UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Behkam Bahadorani, Petitioner v. Pamela Bondi, Attorney General; et al., Respondents.	Case No.: 25-CV-01091-PRW **PETITIONER'S SUR-REPLY TO RESPONDENTS' SUR-RESPONSE TO THE ORDER TO SHOW CAUSE** **EXPEDITED HANDLING REQUESTED**

INTRODUCTION

Petitioner, Behkam Bahadorani, filed a petition for a writ of habeas corpus and concurrently filed a motion for a temporary restraining order ("TRO") and preliminary injunction ("PI") on September 21, 2025 alleging that he is being detained in violation of law. ECF Nos. 1, 5, 8-9. On October 2, 2025, the Court issued an Order to Show Cause ordering Respondents to state the true cause of Petitioner's detention by October 14, 2025. ECF No. 12, 13. Respondents filed their opposition response to the habeas petition on October 14, 2025, explaining why, in their view, Petitioner is lawfully detained. *See* ECF Nos. 15, 15-1, 15-2, 15-3, 15-4, 15-5. On October 15, 2025, Petitioner filed his reply. ECF No. 16. On October 22, 2025, the Court issued an Order requiring Respondents to file a sur-reply on or before October 27, 2025 "detailing (1) the extent to which Respondents have or have not complied with the procedural requirements of 8 C.F.R. § 241.13(i)(2)-(3), and (2) if Respondents did fail to do so, what the appropriate remedy for such failures ought to be." ECF No. 17.

On October 27, 2025, Respondents filed their sur-reply. *See* ECF No. 18. Respondents also supplied new evidence that was not requested by the Court. ECF Nos. 18-1, 18-2, 18-3. The Court then granted Petitioner's motion to file a sur-response on or before October 29, 2025. *See* ECF No. 19.

PROCEDURAL & FACTUAL HISTORY

Bahadorani incorporates by reference the facts alleged in his verified habeas corpus petition and his memorandums in support of his emergency motions. *See* ECF No. 1; ECF No. 9 at 5; ECF No. 16 at 1-4.

ARGUMENT

I. Respondents did not comply with regulation.

By arguing substantial compliance, Respondents first admit that they did not comply with the regulations at 8 C.F.R. § 241.13(i)(2)-(3). *See* ECF No. 18 at 2-4. Respondents admit that they "are unable to verify that upon his redetention Mr. Bahadorani received a formal Notice of Revocation of Release." *Id.* at 2. This is an admission that no such Notice was ever issued or served. *See* Fed. R. Evid. 803(7) (absence of evidence of regularly conducted business activities is evidence such activities did not occur).

Respondents seem to contend that written notice is not required under 8 C.F.R. § 241.13(i), and that oral notice by a deportation officer at time of arrest suffices. *See* ECF No. 18 at 3. This flatly contradicts regulation. 8 C.F.R. § 241.13(g) ("The HQPDU **shall** issue a **written decision** based on the administrative record, including any documentation provided by the alien, regarding the likelihood of removal and whether there is a

significant likelihood that the alien will be removed in the reasonably foreseeable future under the circumstances. The HQPDU **shall** provide the decision to the alien, with a copy to counsel of record, by regular mail.") (emphasis added). Magistrate Maxfield recently issued a Report and Recommendation finding the same. *See Bahadorani v. Bondi*, No. 25-CV-1067-J, ECF No. 18 at 13 (R&R) (W.D. Okla. Oct. 15, 2025) ("ICE is required to issue a written decision"), *adopted* by ECF No. 21 (W.D. Okla. Oct. 27, 2025). Because compliance with § 241.13(i)(2)–(3) is a condition precedent to redetention, the government's inability to show written notice with supporting reasons and the required revocation interview voids detention *ab initio*.

As to the basis for redetention, ICE now states that the reason Petitioner was redetained is "because he is a sex offender…, and because ERO now has the possibility of removing him to a third country if Iran does not accept him." ECF No. 18 at 3 (quoting ECF No. 18-1 at 1-2, ¶ 3). Neither of these are new facts that might constitute "changed circumstances" under regulation. Petitioner's prior convictions did not prevent ICE from previously releasing Petitioner after finding he is not an ongoing or future danger or flight risk. *See, e.g.*, 8 C.F.R. § 241.4(e). Moreover, ICE always had the possibility of removing Petitioner to a third country if Iran does not accept him; nothing has changed. A "possibility" of removal is a far cry from a "**significant likelihood** of removal in the **reasonably foreseeable future**," and ICE must not be allowed to indefinitely detain individuals based on a mere possibility. The agency's asserted changes are either pre-existing or speculative; neither satisfies § 241.13(i)(2)'s standard or *Zadvydas*' evidentiary burden.

