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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 MUHAMADOU DRAMMEH,
13
14 Petitioner,

15 v.

16 KRISTI NOEM, Secretary of the
Department of Homeland Security,
17 PAMELA JO BONDI, Attorney General,
TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement,
18 JESUS ROCHA, Acting Field Office
Director, San Diego Field Office,
19 CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center,
20
21 Respondents.

No.: 25-cv-3412-JLS-JLB

**Traverse in support of first
amended habeas petition**

[28 U.S.C. § 2241]

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1 **I. Introduction**

2 In their return, Respondents argue that there is no remedy for their failure to
3 follow regulations implementing the process due to a noncitizen when his
4 supervision order is revoked. They are wrong. “These procedures are not optional
5 or discretionary; they must be followed, and failure to do so renders the detention
6 unlawful.” *Hashemi v. Noem*, __ F. Supp. 3d __, 2025 WL 3468694, *6 (C.D. Cal
7 2025) (quoting *Delkash v. Noem*, No. 25-cv-1675-HDV-AGR, 2025 WL
8 2683988, *6 (C.D. Cal. Aug. 28, 2025)); accord *Dipraseuth v. Noem*, No. 25-CV-
9 3471-JLS-BJW, 2025 WL 3677674, *2–*3 (S.D. Cal. Dec. 18, 2025).

10 “[T]he ‘norm’ when ICE fails” to comply with these regulations, including
11 by failing to “conduct an ‘informal interview promptly[,]’ is that ‘courts across
12 the country have ordered the release of individuals stemming from ICE’s illegal
13 detention.” *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS-DDL, 2025 WL
14 3126821, *3 (S.D. Cal. Nov. 8, 2025) (quoting *KEO v. Woosley*, No. 4:25-CV-74-
15 RGJ, 2025 WL 2553394, *6–*7 (W.D. Ky. Sept. 4, 2025)). As Judge Schopler
16 has reasoned, “Especially in the context of civil detentions—when constitutional
17 safeguards are at their zenith—this Court is unwilling to import such a prejudice
18 analysis into regulations or binding caselaw that don’t mention it.” *Id.*

19 Respondents do not submit any evidence that Mr. Drammeh was notified of
20 the basis for revocation. They do not submit any evidence that Mr. Drammeh
21 received an informal interview about revocation in the four and a half months he
22 has been detained. That is consistent with Mr. Drammeh’s declaration, which
23 explained that he has received no revocation notice and no informal interview. *See*
24 ECF No. 13; ECF No. 1, Exhibit A, ¶¶ 6–8.

25 Respondents do include the following evidence:

- 26 • A declaration explaining that:
- 27 ○ Mr. Drammeh was “processed as a reinstatement of a prior
28 removal order” on “January 3, 2024”;

- 1 ○ “On January 12, 2024,” Mr. Drammeh was “released . . . on an
- 2 order of supervision”;
- 3 ○ “On August 19, 2025,” ICE “arrested and detained
- 4 [Mr. Drammeh]” to once again “process the reinstatement of
- 5 the prior removal order”; and
- 6 ○ “On September 29, 2025,” Mr. Drammeh received a “positive
- 7 reasonable fear” determination from USCIS, which “referred
- 8 the case to Immigration Court for withholding-only
- 9 proceedings,” which are “pending.” ECF No. 13, Declaration
- 10 of David Townsend, ¶¶ 7–11;
- 11 • A warrant of removal issued August 19, 2025, finding that
- 12 Mr. Drammeh entered the United States “on January 3, 2024,” and
- 13 “is subject to removal/deportation from the United States,” ECF No.
- 14 13, Exhibit 3; and
- 15 • An order reinstating Mr. Drammeh’s removal order, issued on
- 16 August 19, 2025, in Los Angeles, ECF No. 13, Exhibit 2.

17 This evidence does not rebut Mr. Drammeh’s claim that he was re-detained
18 in violation of his regulatory and due process rights to be notified of “the reasons
19 for revocation.” 8 C.F.R. § 241.4(l)(1). Nor do they rebut Mr. Drammeh’s claim
20 that he was not “promptly” “afford[ed] . . . an opportunity to respond to the
21 reasons for revocation” in an “informal interview.” *Id.*

22 Further, Mr. Drammeh need not show prejudice from ICE’s failure to give
23 him notice and an opportunity to be heard when revoking his supervision. But he
24 can. Had ICE notified Mr. Drammeh that his supervision was being revoked to
25 “process the reinstatement of [his] prior removal order,” Mr. Drammeh could
26 have explained that his reinstatement already *had* been “processed,” on “January
27 3, 2024.” ECF No. 13, Declaration of David Townsend, ¶¶ 8, 7. He had already
28 been detained under 8 U.S.C. § 1231 in January 2024—and then released on

1 supervision to pursue withholding of removal. He was in the midst of pursuing
2 withholding of removal. He had submitted his applications to USCIS in a timely
3 manner, and they were pending. There was and is no proper reason to revoke his
4 supervision. *See Cherisme v. Moniz*, __ F. Supp. 3d __, 2025 WL 3759531, *3 (D.
5 Mass 2025) (holding as much in similar circumstances).

