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20 **UNITED STATES DISTRICT COURT**  
21 **SOUTHERN DISTRICT OF CALIFORNIA**  
22

23 ANA LESIC, *et al.*,

24 Petitioners,

25 v.

26 CHRISTOPHER J. LAROSE, Senior  
27 Warden, Otay Mesa Detention Center, *et*  
28 *al.*,

Respondents.

Case No.: 25-cv-2746-LL-BJW

**RETURN IN OPPOSITION TO  
PETITION FOR WRIT OF HABEAS  
CORPUS**

JUDGE: Hon. Linda Lopez

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## INTRODUCTION

Respondents Christopher J. LaRose, Senior Warden of the Otay Mesa Detention Center; Joseph Freden, Acting Field Office Director of U.S. Immigration and Customs Enforcement; Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement; Kristi Noem, Secretary of U.S. Department of Homeland Security; and Pamela Bondi, Attorney General of the United States, hereby submit this answer to the Petition for a Writ of Habeas Corpus (“Petition”) filed on October 15, 2025, by Petitioners Ana Lesic and Nikica Lesic. *See generally* Pet. Writ Habeas Corpus (“Petition”), ECF No. 1. Petitioners are a married couple. Each are Croatian nationals presently in removal proceedings and detained by U.S. Immigration and Customs Enforcement (“ICE”) since October 6, 2025. Petitioner Ana Lesic is charged as deportable under 8 U.S.C. § 1227(a)(1)(C)(i).<sup>1</sup> Petitioner Nikica Lesic is charged as deportable under 8 U.S.C. § 1227(a)(1)(B).<sup>2</sup>

Petitioners challenge their continued detention by ICE, claiming that ICE unlawfully revoke their prior release and re-detained them without individualized consideration. However, Petitioners fail to establish that their detention violates 8 U.S.C. § 1226(a), the Administrative Procedure Act, or the Fifth Amendment Due Process Clause. Moreover, because claims brought under the Administrative Procedure Act constitute civil actions governed by the Federal Rules of Civil Procedure rather than the habeas corpus framework, Petitioners’ APA claims are not properly raised in a habeas petition. ICE revoked

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<sup>1</sup> “Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status, is deportable.”

<sup>2</sup> “Any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable.



1 Petitioners' release based on material changes in circumstances—namely, the  
2 implementation of updated immigration priorities under Executive Order 14165, Securing  
3 Our Borders. These policy changes reflect a lawful shift in how ICE exercises its discretion  
4 in supervising aliens, including those without final orders of removal, who may be lawfully  
5 detained pending removal. As such, ICE acted within its statutory and regulatory authority.  
6 Therefore, Petitioners have not demonstrated any legal basis for habeas relief, and the  
7 petition should be denied.

### 8 **PROCEDURAL HISTORY OF THE INSTANT CASE**

9 On October 15, 2025, Petitioners filed their petition for writ of habeas corpus,  
10 challenging their continued detention by ICE at the Otay Mesa Detention Facility in Otay  
11 Mesa, California. *See generally* Pet. Petitioners seek a writ to order Respondents to release  
12 them from ICE's custody. *See* Pet., Prayer for Relief ¶ 4. Petitioners bring forth three civil  
13 counts for declaratory and injunctive relief. Under Count I, Respondents allegedly violated  
14 the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A), by abusing their  
15 discretion categorically revoking and re-detaining Petitioners without consideration of  
16 individualized facts and circumstances in contradiction to 8 U.S.C § 1226(b) and 8 C.F.R.  
17 1236.1(c)(9). *See* Pet. ¶¶ 44–52. Under Count II, Respondents allegedly violated the APA  
18 by not acting in accordance with law and in excess of statutory authority by revoking and  
19 re-detaining Petitioners without consideration of individualized facts and circumstances in  
20 contradiction to 8 U.S.C § 1226(b) and 8 C.F.R. 1236.1(c)(9). *See id.* ¶¶ 53–60. Under  
21 Count III, Respondents allegedly violated the Due Process Clause of the Fifth Amendment  
22 by revoking Petitioners' release in an arbitrary manner not based on a rational and  
23 individualized determination. *See id.* ¶¶ 61–65.