There seems to be a fundamental disconnect between the claimed basis for Petitioner's detention and the likelihood of third country removal. Respondents indicate Petitioner is both in civil detention and socially undesirable due to his convictions. Respondents also indicate that they might get lucky and manage a deportation. Respondents do not indicate, however, why either Iran or any other third country would voluntarily agree to accept a convicted sex offender. Petitioner's convictions makes him *less likely* to be deported in the reasonably foreseeable future, not more likely much less "significantly likely."

Respondents also seem to claim that Petitioner is being detained in accordance with the factors delineated at 8 C.F.R. § 241.4(e), (f), and (g). ECF No. 18 at 5 (citing ECF No. 18-3 at 1 ("Custody Decision")).

The Custody Decision notice simply parrots regulatory text, which has routinely been deemed to be insufficient by other courts. For example, in *Roble v. Bondi*, Judge Laura Provinzino held that "[p]roviding a notice that simply recites the language of the regulation does not satisfy the Government's obligation to provide the 'reasons' why Roble's Order of Supervision was revoked." *Roble v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2443453, at *3 (D. Minn. Aug. 25, 2025) (citing *Sarail A. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2533673, at *5 (D. Minn. June 17, 2025)). As was true in *Roble*, here, "the Government also fails to show why [Bahadorani]'s removal to a third country is more likely in the reasonably foreseeable future, especially given that ICE was previously unable to remove [Bahadorani] to a third country [between 2015-2016]." *Roble*, 2025 WL 2443453, at *5. As was true in *Roble*, "[t]his case is not a close call. Not only was ICE's

release-revocation notice deficient, but even after detaining [Bahadorani] for over a month [(in this case, over four months)], the Government still fails to show that his removal is any more likely today than the day he was released on his Order of Supervision." *Id.* As was true in *Roble*, "ICE broke the law when it re-detained [Bahadorani], so habeas relief is warranted." *Id.*

Similarly, in *Liu v. Carter*, a Kansas District Court examined a situation where ICE's proposed reason for revocation was "an increase in successful repatriations to the People's Republic of China in 2024," but determined that explanation was "insufficient," as it did not address specific information that the petitioner was likely to be removed. *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *1-2 (D. Kan. June 17, 2025). Lacking that information, the court could not decide "whether any changed circumstances led officials to determine that there is a significant likelihood that petitioner may be removed in the reasonably foreseeable future, as required by Section 241.13(i)." *Id.* at *2. The court read § 241.13(i)(3) to "require[ ] officials to notify an alien of the *supporting* reasons"—construing the statutory text in the same fashion as the District of Minnesota in *Sarail A. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2533673, at *4-5 (D. Minn. June 17, 2025), which also involved a habeas corpus grant. *Id.*

Respondents claim that the detention decisions have been made in consideration of the factors set forth in 8 C.F.R. § 241.4(e), (f), and (g), which is implausible. Consider for example, § 241.4(e)(1)-(6). Those provisions provide:

> ***Criteria for release.*** Before making any recommendation or decision to release a detainee, a majority of the Review Panel members, or the Director of the HQPDU in the case of a record review, must conclude that:

> **(1)** Travel documents for the alien are not available or, in the opinion of the Service, immediate removal, while proper, is otherwise not practicable or not in the public interest;
>
> **(2)** The detainee is presently a non-violent person;
>
> **(3)** The detainee is likely to remain nonviolent if released;
>
> **(4)** The detainee is not likely to pose a threat to the community following release;
>
> **(5)** The detainee is not likely to violate the conditions of release; and
>
> **(6)** The detainee does not pose a significant flight risk if released.

8 C.F.R. § 241.4(e).

Here, Respondents have admitted that travel documents for Petitioner are not presently available. Petitioner is not alleged to **"presently"** be a violent person, and he has not been convicted of any new offenses since being released on an OOS. Petitioner has remained non-violent since his release in 2016, and there is no reason for ICE to believe this will change if Petitioner is released again. Petitioner has not posed a threat to his community since his release in 2016, and there is no basis for ICE to claim that Petitioner is likely to pose a threat to his community in the future. Petitioner has fully complied with every term of his OOS for nearly a decade, and there is no reason to believe he is likely to violate conditions of release if re-released on an OOS. Lastly, Petitioner has routinely attended all ICE check-ins. There is no reason to believe he is a flight risk, especially considering his strong community ties to his local community and the United States. Respondents' claim to have based their Custody Decision on § 241.4(e) seems, at best, disingenuous.