6 For all of these reasons, this Court should order Mr. Drammeh's release.

7 **II. ICE did not adhere to regulations implementing the due process rights**
8 **to notice and a meaningful opportunity to be heard.**

9 Respondents do not claim to have complied with 8 C.F.R. § 241.4. *See* ECF
10 No. 13 at 4, 6.

11 For Mr. Drammeh, § 241.4 permits his re-detention only if ICE: (1) “[u]pon
12 revocation,” “notifie[s]” him “of the reasons for revocation of his or her release,
13 § 241.4(l)(1); and (2) “afford[s]” him “an initial informal interview promptly after
14 his . . . return to Service custody to afford [him] an opportunity to respond to the
15 reasons for revocation stated in the notification,” § 241.4(l)(1). Further, because
16 Mr. Drammeh has not violated any conditions of his supervision, ICE may only
17 return him to custody when a proper official finds either that “[t]he purposes of
18 release have been served” or “[i]t is appropriate to enforce a removal order or to
19 commence removal proceedings against” him. § 241.4(l)(2).

20 As Mr. Drammeh explained in his habeas petition, and as Respondents'
21 evidence does not rebut, ICE failed to comply with every single one of these
22 requirements. This failure was a violation of Mr. Drammeh's rights under the
23 regulations, due process, and the *Accardi* doctrine. *See* ECF No. 1 at 2–5.

24 **III. Mr. Drammeh need not show prejudice from ICE's failure to comply**
25 **with due-process implementing regulations to be released, although he**
26 **can.**

27 Respondents instead argue that 8 C.F.R. § 241.4(l)(1) is not the type of
28 regulation that implements due process and protected liberty interests under
Accardi, and thus requires a showing of prejudice before granting a habeas

1 petition. Respondents also argue that Mr. Drammeh has not shown and cannot
2 show prejudice. Both of these arguments fail.

3 First, “[t]here are two types of regulations: (1) those that protect
4 fundamental due process rights, and (2) and those that do not.” *Martinez v. Barr*,
5 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). “A violation of the first type
6 of regulation . . . implicates due process concerns even without a prejudice
7 inquiry.” *Id.* (cleaned up). In other words, “a showing of prejudice to sustain an
8 *Accardi* claim . . . is not mandated by the Ninth Circuit when the violated
9 regulation safeguards fundamental due process rights.” *Martinez v. Noem*, No. 25-
10 CV-2740-BJC-BJW, 2025 WL 3171738, *4 (S.D. Cal. Nov. 13, 2025).

11 Here, “[t]here can be little argument that ICE’s requirement that
12 noncitizens be afforded an informal interview—arguably the most bare-bones
13 form of an opportunity to be heard—derives from the fundamental constitutional
14 guarantee of due process.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26
15 (W.D.N.Y. May 2, 2025); *see, e.g., Azzo v. Noem*, No. 25-cv-3122-RBM-BJW,
16 2025 WL 3535208, *5–*6 (S.D. Cal. Dec. 10, 2025) (explaining this rule);
17 *accord, e.g., Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, *7
18 (S.D. Cal. 2025) (same); *Villanueva v. Tate*, __ F. Supp. 3d __, 2025 WL
19 2774610, *7 (S.D. Tex. 2025) (same); *Sarail A. v. Bondi*, __ F. Supp. 3d __, 2025
20 WL 2533673, *2 (D. Minn. 2025) (same).

21 “When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it
22 explained that the regulation was intended to provide aliens procedural due
23 process, stating that § 241.4 ‘has the procedural mechanisms that . . . courts have
24 sustained against due process challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d
25 626, 641 (D. Mass. 2018) (quoting *Detention of Aliens Ordered Removed*, 65 FR
26 80281-01). “The procedures in § 241.4 are not meant merely to facilitate internal
27 agency housekeeping, but rather afford important and imperative procedural
28 safeguards to detainees.” *Id.* at 642.

1 Under § 241.4 and due process, “a noncitizen released from custody
2 pending removal proceedings has a protected liberty interest in remaining out of
3 custody.” *Claros v. Albarran*, __ F. Supp. 3d __, 2025 WL 3458888, *3 (N.D.
4 Cal. 2025). That is the case “even when an initial decision to detain or release an
5 individual is discretionary.” *Id.* That is the case even “where a noncitizen is
6 subject to a final removal order and at liberty on an OSUP [i.e., an order of
7 supervision].” *Funes v. Francis*, __ F. Supp. 3d __, 2025 WL 3263896, *21
8 (S.D.N.Y. 2025) (collecting cases).