24 On October 17, 2025, this Court found that Petitioners sufficiently alleged that the  
25 government "will be unable to remove them for the 'reasonably foreseeable future[,]'" and  
26 that the government must file its return to the petition and show cause for why it should  
27  
28

1 not be granted. *See generally* Order Screening Habeas Pet. and Setting Br. Schedule, ECF  
2 No. 2.

### 3 RELEVANT FACTUAL BACKGROUND

4 Petitioners are a married couple and citizens of Croatia. *See* Pet. ¶¶ 1, 9, 10.  
5 Petitioner Ana Lesic initially entered the United States in December 21, 2004, as a B-2  
6 nonimmigrant visitor and later changed status to an O-2 nonimmigrant on March 2, 2007.  
7 *Id.* ¶ 19; *see also* Notice to Appear for Ana Lesic, attached as Ex. A. On May 28, 2007,  
8 Petitioner Nikica Lesic was admitted to the United States as a O-1 nonimmigrant. *See*  
9 Notice to Appear for Nikica Lesic, attached as Ex. B. In July of 2009, Petitioner Ana Lesic  
10 affirmatively applied for asylum. *Id.* ¶ 19. On August 26, 2009, DHS placed Petitioners  
11 into removal proceedings pursuant to 8 U.S.C. § 1229a via the filing of a Notice to Appear  
12 for each Petitioner. Decl. Denise Baroga ¶ 3, attached as Ex. C; *see e.g.*, Exs. A and B.  
13 Both Petitioners remained in the United States beyond March 1, 2009, without  
14 authorization from U.S. Customs and Immigration Services (“USCIS”). *See* Ex. A; *see also*  
15 Ex. B. Petitioner Ana Lesic was charged with removability under 8 U.S.C. 1227(a)(1)(C)(i)  
16 for failing to maintain or comply with the conditions of the nonimmigrant status under  
17 which admitted. Ex. C ¶ 4. Petitioner Nikica Lesic was charged with removability under 8  
18 U.S.C. § 1227(a)(1)(B) for remaining in the United States for a time longer than permitted.  
19 Ex. C ¶ 5. On October 28, 2011, Petitioners’ cases were administratively closed without  
20 the issuance of a decision. Ex. C ¶ 6; Pet. ¶ 19.

21 On May 24, 2018, Petitioner Ana Lesic was taken into ICE custody due to changed  
22 circumstances pursuant to 8 U.S.C. § 1226(a). Ex. C ¶ 7; *see also* Notice of Custody  
23 Determination, attached as Ex. D. On June 5, 2018, an Immigration Judge granted a  
24 \$10,000 bond for Petitioner Ana Lesic. Ex. C ¶ 8. On June 11, 2018, Petitioner Ana Lesic  
25 posted bond and was released. *Id.* ¶ 9.

26 On September 8, 2022, Petitioners’ cases were reopened and consolidated, with  
27 Petitioner Ana Lesic as the lead applicant and Petitioner Nikica Lesic as a derivative rider.  
28



1 *Id.* ¶ 10; *see also* Order of Immigration Judge, attached as Ex. E. On December 8, 2022,  
2 all relief from removal was denied and an order of removal to Croatia was entered for  
3 Petitioner Ana Lesic while Petitioner Nikica Lesic was granted voluntary departure to  
4 Croatia. *Id.* ¶ 11. On December 19, 2022, Petitioners timely filed an appeal with the Board  
5 of Immigration Appeals (“BIA”). *Id.* ¶ 13. That appeal remains pending before the BIA.  
6 *Id.*

