UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

NAIM DULOVI,
Petitioner,

v.

Case No. 2:26-cv-643-SPC-NPM

MATTHEW MORDANT, *et al.;*
Respondents.

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 and MOTION TO DISMISS

COMES NOW, the Petitioner, **Naim Dulovi** by and through undersigned counsel and hereby submits this Reply to the ICE/DHS Respondents' opposition to the Petition for Writ of Habeas Corpus. Petitioner seeks an order: (1) immediately releasing petitioner from custody under conditions of his prior OSUP; (2) prohibiting re-detention absent an executable travel document; and (3) requiring adequate notice and an opportunity to be heard at a meaningful time, before any future deprivation of liberty.

The Petitioner is not seeking a bond, as reflected in the Motion to Dismiss filed by the Mordant/Guthrie Respondents.

I. The Respondents are properly named

Petitioner properly named Matthew Mordant as the warden of the facility where the Petitioner is being held, and Kevin Guthrie as Executive Director of the Florida Division of Emergency Management. In the Motion to Dismiss, Mordant/Guthrie request the Court dismiss each from this proceeding as an improper respondent. They argue that ICE is the immediate custodian and director of ICE's local field office responsible for the facility not its warden. In their response, they cite the 287(g) program. While the warden in the instant matter may technically maintain only the day-to-day control of a facility, the warden, nevertheless is the "immediate custodian" and presumably the individual who, upon ICE's direction, opens the door to release the detainee. The court should therefore decline to find that the warden is not a proper respondent. See *Vasquez v. Reno*, 233 F.3d 688, 696 (1st Cir. 2000).

While a prisoner's immediate custodian is normally the only proper respondent in a habeas action, immigration detention is more complicated. *See, e.g., Rumsfeld v. Padilla*, 542 U.S. 426 (2004). The Supreme Court expressly left open the question of the identity of the proper respondent(s) to a petition filed by a noncitizen "detained pending deportation." *Id.* at 435 n.8 (recognizing circuit split on "the question whether the Attorney General is a proper respondent to a habeas petition filed by [a noncitizen] detained pending deportation" and stating "[b]ecause the issue is not before us today, we again decline to resolve it").

The Petitioner asserts he correctly named the Warden, the director Florida Division of Emergency Management, ICE Field Office Director, the DHS Secretary, the U.S. Attorney General and the agency involved in the decision to revoke his Order of Supervision.

II. The revocation of the Petitioner's Order of Supervision was unlawful - Notice of Revocation is erroneous

At the time of the revocation of his Order of Supervision, the Petitioner was not provided with a copy of the Notice of Revocation presented with the Respondents' opposition (ECF Document 7-1). Upon review of the Notice included it is apparent the Proof of Service contains "Refused to Sign" where the Petitioner's signature would go.

Notice of Revocation is signed by the incorrect official.

ICE's regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." 8 C.F.R. §§ 1.2, 241.4(l)(2). If the field office director or a delegated official intend to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). In *Ceesay v. Kurzdorfer*, the district court found that the ICE assistant field office director lacked authority to revoke noncitizen's release. 781 F. Supp. 3d 137 (W.D.N.Y. 2025). The Notice of Revocation provided in ECF 7-1, pages 19-20, dated January 26, 2026[1] is signed on behalf of Zoelle Rivera, the Assistant Field Office Director at Miramar, FL. There is no delegation order clearly giving Rivera or Plascencia (the deportation officer) the authority to revoke release, and even if there were, there is no caselaw supporting the validity of such a delegation order. The document presented as a Memorandum of delegation of Signature Authority (ECF 7-3) lists final decisions on

[1] This document was purportedly signed 20:30 (8:30PM)

informal Significant Likelihood of Removal in the Foreseeable Future (SLRFF) reviews to the DFOD (District Field Office Director). Therefore, the signature that appears in for A. SDDO signed for Zoelle Rivera is not an authorized signature. A second Notice of Revocation of Release [2] (ECF 7-1 pages 14-15) was issued, this time, signed by Georgie Garcia and served on the Petitioner on March 13, 2026. On this notice, ECF 7-1 page 15, states that "on March 13, 2026, you will be afforded an informal interview at which you will be given an opportunity to respond to the reasons of the revocation. The Notice provided by the Respondents on behalf of ICE, ECF 7-1 page 16, states that on March 14, 2026, Officer Carlos Perez, Deportation Officer conducted an informal interview of the detainee in order to afford the alien an opportunity to respond to he reasons for the revocation of his or her order of supervision stated in the notification letter. Petitioner's family confirms an officer came to meet with the Petitioner, and asked him if he wanted to make any statements regarding the pending Habeas Petition. (Exhibit A).

The government has not argued that Rivera or anyone else that has signed the revocations had that authority because an assistant field office director is the equivalent of a district director, and even if it had, there is no evidence that Rivera made the findings that a district director is required to make before revoking the Petitioner's release. As a result, this Court cannot conclude that Rivera had the authority to revoke release and should find that the Petitioner's release was not lawfully revoked and hold that he is entitled to release on that basis alone. Neither the January 26, 2026, Notice of Revocation

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[2] Interestingly, this document was also signed at 20:30 (8:30PM)

nor the March 13, 2026, Notice of Revocation show that a travel document has been obtained.

The revocation was unlawful.