9 As a result, and as the majority of courts have concluded, noncitizens in
10 Mr. Drammeh’s position need not establish prejudice to be released when ICE
11 fails to provide notice and an opportunity to be heard when revoking a
12 noncitizen’s supervision. *See, e.g., Ngo v. Noem*, No. 25-CV-3234-JLS-MMP,
13 2025 WL 3470438, *4 (S.D. Cal. Dec. 3, 2025) (collecting cases).

14 Second, of course Mr. Drammeh experienced prejudice by ICE’s failure to
15 provide him with notice and an opportunity to be heard on the reasons for the
16 revocation of his supervision. Apparently, ICE revoked his supervision in August
17 2025 “to process the reinstatement of [his] prior removal order.” ECF No. 13,
18 Declaration of David Townsend, ¶ 8. But ICE already *had* “processed” that
19 “reinstatement” in January 2024. *Id.* ¶ 7.

20 There are no other reasons to revoke Mr. Drammeh’s supervision under 8
21 C.F.R. § 241.4(l). Mr. Drammeh has not violated any conditions of release.
22 § 241.4(l)(1). “The purposes of release have” not “been served.” § 241.4(l)(2). In
23 January 2024, Mr. Drammeh had his reinstatement issued, and then was released
24 to pursue withholding of removal before USCIS, and USCIS has not adjudicated
25 that application. Nor is “[i]t is appropriate to enforce a removal order or to
26 commence removal proceedings against” him. § 241.4(l)(2). Removal
27 proceedings already commenced and concluded in January 2024, and all that is
28 left are the separate withholding-only proceedings that were already ongoing at

1 the time ICE re-detained Mr. Drammeh. Because those proceedings were and
2 remain ongoing, it is not an “appropriate” time to “enforce [the] removal order.”
3 § 241.4(1)(2).

4 Had ICE explained the reason why it was revoking Mr. Drammeh’s
5 supervision at any point between August 2025 and the present, Mr. Drammeh
6 could have responded and successfully contested that reason under 8 C.F.R.
7 § 241.4. He would have been released months ago. He would not have missed his
8 “GED test this September.” ECF No. 1, Exhibit A (Declaration of Muhamadou
9 Drammeh), ¶ 9. He would still be working. *Id.* ¶¶ 1, 5, 10. His application for
10 asylum and withholding of removal would still be pending with USCIS, rather
11 than with the backlogged immigration court. *Id.* ¶ 5.

12 “Rules matter. Hearings matter.” *Hashemi*, __ F. Supp. 3d __, 2025 WL
13 3468694 at *6 (simplified). “The government’s position that it can choose, based
14 on a change in administration, not to comply with its own regulations is
15 unprecedented.” *Villanueva*, __ F. Supp. 3d __, 2025 WL 2774610, at *7.
16 Because Respondents failed to abide by the rules they established to protect the
17 due process rights of noncitizens like Mr. Drammeh, and as a result they have
18 illegally detained him since mid-August, this Court should grant this petition.

19 **IV. Conclusion**

20 For the foregoing reasons, this Court should grant the petition and order the
21 relief identified in Mr. Drammeh’s prayer for relief.

22 Respectfully submitted,

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24 Dated: January 2, 2026

s/ Jessie Agatstein

25 **Jessie Agatstein**
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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 MUHAMADOU DRAMMEH,

11 Petitioner,

12 v.

13 WARDEN, OTAY MESA DETENTION
14 CENTER, *et al.*,

15 Respondents.

Case No. 3:25-cv-03412-JLS-JLB

JOINT STATUS REPORT

16 Pursuant to the Court's January 6, 2026 Order, ECF No. 15, the parties jointly
17 provide this status report confirming that Petitioner was released from custody.
18

19 DATED: January 9, 2026

s/ Jessica Agatstein

Jessica Agatstein
Attorney for Petitioner

22 DATED: January 9, 2026

Respectfully submitted,

23 ADAM GORDON
24 United States Attorney

s/ Robbin O. Lee

ROBBIN O. LEE
Assistant United States Attorney
Attorneys for Respondents

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SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures of the United States District Court for the Southern District of California, I hereby certify that the content of this document is acceptable to Jessica Agatstein, counsel for Petitioner, and that I have obtained her authorization to affix her electronic signature to this document.

DATED: January 9, 2026

s/ Robbin O. Lee
Robbin O. Lee
Assistant United States Attorney

Attorney for Respondents