DETAINED

District Judge James L. Robart

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MUSSIE TEWELDEMEDHIN, Petitioner, v. KRISTI NOEM, *et al.*; Respondents.	CASE NO.: 2:25-cv-2363-JLR **PETITIONER'S REPLY TO FEDERAL RESPONDENTS' RETURN MEMORANDUM** Noted for Consideration: December 12, 2025

ARGUMENT

In its Return Memorandum, Federal Respondents argue that the revocation of Petitioner's order of supervision (OSUP) complied with the applicable regulations and that its revocation comported with due process. Dkt. 6, at 5–6. Petitioner respectfully disagrees and the *Mathews* factors clearly weigh in favor of Petitioner's arguments. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333.

A. Respondents failed to show a significant likelihood that Petitioner could have been removed in the reasonably foreseeable future.

Respondents assert that Petitioner's OSUP was revoked because they had obtained a travel document from the government of Eritrea to effectuate his removal. Dkt. 6, at 5. The regulations require that when ICE revokes release to effectuate removal, it is ICE's burden to show a significant likelihood that the noncitizen may be removed. 8 C.F.R. §§ 241.13(i), 241.4(l); *see also Yan-Ling X. v. Lyons*, No. 1:25-cv-01412-KES-CDB (HC), 2025 WL 3123793, at *7-14 (E.D. Cal. Nov. 7, 2025) ("The phrase 'significant likelihood' requires something more than a mere possibility that removal will occur."); *Chen v. Chestnut*, No. 1:25-cv-01338-EPG-HC, 2025 U.S. Dist. LEXIS 251667, at *13 (E.D. Cal. Dec. 5, 2025) ("Thus, the regulations at 8 C.F.R. §§ 241.13(i) and 241.4(l) apply to non-citizens in [Petitioners'] situation and outline the process to be followed, including that when ICE revokes release to effectuate removal, it is [ICE's] burden to show a significant likelihood that the alien may be removed.") (internal quotations omitted).

Respondents did not and have not proven that "on account of changed circumstances . . . there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). This travel document was allegedly issued on May 19, 2025, and expired on November 18, 2025. Dkt. 8, Exh. F at 2. Petitioner was not re-detained until July 14, 2025. *Id.* Petitioner remained in ICE custody for over two months without his removal ever being effectuated. He then filed a motion for an emergency stay of removal along with a motion to reopen his proceedings—the stay was granted on September 24, 2025. Decl. of Hilary Smith, Exh. A, at 5. While Petitioner concedes that he could not have been removed once the stay was granted, Respondents allegedly had a travel document for four months prior to that. Respondents did not re-detain Petitioner until nearly two months after the travel document was issued. And the removal

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order had to be amended in August 2025, three months after the travel document was allegedly obtained by ICE. Dkt. 6, at 4–5. Respondent can no longer be removed at this stage, even if a new travel document is issued at this time, because his removal proceedings were reopened on October 10, 2025. Decl. of Hilary Smith, Exh. B, at 8.

Further, Respondents argue that "ICE made an individualized determination concerning Petitioner's likelihood of removal …." Dkt. 6, at 7; Dkt. 8, Exh. G at 1. This individualized determination is rife with inaccurate statements so its reliability should be questioned, especially the allegation that a travel document was procured. First, the notice of revocation states the decision to revoke was made based on Petitioner's "recent illegal entry into the United States from Mexico." Dkt. 8, Exh. G at 1. Petitioner only entered the United States once, in 2019, as attested to by Respondents. Second, the revocation notice simply states that Petitioner was "processed as an Expedited Removal, then released from ICE custody on May 6, 2020." Again, this is inaccurate. Petitioner was placed in full, 240 removal proceedings and presented a claim for asylum after being *initially* processed for expedited removal, as Respondents again attested to. Dkt. 6, at 4. There is no reliable evidence that this travel document was created, further supporting the argument that there was not a significant likelihood of Petitioner's removal in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(i)(2).

Based on the record, it is clear that Respondents were and are in violation of the regulations because they have not proven that "on account of changed circumstances . . . there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

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B. Respondents did not provide Petitioner with an informal interview as required by the regulations.

Respondent does not dispute that he received notice of the revocation of his OSUP. However, he does argue that he did not receive an informal interview as required by the regulations. The regulations mandate that a noncitizen be afforded a prompt informal interview as an opportunity to respond to the reasons alleging supporting revocation of release. 8 C.F.R. § 241.4(l)(1) ("Upon revocation, the [noncitizen] will be notified of the reasons for revocation of his or her release on parole. The [noncitizen] will be afforded an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.").

Respondents have offered no evidence or statements that this informal interview took place and Petitioner asserts none occurred. The regulation Respondent cites to in fact still requires that an informal interview occurs, regardless of whether removal is likely to occur. 8 C.F.R. § 241.13(i)(3) ("The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification."). Just because "it is unclear how Petitioner could provide any such information" pertaining to the likelihood of his removal, Dkt. 6, at 6, does not mean that he should not have been afforded the *required* opportunity to present any information he so desired. And as stated above, there is no evidence that this alleged travel document existed, especially considering the removal order had to be amended in August 2025, two months after the travel document was allegedly obtained by ICE. Dkt. 6, at 4–5.

