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10 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

11 MUHAMADOU DRAMMEH

12 Petitioner,

13 v.

14 KRISTI NOEM, *et al.*

15 Respondents.
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Case No.: 25-cv-03412-JLS-JLB

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

1 I. INTRODUCTION

2 On December 1, 2025, Petitioner filed his habeas petition. ECF No. 1. On December
3 4, 2025, the Court (i) referred the petition to the Office of the Federal Defenders for
4 evaluation of whether appointment of counsel would benefit Petitioner; and (ii) dismissed
5 the petition with leave to amend. ECF No. 2. On December 19, 2025, Petitioner filed an
6 amended petition, alleging a sole claim for relief. For the reasons below, the petition should
7 be denied.

8 II. FACTS

9 Petitioner is a native and citizen of Gambia. Declaration of Deportation Officer David
10 Townsend (Townsend Decl.) at ¶ 4. In 2017, Petitioner was previously ordered removed to
11 Gambia by an Immigration Judge, and his appeal was dismissed by the Board of
12 Immigration Appeals on April 26, 2019. *Id.* at ¶¶ 4-5. On November 13, 2019, U.S.
13 Immigration and Customs Enforcement (ICE) executed that removal order and removed
14 Petitioner to Gambia. *Id.* at ¶ 6.

15 On January 3, 2024, Petitioner was apprehended by U.S. Border Patrol near
16 Lukeville, Arizona after entering the United States without authorization. *Id.* at ¶ 7.
17 Petitioner was processed as a reinstatement of a prior removal order under Section 241(a)(5)
18 of the Immigration and Nationality Act. *Id.* On January 12, 2024, Petitioner was released
19 on an order of supervision. *Id.*

20 On August 19, 2025, ICE Enforcement and Removal Operations apprehended and
21 detained Petitioner to process the reinstatement of the prior removal order from 2017. *Id.* at
22 ¶ 8. On that date, DHS issued Petitioner a Notice of Intent/Decision to Reinstate Prior Order,
23 which reinstated Petitioner's prior removal order. Exhibit 2 at p. 1. Petitioner was presented
24 with the documents but declined to sign them. *Id.* at p. 3.

25 On September 15, 2025, Petitioner requested an interview with an asylum officer and
26 his case was referred for a reasonable fear interview with U.S. Citizenship and Immigration
27 Services (USCIS). Townsend Decl. at ¶ 9. It was later determined that there was a positive
28 reasonable fear, and USCIS referred the case to the Immigration Court for withholding-only

1 proceedings. *Id.* These proceedings remain pending with Otay Mesa Immigration Court. *Id.*
2 at ¶ 10.

3 III. ARGUMENT

4 A. Reinstated Removal Orders

5 Reinstated removal orders are a part of “an expedited process for aliens who reenter
6 the United States without authorization after having already been removed.” *Johnson v.*
7 *Guzman Chavez*, 594 U.S. 523, 529 (2021). The statute provides: “If the Attorney General
8 finds that an alien has reentered the United States illegally after having been removed or
9 having departed voluntarily, under an order of removal, the prior order of removal is
10 reinstated from its original date and is not subject to being reopened or reviewed, the alien
11 is not eligible and may not apply for any relief under this chapter, and the alien shall be
12 removed under the prior order at any time after the reentry.” 8 U.S.C. § 1231(a)(5). When
13 subject to a reinstated removal order, an individual is not precluded “from pursuing
14 withholding-only relief to prevent DHS from executing his removal to the particular country
15 designated in his reinstated removal order.” *Guzman Chavez*, 594 U.S. at 530.

16 Because an individual subject to a reinstated removal order is not in normal removal
17 proceedings under 8 U.S.C. § 1229a, to pursue withholding-only relief such individual must
18 express a fear of returning to the designated country, at which point he will be referred to
19 an asylum officer for a reasonable fear determination; if the asylum officer makes a positive
20 reasonable fear determination, the matter will be referred to an immigration judge for
21 initiation of withholding-only proceedings. *Id.* at 531. “Those proceedings are limited to a
22 determination of whether the alien is eligible for withholding or deferral of removal, and as
23 such, all parties are prohibited from raising or considering any other issues, including but
24 not limited to issues of admissibility, deportability, eligibility for waivers, and eligibility for
25 any other form of relief.” *Id.* (citations omitted).

26 Throughout withholding-only proceedings, individuals remain subject to mandatory
27 detention under 8 U.S.C. § 1231.
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1 **B. Alleged Procedural Defects Do Not Establish Basis for Habeas Relief**

2 A noncitizen who is not removed within the removal period may be released from
3 ICE custody “pending removal . . . subject to supervision under regulations prescribed by
4 the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C.
5 § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the order
6 may be revoked under 8 C.F.R. § 241.4(l)(2)(iii) where “appropriate to enforce a removal
7 order.” *See also* 8 C.F.R. § 241.5 (conditions of release after removal period). ICE may also
8 revoke the order of supervision where, “on account of changed circumstances, [ICE]
9 determines that there is a significant likelihood that the alien may be removed in the
10 reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The regulations further provide:

11 *Upon revocation*, the alien will be notified of the reasons for revocation of his
12 or her release or parole. The alien will be afforded an initial informal interview
13 promptly *after* his or her return to Service custody to afford the alien an
14 opportunity to respond to the reasons for revocation stated in the notification.