7 On October 6, 2025, Petitioner Ana Lesic’s \$10,000 bond posted in June of 2018  
8 was cancelled. *Id.* ¶ 14; *see also* Notice of Revocation of Release, attached as Ex. F. She  
9 was served with Form I-200 and brought into ICE custody pursuant to 8 U.S.C. § 1226(a)  
10 as an immigration priority to secure borders under Executive Order 14165 issued on  
11 January 20, 2025. *Id.*; *see also* Form I-200, Warrant for Arrest of Petitioner Ana Lesic,  
12 attached as Ex. G. On October 17, 2025, Form I-286, Notice of Custody Determination,  
13 was served on Petitioner Ana Lesic. *Id.*; *see also* Notice of Custody Determination for  
14 Petitioner Ana Lesic, attached as Ex. H.

15 Also, on October 6, 2025, Petitioner Nikica Lesic’s \$500 voluntary departure bond  
16 was cancelled. Ex. C ¶ 15. He was served with Form I-200 and brought into ICE custody  
17 pursuant to 8 U.S.C. § 1226(a) as an immigration priority to secure borders under Executive  
18 Order 14165 issued on January 20, 2025. *Id.*; *see also* Form I-200, Warrant for Arrest of  
19 Petitioner Nikica Lesic, attached as Ex. I. On October 7, 2025, Form I-286, was served on  
20 Petitioner Nikica Lesic. *Id.*; *see also* Notice of Custody Determination for Petitioner Nikica  
21 Lesic, attached as Ex. J.

22 To date, Petitioners remain detained at the Otay Mesa Detention Facility. To date,  
23 Petitioners are eligible for bond hearings before an immigration judge. *See* Exs. H and J.  
24  
25  
26  
27  
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## ARGUMENT

### A. Relevant Statutory and Regulatory Framework

#### 1. Revocation of Release Pursuant to 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13

Relevant here, release may be revoked under 8 C.F.R. § 241.4 when the Executive Associate Commissioner or a district director believes revocation “is appropriate to enforce a removal order or to commence removal proceedings against an alien.” 8 C.F.R. § 241.4(l)(2)(iii). Further, if ICE subsequently finds that, “because of a *change of circumstances*, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future to the country to which the alien was ordered removed or to a third country, the alien shall again be subject to the custody review procedures under this section.” 8 C.F.R. § 241.4(b)(4) (emphasis added). “Upon revocation,” the alien “will be notified of the reasons for revocation of his or her release or parole” and “will be afforded an initial informal interview promptly after his or her return” to be given “an opportunity to respond to the reasons for revocation stated in the notification.” § 241.4(l)(1).

Also, relevant here, 8 U.S.C. § 241.13 provides “special review procedures” that apply where, among other conditions, an alien “has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future.” 8 C.F.R. § 241.13(a). ICE “may revoke an alien’s release under this section and return the alien to custody if, on account of *changed circumstances*, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” § 241.13(i)(2). This section has the same requirements as 8 C.F.R. § 241.4 in that, “[u]pon revocation,” the noncitizen “will be notified of the reasons for revocation of his or her release” and “will be afforded an initial informal interview promptly after his or her return” to be given “an opportunity to respond to the reasons for revocation

1 stated in the notification.” § 241.13(i)(3).

2 **2. Immigration Detention Pursuant to 8 U.S.C. § 1226**

3 The INA distinguishes between detention of aliens still in removal proceedings and  
4 aliens who have received final orders of removal. Relevant here, 8 U.S.C. § 1226 governs  
5 the detention of aliens already present in the country prior to their final orders of removal.  
6 *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226 dictates the process of  
7 arresting and detaining the group of aliens pending their removal. *Jennings*, 583 U.S. at  
8 288. Section 1226 sets forth two categories of aliens. *Id.* at 287. Relevant here, section  
9 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest  
10 and “*may continue* to detain” the arrested alien “pending a decision on whether the alien is  
11 to be removed from the United States.” 8 U.S.C. § 1226(a)(1); *id.* at section 1226(a)(2)  
12 (“Except as provided in subsection (c) of this section,” the Attorney General “*may release*”  
13 an alien detained under section 1226(a) “on . . . bond” or “conditional parole”) (emphasis  
14 added).