The lack of an informal interview after revocation of relief is enough to find that Petitonier's detention is unlawful and in violation of Due Process, as many courts in this circuit

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have found. *Minh Nhat Pham v. Noem*, No.: 3:25-cv-02422-RBM-MSB, 2025 WL 2898977, at *9. (S.D. Cal. Oct. 10, 2025) (granting a habeas petition after finding that that the petitioner's detention was unlawful because ICE failed to comply with the regulations); *Phabsokoth v. Noem*, No.: 3:25-cv-02817-RBM-SBC, 2025 U.S. Dist. LEXIS 220365, at 12 (S.D. Cal Nov. 7, 2025) (granting the petitioner's temporary restraining order after finding that "ICE's conclusory explanations for revoking Petitioner's release 'did not offer him adequate notice of the basis for the revocation decision such that he could meaningfully respond at the post-detention informal interview.'"); *see also M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 U.S. Dist. LEXIS 162519, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (finding an informal interview given 27 days after petitioner was taken into ICE custody "cannot reasonably be construed as . . . prompt" and granting habeas petition); *Quoc Chi Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 U.S. Dist. LEXIS 136002, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (finding petitioner likely to succeed on his claim that his detention was unlawful "[b]ecause there is no indication that an informal interview [*10] was provided"); *Wing Nuen Liu v. Carter*, Case No. 25-03036-JWL, 2025 U.S. Dist. LEXIS 115275, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025) (finding "that officials did not properly revoke petitioner's release" because "most obviously . . . petitioner was not granted the required interview upon the revocation of his release")).

For these reasons, Petitioner's re-detention was unlawful and in violation of Due Process and regulatory procedures.

C. The current status of Petitioner's proceedings does not change the outcome.

Respondents argue that because Petitioner's proceedings have been reopened and are now before the immigration court, he is subject to mandatory detention under section 1225(b). *See* Dkt.

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6, at 9–10. However, the current status and scheme of his detention and proceedings is immaterial to the outcome of this case. This Court has found that even in a case where the government asserted that mandatory detention applied, a person's re-detention could not occur absent a hearing. *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 U.S. Dist. LEXIS 160809, at *11 (W.D. Wash. Aug. 19, 2015) ("That the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process."). The same notion is applicable here. At this time of Petitioner's re-detention, Respondents did not follow the regulations, and the question is whether the Due Process Clause requires Petitioner's release, which Petitioner argues, it does.

C. The *Mathews* factors weigh in favor of Petitioner.

The Court must assess (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 or substitute procedural safeguards," and (3) the Government's interest. *Mathews*, 424 U.S. at 334-35.

Petitioner's interest in not being detained is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). That Petitioner was arrested, has been detained for months, and remains in custody undoubtedly deprives him of an established interest in his liberty. Petitioner was released from custody on an OSUP in 2020 and remained free from custody for over five years—his established liberty interest only grew during that time. *See Ramirez Tesara v. Wamsley*, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663, at *3 (W.D. Wash. Sept. 12, 2025) ("When he was released from his initial detention on parole, Petitioner took with him a liberty interest which is entitled to the full protections of the due process clause.").

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The second *Mathews* factor considers whether a particular process results in a risk of erroneous deprivation of a protected interest. The risk of erroneous deprivation of his liberty interest is high under the facts of this case, as argued above. There has been no reliable evidence provided that a travel document existed at the time Petitioner was taken back into custody. Further, "[c]ivil immigration detention, which is nonpunitive in purpose and effect is justified when a noncitizen presents a risk of flight or danger to the community." *R.D.T.M. v. Wofford*, No. 1:25-CV-01141-KES-SKO (HC), 2025 WL 2617255, at *4 (E.D. Cal. Sept. 9, 2025) (internal quotation and citation omitted). Petitioner has no criminal history and represents he has attended every requisite check-in as mandated under his former OSUP. Without any procedural safeguards to determine whether his re-detention was justifiable, the probative value of additional procedural safeguards is high. *Id.* at *4.

As to the final and third *Mathews* factor, Respondent's interest is low. There is no credible claim that Respondents are burdened by the minimal procedural safeguards to which Petitioner was entitled—in this case, a prompt informal interview. "Indeed, it would be less of a fiscal and administrative burden for the Government to return Petitioner home to await a determination on [his] asylum case than to continue to detain [him]." *Berrios v. Albarran*, No. 1:25-cv-01544-TLN-CSK, 2025 WL 3171140, at *7–8 (E.D. Cal. Nov. 13, 2025).

CONCLUSION

The Court should therefore grant Petitioner's habeas petition and order his immediate release from custody. This Court should also enjoin Respondent's from re-detaining Petitioner without providing adequate notice of the reasons for his re-detention and a meaningful opportunity to respond to the reasons.

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Dated: December 12, 2025.

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I certify that this memorandum contains 1,916 words, in compliance with the Local Civil Rules.