15 8 C.F.R. § 241.4(l)(1) (emphases added).

16 Here, Petitioner contends that “ICE violated § 241.4(l) in at least three respects”: (1)
17 ICE allegedly failed to promptly provide him an informal interview; (2) upon revocation of
18 supervision, ICE allegedly failed to notify him of the reasons for revocation; and (3) the
19 proper government official did not make the requisite findings prior to Petitioner’s re-
20 detention. As for relief, Petitioner’s contends that ICE’s failed to comply “with 8 C.F.R. §
21 241.4(l) or due process before re-detaining Mr. Drammeh” and therefore asks this court to
22 (i) immediately release Petitioner from custody; (ii) enjoin Respondents from re-detaining
23 Petitioner absent “full compliance with 8 C.F.R. § 241.4(l); (iii) enjoin Respondents from
24 re-retaining Petitioner absent changed circumstances and a pre-deprivation hearing
25 justifying revocation; and (iv) order all other relief that the Court deems just and proper.
26 ECF No. 1 at 5. The Court should decline to grant such relief.

27 Even if the agency failed to follow to strictly follow the above regulations, Petitioner
28 cannot establish that he was prejudiced by these omissions. *See Brown v. Holder*, 763 F.3d

1 1141, 1148–50 (9th Cir. 2014) (“[T]he mere failure of an agency to follow its regulations is
2 not a violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174, 1178 (9th Cir.
3 2007) (holding that “[c]ompliance with . . . internal [customs] agency regulations is not
4 mandated by the Constitution”) (simplified); *Bd. of Curators of Univ. of Mo. v. Horowitz*,
5 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* “enunciate[s] principles of federal
6 administrative law rather than of constitutional law”).

7 For example, in *Ahmad v. Whitaker*, the government revoked the petitioner’s release
8 but did not provide him an informal interview. *Ahmad v. Whitaker*, No. C18-27-JLR-BAT,
9 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted*,
10 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of his
11 release was unlawful because, he contended, the federal regulations prohibited re-detention
12 without, among other things, an opportunity to be heard. *Id.* at *5. In rejecting his claim, the
13 court held that although the regulations called for an informal interview, petitioner could
14 not establish “any actionable injury from this violation of the regulations given that ICE had
15 procured a travel document and scheduled [petitioner’s] removal.” *Id.*

16 Similarly, in *Doe v. Smith*, the court held that even if an ICE detained petitioner had
17 not received a timely interview following her return to custody, there was “no apparent
18 reason why a violation of the regulation, even assuming it occurred, should result in
19 release.” *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1,
20 2018). The court elaborated, “it is difficult to see an actionable injury stemming from such
21 a violation. Doe is not challenging the underlying justification for the removal order. . . .
22 Nor is this a situation where a prompt interview might have led to her immediate release—
23 for example, a case of mistaken identity.” *Id.*

24 The same logic applies here. Petitioner relies on district court decisions within and
25 outside this district that have granted release when “ICE failed to follow 8 C.F.R. § 241.4(I)
26 and its counterpart, 241.13(i).” *See* ECF No. 1 at 5 and FN 3. Yet these non-binding
27 authorities generally (i) do not discuss prejudice or harmless error and/or (ii) relied on
28 *Ceesay v. Kuzrdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. 2025), *Rombot v. Souza*, 296 F.

1 Supp. 3d 383, 388 (D. Mass. 2017), or similar caselaw,¹ where the courts did not conduct a
2 prejudice inquiry. *See, e.g., Ceesay*, 781 F. Supp. 3d at 158 (“[A]t least in this circuit, ‘when
3 a regulation is promulgated to protect a fundamental right derived from the Constitution or
4 a federal statute, and [the government] fails to adhere to it, the challenged deportation
5 proceeding is invalid and a remand to the agency is required’—even in the absence of a
6 showing a prejudice.”) (quoting *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993));
7 *Rombot*, 296 F. Supp. 3d at 388 (quoting *Waldron*, 17 F.3d at 518).