15 Aliens detained under section 1226(a) are entitled to bond hearings “at the outset of  
16 detention.” *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).  
17 Release depends on “the alien demonstrat[ing] to the satisfaction of the officer that such  
18 release would not pose a danger to property or persons, and that the alien is likely to appear  
19 for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

20 **B. Claims Pursuant to the Administrative Procedure Act are Not**  
21 **Cognizable in Habeas.**

22 To begin, should the Court find that it has jurisdiction over Petitioner’s civil  
23 claims, it should still dismiss them without prejudice as improperly raised in habeas and  
24 require Petitioner to file a civil claim subject to the Federal Rules of Civil Procedure.  
25 *See Mayle v. Felix*, 545 U.S. 644, 655 (2005); *Trollope v. Vaughn*, No. CV 18-03902-  
26 JLS (JDE), 2018 WL 3913922, at \*2 (C.D. Cal. 2018) \*2; *see also Acosta v. Doerer*,  
27 No. 5:24-cv-01630-SPG-SSC, 2025 WL 725245, at \*2 (C.D. Cal., 2025) (Federal Rules  
28



1 of Civil Procedure may be applied in habeas proceedings only “to the extent that they  
2 are not inconsistent with any statutory provisions or the[ habeas] rules.”)  
3 (citing *O’Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1990)) (quoting *Browder v.*  
4 *Director, Ill. Dept. of Corr.*, 434 U.S. 257, 269 n.14 (1978)); *Hillery v. Pulley*, 533 F.  
5 Supp. 1189, 1195 (E.D. Cal. 1982) (“[M]otion practice in habeas corpus is not  
6 specifically provided for in the rules but must be inferred from their structure and the  
7 Advisory Committee Notes.”); *Trollope*, 2018 WL 3913922 at \*3 (declining to convert  
8 a non-cognizable habeas petition to a civil rights claim in part because petitioner paid  
9 only the \$5 habeas fee and not the \$350 civil filing fee and \$50 administrative fee)  
10 (citing 28 U.S.C. § 1914); *Jorgenson v. Spearman*, No. 5:16-cv-00455-JLS-KS, 2016  
11 WL 2996942, at \*1 (C.D. Cal. May 22, 2016) (same). Most recently, a sister court in  
12 this circuit has found that, to the extent petitioners assert claims for injunctive relief  
13 under the APA or Due Process Clause, the court should not allow petitioners to proceed  
14 without paying the appropriate filing fee. *See Al Eyani v. Bondi, et al.*, No. 5:25-cv-  
15 00422-RGK-DTB (C.D. Cal. May 20, 2025) (J. Klausner, R. Gary), attached as Ex. K.

16 **C. Petitioner is Lawfully Detained Pursuant to 8 U.S.C. § 1226(a) as an Alien**  
17 **in Removal Proceedings.**

18 Petitioners have failed to demonstrate that their respective detentions are  
19 unlawful pursuant to 8 U.S.C. § 1226(a). Petitioners allege that ICE officials detained  
20 them in violation of ICE’s own regulations and their due process rights. *See* Pet. ¶¶ 48–  
21 52; 57–60; 65. Specifically, Petitioners allege the government violated their rights in  
22 two ways. *First*, Petitioners allege ICE violated their rights by categorically revoking  
23 their release without any changes in facts and circumstances in violation of ICE’s own  
24 regulations. *See id.* ¶¶ 43, 48–52, 57–60. *Second*, Petitioners allege that ICE violated  
25 his due process rights by revoking Petitioners’ release in an arbitrary manner not based  
26 on a rational and individualized determination. *See id.* ¶¶ 61–65. For the reasons as  
27  
28

1 more fully explained below, Petitioners have failed to state any basis for habeas relief,  
2 and the Court should dismiss the petition.