The factors in § 241.4(f) similarly weigh heavily in favor of Petitioner's release.

ICE notes no disciplinary infractions or incident reports received while in service custody. There is no evidence of recidivism since release in 2016 and all criminal sentences have been discharged. Petitioner, through his long history of law-abiding behavior, appears to have fully rehabilitated. There is no indication that Petitioner is a mental health risk. Petitioner has strong ties to the United States. Petitioner's immigration violations are all nearly or more than a decade old. Petitioner has previously adjusted to life in his community, and there are no reasons to suspect or believe that he poses any future risk of violence or criminal activity or otherwise poses a future or present danger to any person. Respondents' claim to have based their Custody Decision on § 241.4(f) seems, at best, disingenuous.

As to § 241.4(g), subsection (2) states that "[t]he Service's determination that receipt of a travel document **is likely** **may** by itself warrant continuation of detention pending the removal of the alien." 8 C.F.R. § 241.4(g)(2) (emphasis added). Subsection (3) states, in pertinent part, "**[i]f** it is **established** at any stage of a custody review that, in the judgment of the Service, travel documents can be obtained, or such document is forthcoming, the alien will not be released **unless immediate removal is not practicable** or in the public interest." 8 C.F.R. § 241.4(g)(3) (emphasis added). Here, Respondents have never established that travel documents can be obtained or are otherwise forthcoming. Instead, Respondents speculate that they might be able to obtain a travel document. Respondents do not provide any communications between ICE HQ and the State Department indicating that even the slightest attempt has been made to secure a third-country travel document, or whether those illusory efforts have been fruitful.

Respondents have not "established" that travel documents can be obtained or are forthcoming, nor that immediate removal is practicable. Respondents' claim to have based their Custody Decision on § 241.4(g) is contradicted by the plain language of the regulation and the record.

The undersigned also notes that despite the new Deportation Officer affidavit indicating that Petitioner was being taken into custody based on his criminal history, that basis for continued detention is conspicuously absent from the Custody Decision. *Compare* ECF No. 18-1, ¶ 3 ("ERO was revoking his order of supervision because he is a sex offender with an aggravated felony conviction, and because…") *with* ECF No. 18-3 (not mentioning danger or criminal issues at all) *and Momennia v. Bondi*, No. 25-CV-1067-J (W.D. Okla. Oct. 22, 2025), ECF No. 19-1 (exact same notice for different individual indicated basis of determination was "significant criminal history and ongoing efforts to effect… removal"). The absence of the criminal basis for detention in the written notice indicates that Respondents' unwarranted belief that Petitioner is significantly likely to be removed in the reasonably foreseeable future is mere pretext used to punish Petitioner via civil detention for crimes with discharged sentences and/or for being an immigrant and/or for being undeportable for practical reasons beyond Petitioner's control. *See also* ECF No. 1, ¶¶ 42, 59, 75-76.

Lastly, the government's July 30 custody review and October 16 continuation decision are § 241.4 processes that presuppose a lawful revocation; they do not satisfy—and cannot retroactively cure—§ 241.13(i)'s pre-revocation duties of written notice with reasons and an initial interview tied to that notice.

II. The only appropriate remedy is immediate release.

Respondents submit that even if they failed to comply with binding regulations governing their detention authority and basic constitutional due process requirements, the appropriate remedy is to collectively stick our hands in our pockets and look the other way. *See* ECF No. 18 at 4-6. By suggesting an order to comply with regulation instead of release, Respondents propose a mulligan as a constitutional remedy. Unsurprisingly, Respondents cite to no cases in which such a remedy has been utilized for constitutional defects relating to ongoing and indefinite civil detention.

Instead of citing cases on point, Respondents throw a Hail Mary and attempt to wrest jurisdiction from the Court by recharacterizing Petitioner's claim as an impermissible "condition-of-confinement" claim. *See* ECF No. 18 at 5-6. This is an artful way to interpret Petitioner's habeas corpus petition, but there is no support for such a claim on the face of the petition. Where detention authority turns on compliance with mandatory predicates, habeas release is the proportionate remedy because the detention itself—and not merely a condition of confinement—is unlawful.

CONCLUSION

As many other courts have done before under like circumstances, and as Judge Bernard Jones held as recently as October 27, 2025 in *Momennia*, No. 25-CV-1067, this Court must order Petitioner's immediate release because Petitioner's detention is unconstitutional.

DATED: October 29, 2025

Respectfully submitted,

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