

No. 25-6177

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

Bekham Bahadorani,
Petitioner-Appellant

v.

Pamela Bondi, U.S. Attorney General, et al.,
Respondents-Appellees

APPEAL FROM DISTRICT COURT ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS

IN THE WESTERN DISTRICT OF OKLAHOMA

IN DISTRICT COURT CASE NO.: 25-CV-1091

BEFORE THE HONORABLE PATRICK R. WYRICK

PETITIONER'S REPLY BRIEF

BEKHAM BAHADORANI

Nico Ratkowski
Ratkowski Law PLLC
332 Minnesota Street, Suite W1610
St. Paul, MN 55101
(651) 755-5150

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
GLOSSARY	iv
INTRODUCTION	1
ARGUMENT.....	1
I. Petitioner’s regulatory claims require habeas corpus relief.	1
II. Harmless error	5
III. Respondents have better access to the OOS and have also failed to provide a copy to the Court.	8
CONCLUSION.....	8
CERTIFICATE OF COMPLIANCE.....	10
CERTIFICATE OF SERVICE	11

TABLE OF AUTHORITIES

Cases

<i>Bon Van Nguyen v. Bondi</i> , No. 4:25-CV-05827, ECF No. 11 (S.D. Tex. Dec. 19, 2025)	4
<i>Ceesay v. Kurzdorfer</i> , 781 F. Supp. 3d 137 (W.D.N.Y. 2025)	3
<i>Constantinovici v. Bondi</i> , No. 3:25-CV-02405-RBM-AHG, --- F. Supp. 3d ---, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025).....	4
<i>Do v. Bondi</i> , No. 4:25-CV-05643, ECF No. 10 (S.D. Tex. Dec. 18, 2025)	4
<i>Hernandez Escalante v. Noem</i> , No. 9:25-cv-00182-MJT, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025)	2
<i>Hmung v. Bondi</i> , No. 25-CV-1303-J, 2025 WL 3657221 (W.D. Okla. Dec. 9, 2025), <i>adopted</i> 2025 WL 3670499 (W.D. Okla. Dec. 17, 2025).....	4
<i>Hoac v. Becerra</i> , No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771 (E.D. Cal. July 16, 2025)	2
<i>Karki v. Raycraft</i> , No. 2:25-CV-13186, 2025 WL 3516782 (E.D. Mich. Dec. 8, 2025).....	7
<i>Kong v. United States</i> , 62 F.4th 608 (1st Cir. 2023)	2
<i>Liban O. v. Bondi</i> , No. 0:25-CV-04560-JWB-ECW, ECF No. 10 (Slip. Op.) (D. Minn. Dec. 17, 2025).....	4, 6
<i>M.S.L. v. Bostock</i> , Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267 (D. Or. Aug. 21, 2025)..	1
<i>Michelson v. I.N.S.</i> , 897 F.2d 465 (10th Cir. 1990)	5

<i>Morton v. Ruiz</i> , 415 U.S. 199 (1974)	3
<i>Nazaraghaie v. I.N.S.</i> , 102 F.3d 460 (10th Cir. 1996)	5
<i>Nguyen v. Noem</i> , No. 6:25-CV-057-H, 2025 WL 2737803 (N.D. Tex. Aug. 10, 2025).....	7
<i>Phan v. Noem</i> , No. 25-CV-2422-RBM-MSB, 2025 WL 2898977 (S.D. Cal. Oct. 10, 2025)	3
<i>Rosado v. Figueroa</i> , No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)	2
<i>Surovtsev v. Noem</i> , No. 1:25-CV-160-H, 2025 WL 3264479 (N.D. Tex. Oct. 31, 2025)	7
<i>United States ex rel. Accardi v. Shaughnessy</i> , 347 U.S. 260 (1954)	3
<i>Wright v. Lansing</i> , 75 F. App'x 710 (10th Cir. 2003).....	1
<i>Yee S. v. Bondi</i> , No. 25-CV-02782-JMB-DLM, --- F. Supp. 3d ---, 2025 WL 2879479 (D. Minn. Oct. 9, 2025).....	2
Statutes	
8 U.S.C. § 1252.....	5
Regulations	
8 C.F.R. § 241.13(i)	2, 6
8 C.F.R. § 241.13(i)(3)	4

GLOSSARY

1. App.: Appendix
2. Doc.: Appellate Document Number
3. ICE: U.S. Immigration & Customs Enforcement
4. OOS: Order of Supervision

INTRODUCTION

The majority of Respondents' arguments have already been adequately addressed in Petitioner's Opening Brief. This reply will address only the portions of Respondents' brief that warrant further discussion.