3 **1. Lawfulness of Petitioners' Re-Detention**

4 *First*, Petitioners' detention pursuant to § 1226(a) occurred following the service  
5 of the Notice of Revocation of Release. *See* Ex. C ¶ 14; *see also* Ex. F. Petitioners' order  
6 of supervision—both Petitioner Ana Lesic's \$10,000 bond and Petitioner Nikica Lesic's  
7 \$500 voluntary departure bond—were lawfully revoked pursuant to 8 C.F.R. § 241.4  
8 and § 241.13<sup>3</sup> because there was a change in circumstances since the 2018 and 2022  
9 orders of supervision, respectively. By statute and regulation, as interpreted by the  
10 Board of Immigration Appeals ("BIA"), ICE has the authority to re-arrest aliens  
11 and revoke their release pending the outcome of removal proceedings only when there  
12 has been a change in circumstances since the individuals' initial release. *See Panosyan*  
13 *v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed  
14 circumstances . . . ICE cannot redetain Panosyan."); *Matter of Sugay*, 17 I&N Dec. 647,  
15 640 (B.I.A. 1981). Additionally, any change in circumstances must be  
16 "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub*  
17 *nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

18 On January 20, 2025, President Trump issued Executive Order 14165, *Securing*  
19 *Our Borders*, 90 Fed. Reg. 8467.<sup>4</sup> As of January 20, 2025, ICE Enforcement Removal  
20 and Operations ("ERO") no longer has priority categories, and each individual is  
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22 <sup>3</sup> Petitioners insinuate that the revocation of release was made pursuant 8  
23 U.S.C. § 1226(b) and states that such revocations are subject to and authorized only  
24 under 8 C.F.R. § 1236.1(c)(9). However, the Notice of Revocation of Release clearly  
25 demonstrates that Petitioners' bond was revoked pursuant to 8 C.F.R. § 241.4 and 8  
C.F.R. § 241.13.

26 <sup>4</sup> Executive Order 14165 is publicly available at  
27 [https://www.federalregister.gov/documents/2025/01/30/2025-02015/securing-our-](https://www.federalregister.gov/documents/2025/01/30/2025-02015/securing-our-borders)  
28 [borders](https://www.federalregister.gov/documents/2025/01/30/2025-02015/securing-our-borders).



1 deemed an immigration priority regardless of being a final order or not. Relevant here,  
2 although Petitioners' appeal remains pending before BIA, ICE ERO is authorized to  
3 apprehend and detain Petitioners until their successful removal from the United States.  
4 Specifically, pursuant to section 2(d): Policy of the Executive Order, "the policy of the  
5 United States [is] to take all appropriate action to secure the borders of our Nation  
6 through the following means:...Removing promptly all aliens who enter or remain in  
7 violation of Federal law." Namely and relevant here, Section 5: Detention of the  
8 Executive Order sets forth:

9       The Secretary of Homeland Security shall *take all appropriate actions to*  
10       *detain*, to the fullest extent permitted by law, *aliens apprehended for*  
11       *violations of immigration law until their successful removal* from the  
12       United States. The Secretary shall, consistent with applicable law, issue  
13       new policy guidance or propose regulations regarding the appropriate and  
14       consistent use of lawful detention authority under the INA, including the  
15       termination of the practice commonly known as "catch-and-release,"  
16       whereby illegal aliens are routinely released into the United States shortly  
17       after their apprehension for violations of immigration law.

18 (emphasis added). Therefore, since Petitioners' respective bonds in 2018 and 2022,  
19 there has been a change in circumstances in the form of a policy shift in how ICE  
20 exercises its discretion in supervising aliens, including those without final orders of  
21 removal, who may be lawfully detained pending removal.