8 But this Court *should* apply a prejudice and harmless error standard. And under that
9 standard, Respondents contend that release under a habeas petition is not the appropriate
10 remedy—even if there was a lack of formal notice and chance to respond to the revocation
11 of supervision. *See Karki v. Raycraft*, No. 2:25-cv-13186, 2025 WL 3516782, at *6–7 (E.D.
12 Mich. Dec. 8, 2025) (dismissing habeas action premised on a lack of notice and informal
13 interview under sections 241.4(l) and 241.13 because “any deprivation of process by the
14 Government’s failure to follow its regulatory procedures is *harmless* and the Court cannot
15 justify ordering Karki’s release”) (emphasis added); *Surovtsev v. Noem*, No. 1:25-cv-160-
16 H, 2025 WL 3264479 (N.D. Tex. Oct. 31, 2025) (finding violation of Section 241.13(i)(3)
17 “harmless” because the Petitioner there “has received more than a full notice and an
18 opportunity to be heard...in light of the procedures in this case”); *Nouansisouhak v. Noem*,
19 3:25-CV-2222-K-BW, 2025 WL 3165161 (N.D. Tex. Oct. 9, 2025) (reasoning “a violation
20 of [section] 241.13(i)(3) alone cannot justify habeas relief. It is a mere administrative
21 regulation, not required as the result of the Constitution”); *Bahadorani v. Bondi*, CIV-25-
22 1091-PRW, 2025 WL 3048932 (W.D. Okla. Oct. 31, 2025) (denying habeas petition
23 because “[a]t best the Court could order Petitioner released from detention for failure to
24 follow 8 C.F.R. § 241.13(i)(2)-(3), but that does not change the fact that Petitioner is still
25 removable and could promptly be served with a notice of revocation, detained, and provided
26 a brief interview”); *Nguyen v. Noem*, 797 F. Supp. 3d 651, 664 (N.D. Tex. 2025) (“A

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28 ¹ *M.S.L. v Bostock*, No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Oregon Aug. 1, 2025) relied heavily on *Ceesay* and cited to *Rombot* when ordering the petitioner’s release.

1 violation of Section 241.13(i)(3) alone cannot justify habeas relief. It is a mere
2 administrative regulation, not required as the result of the Constitution.”).

3 Here, Petitioner fails to marshal any facts or present any argument on what actual
4 prejudice, if any, he allegedly suffered when, upon revocation of his supervision, he did not
5 receive formal notice of the reasons for this decision or an informal interview. On the date
6 of Petitioner’s detention, August 19, 2025, the Petitioner was detained to process the
7 reinstatement of his prior removal order, during which time he was shown documentation
8 and interacted with ERO regarding the reinstatement of the prior removal order. Indeed,
9 Petitioner acknowledges in his declaration that “the ICE officer showed me some paperwork
10 I don’t exactly remember[,] and I told him I wanted to talk to my lawyer before I signed.”
11 See ECF No. 5-1 at ¶ 6. It therefore appears that Petitioner wanted to seek legal advice and
12 speak with an attorney on the date he was detained by ERO.

13 Petitioner seeks release because ERO did not provide him a notice of revocation of
14 supervision and an informal interview after he was detained, but he fails to carry his burden
15 that—even if they did—it would have resulted in ERO deciding to release him after he was
16 already detained. See *Nguyen v. Noem*, 797 F. Supp. 3d 651, 664 (N.D. Texas 2025) (stating
17 that, under the procedures of Section 241.13(i)(3), “notice and an informal interview are *not*
18 *prerequisites* to detention. The regulation contemplates that these procedures will occur
19 after detention because notice is to happen ‘upon revocation’ and the initial informal
20 interview occurs ‘after [the alien’s] return to ICE custody.’” And, at that point, the alien may
21 then “submit any evidence or information that he or she believes shows there is no
22 significant likelihood he or she be removed in the reasonably foreseeable future.” *Id.* at 665-
23 66 (emphases added).

24 Indeed, even now, with the assistance of counsel and an opportunity to present his
25 case through fulsome and briefing in federal court, Petitioner fails to articulate what new
26 information or argument he would have raised to immigration officials after he was detained
27 to delay or reverse the revocation of supervision if he was indeed provided a formal notice
28 upon revocation of his supervision and provided an informal interview. It is undisputed that

1 Petitioner is subject to a final removal order, was successfully repatriated to Gambia in
2 2019, entered the United State unlawfully, and is again subject to the same removal order.
3 ICE therefore had the authority to revoke his supervision and detain him for the purposes
4 of reinstating and effectuating his prior removal order.

5 And because Petitioner cannot show prejudice under these circumstances, the alleged
6 violation of agency regulations does not warrant release here. *See, e.g., Rodriguez v. Hayes*,
7 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded on other grounds*,
8 591 F.3d 1105 (9th Cir. 2010) (“While the regulation provides the detainee some
9 opportunity to respond to the reasons for revocation, it provides no other procedural and no
10 meaningful substantive limit on this exercise of discretion as it allows revocation ‘when, in
11 the opinion of the revoking official . . . [t]he purposes of release have been served . . . [or]
12 [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer
13 be appropriate.’”) (emphasis in original) (citing 8 C.F.R. §§ 241.4(l)(2)(i), (iv)); *Carnation*
14 *Co. v. Sec’y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“violations of procedural
15 regulations should be upheld if there is no significant possibility that the violation affected
16 the ultimate outcome of the agency’s action” (citation omitted)); *United States v.*
17 *Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow regulations
18 requiring that an arrested alien be advised of his right to speak to his consul was not
19 prejudicial and thus not a ground for challenging the conviction); *United States v. Barraza-*
20 *Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had
21 violated the rule by failing to inquire into the alien’s background, any error was harmless
22 because there was no showing that the petitioner was qualified for relief from deportation).

23 For the reasons stated above, the Court should deny the petition.

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1 DATED: December 31, 2025

Respectfully submitted,

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