ARGUMENT

I. Petitioner's regulatory claims require habeas corpus relief.

Respondents continue to assert that Petitioner's allegations of regulatory violations afford him no basis for habeas corpus relief. In support, Respondents principally rely on *Wright v. Lansing*, 75 F. App'x 710, 712 (10th Cir. 2003) to argue that only *statutory* violations are capable of implicating due process. *See* Doc. 23-1 at 16.¹ Respondents' reliance on *Wright* is misplaced however, as that case involved allegations of regulatory violations applicable to prisoners serving a criminal sentence. The prisoner in *Wright* had no liberty rights attached to regulatory compliance, in stark contrast with regulations governing the revocation of an OOS, which acknowledge pre-deprivation liberty rights that attach at the moment an individual is released on an OOS under 8 C.F.R. § 241.13. *See M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) ("Although ICE has the initial discretion to detain or release a

¹ Referring to 10th Cir. Stamp in top right corner of page.

noncitizen pending removal proceedings, after that individual is released from custody, they have a protected liberty interest in remaining out of custody.”) (quoting *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025)).

As countless courts have previously held, regulatory violations relating to pre-deprivation procedures regarding revocation of an OOS constitute independent due process violations. *Accord, e.g., Yee S. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2879479, at *6 (D. Minn. Oct. 9, 2025) (ordering release because Petitioner has shown that ICE’s re-detention of him . . . violated the law because ICE did not comply with its own regulations under section 241.13(i)(2)"); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (“The[] regulations clearly indicate, upon revocation of supervised release, it is [ICE’s] burden to show a significant likelihood that the [noncitizen] may be removed.”); *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) (“ICE’s decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE’s own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.”); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16,

2025) (finding petitioner was likely to succeed on unlawful redetention claim because “there is no indication that an informal interview was provided”); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (holding that ICE’s failures to follow regulatory revocation procedures rendered detention unlawful); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025) (“because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release”); *Phan v. Noem*, No. 25-CV-2422-RBM-MSB, 2025 WL 2898977, at *5 (S.D. Cal. Oct. 10, 2025) (“**The Court's research indicates that every district court, except one, to consider the issue has ‘determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered.’**”) (emphasis added; footnote and citations omitted); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (agencies are required to follow their own regulations); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required.”); *Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *8-9 (S.D. Tex. Oct. 16, 2025); *Phong Van Do v. Bondi*, No. 4:25-CV-05643, ECF No. 10 (Slip Op.)

(S.D. Tex. Dec. 18, 2025); *Bon Van Nguyen v. Bondi*, No. 4:25-CV-05827, ECF No. 11 (Slip Op.) (S.D. Tex. Dec. 19, 2025); *Liban O. v. Bondi*, No. 0:25-CV-04560-JWB-ECW, ECF No. 10 (Slip. Op.) at 10-11 (D. Minn. Dec. 17, 2025) (“Where the government fails to comply with the procedural requirements governing re-detention, continued custody is not authorized. ... Here, ICE failed to provide the notice and interview required by § 241.13(i)(3). Re-detention is therefore not authorized on procedural grounds independent of the substantive deficiencies discussed above.”); *Momennia v. Bondi*, No. 25-CV-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025) (R&R), *adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025) (granting habeas relief based on a variety of regulatory violations similar to those presented by Petitioner); *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3477023 (W.D. Okla. Oct. 30, 2025) (R&R), *adopted* 2025 WL 3243870 (W.D. Okla. Nov. 20, 2025) (same); *Hamidi v. Bondi*, No. 25-CV-1205-G, 2025 WL 3452454 (W.D. Okla. Dec. 1, 2025) (same); *Hmung v. Bondi*, No. 25-CV-1303-J, 2025 WL 3657221 (W.D. Okla. Dec. 9, 2025), *adopted* 2025 WL 3670499 (W.D. Okla. Dec. 17, 2025) (same); *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG, --- F. Supp. 3d ---, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025) (same).

II. Harmless error

Respondents' reliance on *Nazaraghaie v. I.N.S.*, 102 F.3d 460 (10th Cir. 1996) is misplaced. *See* Doc. 23-1 at 17-18. That case had nothing to do with habeas corpus or the regulations or statutes at issue. The case was what appears to be a petition for review filed under 8 U.S.C. § 1252 or its predecessor, as it only concerned itself with the merits of the noncitizen's appeal from an immigration judge's decision ordering removal and the BIA's affirmance of that order of removal. The only time habeas is mentioned in the entire decision is in the first paragraph, but there is no discussion of liberty interests, pre-deprivation procedures, or noncitizens previously released on an OOS. It is so clearly inapposite that it deserves no real discussion. Moreover, the logic underlying the harmless error holding in *Nazaraghaie* breaks down in the context of the district court's opinion in this case because, here, there is no substantial evidence supporting the district court's holdings of harmless error. Instead, the evidence plainly demonstrates that Petitioner has been irreparably harmed through unconstitutional custody following the unconstitutional deprivation of Petitioner's liberty rights and concomitant pre-deprivation due process rights.