22       To begin, Petitioners do not argue that their detention, or more precisely the  
23       revocation of their prior release that resulted in present detention, is unlawful under 8  
24       C.F.R. § 241.4 as set forth in the Notice of Revocation of Release. *See* Ex. F. Rather,  
25       Petitioners make generalized allegations that the revocations were issued categorically  
26       and without consideration of individualized facts and circumstances under an  
27       inapplicable statute. As relevant here, however, § 241.4(l)(2) provides alternative bases  
28       for revocation. Specifically, § 241.4(l)(2) permits revocation "in the exercise of  
discretion when, in the opinion of the revoking official":

(i) The purposes of release have been served;

- (ii) The alien violates any condition of release;
- (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
- (iv) The conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.

§ 241.4(l)(2) (emphasis added). Therefore, Petitioners have failed to explain why the revocations of release failed to comply with these alternative bases for revocation under the relevant standard.

Even under 8 C.F.R. § 241.13 revocation of release standard, Petitioners have failed to meet their burden under the relevant standard. Section 241.13(i) restricts revocation more than § 241.4(l)(2). Whereas § 241.4(l)(2) permits revocation in the discretion of the revoking official when an alien falls into one of the four specific categories, § 241.13(i) permits revocation only if (1) the alien “violates any of the conditions of release,” or (2) “on account of *changed circumstances*, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” *Id.* § 241.13(i)(1)–(2) (emphasis added).

Section 241.13 establishes a special review process for aliens otherwise subject to § 241.4 “where the alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future.” *Id.* § 241.13(a). In outline, the alien must first request a review of the likelihood of their removal under § 241.13. *See id.* § 241.13(c), (d). ICE then reviews the request according to the specific procedures and factors set out in the regulation. *See id.* § 241.13(e), (f). Upon completing the review, ICE “shall issue...a written decision based on the administrative record...regarding the likelihood of removal and whether there is a significant likelihood that the alien will be removed in the reasonably foreseeable future.” *Id.* § 241.13(g). If ICE finds that the alien has demonstrated “no significant likelihood that the alien will be removed in the reasonably foreseeable future,” ICE “shall” release the alien on an order of supervision



1 (“OSUP”) “[u]nless there are special circumstances justifying continued  
2 detention.” *Id.* § 241.13(g)(1), (h).

3 Once released on an OSUP under § 241.13, ICE may only revoke the OSUP for  
4 the reasons specified in § 241.13(i). Revocation under § 241.13(i) applies only to aliens  
5 released under § 241.13(g)—where ICE has formally determined that there is no  
6 significant likelihood that the alien will be removed in the reasonably foreseeable  
7 future. *See id.* § 241.13(i)(1) (applying to “[a]ny alien who has been released under an  
8 order of supervision *under this section*”) (emphasis added); *id.* §  
9 241.13(i)(2) (providing that ICE “may revoke an alien’s release *under this section*”)  
10 (emphasis added). Therefore, even when analyzing the revocations of their release  
11 under the more strict standard of § 241.13(i), Petitioners have failed to explain why the  
12 revocations of release failed to comply with the “change of circumstances” bases for  
13 revocation.

14 Even if Petitioners argue that their re-detention is procedurally deficient because  
15 they may not have yet received any interview to respond to the reasons for the  
16 revocation of their release, Petitioners were taken in ICE custody eighteen (18) days  
17 prior the date of this filing. In contrast to other cases in which courts have found ICE  
18 failed to comply 8 C.F.R. § 241.4(l), the petitioners had been in ICE’s custody for over  
19 a month to provide to Petitioner the required interview and opportunity to respond. *See*  
20 *Phan v. Noem*, No. 3:25-cv-02422-RBM-MSB, 2025 WL 2898977 (S.D. Cal. Oct. 10,  
21 2025) (“Petitioner was taken into ICE custody on September 5, 2025, which means ICE  
22 has had over a month to provide to Petitioner the required interview and opportunity to  
23 respond.”) Due to Petitioners’ limited detention period at this stage, ICE has complied  
24 with 8 C.F.R. § 241.4(l), and Petitioners’ detentions are lawful. *See id.*; *see also M.S.L.*  
25 *v. Bostock*, No. 6:25-cv-01204-AA, 2025 WL 2430267, at \*11 (D. Or. Aug. 21, 2025)  
26 (finding an informal interview given 27 days after petitioner was taken into ICE custody  
27 “cannot reasonably be construed as . . . prompt” and granting habeas petition); *Hoac v.*  
28

1 *Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July 16,  
2 2025) (finding petitioner likely to succeed on his claim that his detention was unlawful  
3 “[b]ecause there is no indication that an informal interview was provided”); *Liu v.*  
4 *Carter*, No. 25-03036-JWL, 2025 WL 1696526, at \*2 (D. Kan. June 17, 2025) (finding  
5 “that officials did not properly revoke petitioner’s release” because “most  
6 obviously...petitioner was not granted the required interview upon the revocation of his  
7 release”).

8 Accordingly, there is no basis to find that Petitioners have demonstrated that the  
9 revocation of their release was not authorized under either 8 C.F.R. § 241.3 or § 241.13.

## 10 **2. Petitioners’ Liberty Interest**

11 *Second*, Petitioners’ due process rights were not implicated by the revocations of  
12 their release because ICE has discretion to revoke orders of supervision under 8 C.F.R.  
13 § 241.4 and § 241.13. *See supra* B.1. In spite of ICE’s authority pursuant to 8 C.F.R. §  
14 241.4 and § 241.13, Petitioners challenge ICE’s general discretionary authority to  
15 revoke his release in implicating the Due Process Clause.

16 Petitioners have no procedural due process claim to a continued order of release  
17 because Petitioners allege that they have a right to relief that is otherwise discretionary,  
18 such as cancellation of removal. Courts have continuously held that Petitioners have no  
19 right to this form of relief. *See Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756,  
20 125 S.Ct. 2796, 162 L.Ed.2d 658 (2005) (plaintiff had no liberty or property right in  
21 police enforcement of a discretionary restraining order); *Yuen Jin v. Mukasey*, 538 F.3d  
22 143, 156-57 (2d Cir. 2008) (noncitizen already adjudicated removed and ordered  
23 deported did not have a liberty or property interest in a discretionary grant of  
24 asylum); *Rojas-Reyes v. INS*, 235 F.3d 115, 125-26 (2d Cir. 2000) (noncitizen did not  
25 have constitutional right to be considered for the discretionary relief of cancellation of  
26 removal); *Smith v. Ashcroft*, 295 F.3d 425, 430 (4th Cir. 2002) (explaining that “the  
27 discretionary right to suspension of deportation does not give rise to a liberty or property  
28



1 interest protected by the Due Process Clause”); *Appiah v. U.S. INS*, 202 F.3d 704, 709  
2 (4th Cir. 2000) (similar); *Matias v. Sessions*, 871 F.3d 65, 72 (1st Cir. 2017) (petitioner  
3 lacked cognizable liberty interest where he sought only discretionary relief from the  
4 BIA, and thus could not state a due process claim); *Assaad v. Ashcroft*, 378 F.3d 471,  
5 475-76 (5th Cir. 2004) (similar); *Oguejiofor v. Att’y Gen. of U.S.*, 277 F.3d 1305, 1309  
6 (11th Cir. 2002) (similar); *Ashki v. INS*, 233 F.3d 913, 921 (6th Cir. 2000) (similar).  
7 Here, Petitioners are claiming that they have a right to a continued order of release.  
8 Thus, the Court should dismiss the Petition.

### 9 CONCLUSION

10 For the reasons stated, the Court should dismiss Petitioner’s habeas petition.  
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1 DATED: October 22, 2025

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify the foregoing document was filed on April 15, 2025. Through the ECF system, and that it will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

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