The other cases Respondents rely upon, discussed by *Nazaraghaie*, are similarly inapposite. *Michelson v. I.N.S.*, 897 F.2d 465, 468 (10th Cir. 1990),

for example, pertained to deportation proceedings, which are not at issue in Petitioner's case, as Petitioner's deportation proceedings ended more than a decade ago. Moreover, as noted above, Petitioner has plainly demonstrated prejudice through demonstrating unlawful incarceration. All of the other cases Respondents rely upon regarding this issue suffer from the same defects.

Respondents err in submitting that Petitioner bore any burden before the district court. *See* Doc. 23-1 at 19-20. Petitioner was not required to establish prejudice. Instead, assuming *arguendo* prejudice is an element, the government bore the burden of establishing that its regulatory violations were harmless – requiring Petitioner to prove harmful error would improperly invert the burden of proof imposed by 8 C.F.R. § 241.13(i)(2)-(3). *See Liban O. v. Bondi*, No. 0:25-CV-04560-JWB-ECW, ECF No. 10 (Slip. Op.) at 6 (D. Minn. Dec. 17, 2025) (8 C.F.R. § 241.13(i)(2) “places the burden on the government to make th[e] showing” that re-detention is authorized due to violation of supervision conditions or the existence of changed circumstances demonstrating removal is now significantly likely to occur in the reasonably foreseeable future). Petitioner continues to assert that prejudice is both immaterial to regulatory violation claims under 8 C.F.R. § 241.13(i) and easily proven in Petitioner's case assuming *arguendo* that prejudice is a material consideration.

Respondents cite various decisions that parrot or expand upon the district court's questionable holdings regarding prejudice and harmless error, including *Karki v. Raycraft*, No. 2:25-CV-13186, 2025 WL 3516782 (E.D. Mich. Dec. 8, 2025), *Surovtsev v. Noem*, No. 1:25-CV-160-H, 2025 WL 3264479 (N.D. Tex. Oct. 31, 2025), and *Nguyen v. Noem*, No. 6:25-CV-057-H, 2025 WL 2737803 (N.D. Tex. Aug. 10, 2025). *See* Doc. 23-1 at 25-27. These decisions are not binding on this Court, and lack any persuasive value. Each of those decisions was wrongheaded for the same reasons as the district court's decision in this case. Repeating an error does not transmute error into accuracy.

Moreover, those decisions are distinguishable. Illustratively, “[l]ike the petition in *Nguyen v. Noem*, *Surovtsev* **does not allege** that ICE's violations of the procedural requirements amount to a constitutional violation.” *Surovtsev v. Noem*, 2025 WL 3264479, at *5 (emphasis added). Conversely, *Bahadorani* **did allege** that ICE's violations of the procedural requirements amount to constitutional violations. *See, e.g.*, App. 11, 14-16, 21-26. *Karki* is also distinguishable because the harmless error review in that case turned on the government's eventual obtention of a travel document, which has not occurred in Petitioner's case. *See Karki*, 2025 WL 3516782, at *5-7.

III. Respondents have better access to the OOS and have also failed to provide a copy to the Court.

Respondents suggest that because Petitioner “did not attach the OOS to his petition,” they “were not in a position to admit or deny the contents of the OOS.” Doc. 23-1 at 33. Respondents thus suggest that they lack access to their own administrative record, which is curious. Notably, Petitioner filed the habeas corpus petition while he was in Respondents’ custody, and therefore lacked ready access to his fully panoply of immigration paperwork at time of filing, which is why the OOS was not filed as one of Petitioner’s exhibits. Conversely, Respondents had time to confer with counsel, provide affidavits and documents from the administrative record, and opted not to submit a copy of the OOS. Because Respondents have better access to the OOS than Petitioner did, if anything, Respondents’ lack of submission of the OOS warrants an adverse inference, allowing the Court to easily determine that if the OOS showed that it did not issue under 8 C.F.R. § 241.13, Respondents would have submitted a copy to the district court.

CONCLUSION

The judgment must be reversed, the writ granted.

Respectfully submitted,

Dated: December 21, 2025

/s/ Nico Ratkowski
Nico Ratkowski (MN #0400413)
Ratkowski Law PLLC

332 Minnesota Street, Suite W1610
St. Paul, MN 55101
P: (651) 755-5150
E: nico@ratkowskilaw.com

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 2,342 words, including the parts of the brief exempted by Rule 32(f). This brief also complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Respectfully submitted,

Dated: December 21, 2025

/s/ Nico Ratkowski
Nico Ratkowski (MN #0400413)
Ratkowski Law PLLC
332 Minnesota Street, Suite W1610
St. Paul, MN 55101
P: (651) 755-5150
E: nico@ratkowskilaw.com

CERTIFICATE OF SERVICE

I, Nico Ratkowski, hereby certify that all other parties to this litigation are represented by attorneys.

Respectfully submitted,

Dated: December 21, 2025

/s/ Nico Ratkowski
Nico Ratkowski (MN #0400413)
Ratkowski Law PLLC
332 Minnesota Street, Suite W1610
St. Paul, MN 55101
P: (651) 755-5150
E: nico@ratkowskilaw.com