ICE failed to provide Petitioner with a <u>meaningful</u> opportunity to contest the revocation of his OSUP through an informal interview. This violates both ICE's own regulations and the Due Process Clause of the Fifth Amendment. Upon revocation of an OSUP under § 241.4(l), an alien must be "notified of the reasons for revocation." 8 C.F.R. § 241.4(l)(1). "[A]fter his or her return to [ICE] custody" the alien must be "afforded an initial informal interview promptly to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* The notice and informal interview requirement appears in § 241.4(1)(1), but not § 241.1(l)(2). However, courts have "interpreted section 241.4(l) as requiring an informal interview upon the revocation of release regardless of the reason for the revocation"—meaning that the notice and informal interview requirement stated in § 241.4(1)(1) applies to revocation under § 241.4(1)(2). *Grigorian v. Bondi,* No. 25-CV-22914-RAR, 2025 WL 2604573, at 6–7 (S.D. Fla. Sept. 9, 2025) (*citing Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025)).

The Notice states plainly that he will promptly be afforded an informal interview and provided with the opportunity to respond to the reasons for revocation and provide evidence to demonstrate that his removal is unlikely. There has not been any compliance with that detailed process. The process afforded here fails to comply with ICE's own regulations or comport with traditional notions of due process.

The notice and interview requirement stated in § 241.4(l)(1) applies to revocation under § 241.4(l)(2). The four reasons for revocation stated in § 241.4(l)(2) are inclusive of the single reason stated in § 241.4(l)(1)—violation of conditions of release. Indeed, it would be nonsensical if an alien detained for violation of conditions of release would receive notice and an interview under § 241.4(l)(1) but not § 241.4(l)(2) given that both provisions specify that a violation of conditions of release is a basis for revoking an OSUP. *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *6 (S.D. Fla. Sept. 9, 2025)

Second, and even more tellingly, § 241.4(3)—titled "[t]iming of review when release is revoked"—clearly applies to all aliens whose release is revoked regardless of reason, and provides that "[i]f the alien is not released from custody *following the informal interview provided for in paragraph (l)(1)* of this section, [ICE] shall schedule the review process in the case of an alien whose previous release" has been revoked. *Grigorian* at *7. This provision implies "that 'the informal interview provided for in paragraph (l)(1) of this section' applies to all [detained on revocation of an OSUP] regardless of whether or not release is revoked for a violation." *Id.*

Contradictory Statements between the Declaration of Deportation Officer Christpher E. Mencias, ICE records, Evidence and ICE/DHS Respondents' Response

As an initial matter, the Respondents' Exhibits 7-1 and 7-2 are contradictory and also not correctly stated in ICE/DHS Respondents' Response. The affidavit signed by Officer Christopher E. Mencias states that he "provides this declaration based on personal knowledge, belief, reasonable inquiry…and relied upon by DHS In the regular course of business." (See Declaration, ECF 7-2 page 2 paragraph 4). Officer Mencias goes on to state that the Petitioner entered the Untied States in 1993 and did not depart. This is factually incorrect. As stated in the Petition for Writ of Habeas Corpus together with Exhibits C and D, the Petitioner left the United States and was deported from Macedonia, and brought back to the Unites States where he was paroled by DHS. See also Respondents' Exhibit 7-1 page 5, Record of Deportable/Inadmissible Alien, wherein it states, "Subject was last paroled into the United States on December 13, 1997".

The Declaration's next inaccuracy, aside from the incorrect date of the Petitioner's detention[3], is on paragraph 8, wherein it states that "on September 4, 2000, Petitioner was convicted of Aggravated Assault – Police Officer – Strongarm. He was sentenced to 18 months probation". ICE/DHS response misstates not only the date of the conviction, it also misstates the reasons for the conviction. While the Petitioner's conviction is not at issue in the instant matter, these contradictions between the officer's sworn statement, ICE's own records, and the Respondent's response show that the evidence used by ICE/DHS should be given limited weight in its totality. In ICE/DHS's documents, ECF 7-, page 7, the Notice to Appear indicates that on September 14, 2000, the Petitioner was convicted of Resist/Obstruct officer with violence. The conviction records were disclosed to the court in Exhibit M with the Habeas.

90-day removal period

"Once a noncitizen's order of removal becomes administratively final, the Government 'shall' remove the person within 90 days." *Singh v. U.S. Attorney Gen.*, 945 F.3d 1310,

[3] Declaration lists January 6, 2026 as the date the Petitioner was detained. The correct date is January 26, 2026.

1313 (11th Cir. 2019) (quoting 8 U.S.C. § 1231(a)(1)(A)).

The government must detain the noncitizen during the 90-day removal period, which begins when the removal order becomes administratively final. *Id.* Detention may continue after the removal period, but not indefinitely.

In *Zadvydas*, the Supreme Court held, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." 533 U.S. at 700-01 (2001). If removal is not practically attainable, detention no longer serves its statutory purpose of "assuring the alien's presence at the moment of removal." *Id.* at 699. The Court found it unlikely Congress "believed that all reasonably foreseeably

removals could be accomplished in [90 days]." *Id* at 701. So, "for the sake of uniform administration in the federal courts," it established a "presumptively reasonable period of detention" of six months—the 90-day removal period plus an additional 90 days. *Id.* Courts use a burden-shifting framework to judge the constitutionality of additional post-removal detention:

> After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut the showing.

Id. The presumptively reasonable six-month period for detention pending removal commences at the beginning of the removal period. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002).

The ICE/DHS Respondents address the *Zadvydas* claim in their Response as their main argument for the denial of the instant Habeas. Because the six-month period for presumptively reasonable detention has expired, *Zadvydas*'s burden-shifting framework applies. The Petitioner has carried his initial burden by showing a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. The Petitioner provided in Exhibit B an email from The Consulate General of the Republic of North Macedonia in Chicago stating that "Based on the information available in our official records, Mr. Dulovi is not registered as a citizen of the Republic of North Macedonia. Regrettably, under these circumstances, we are not in a position to issue an emergency passport or provisional travel document on his behalf. Surely, ICE must have receive the same response, as the response was obtained in a day from the request. Lastly, ICE/DHS has not shown which third country they intend to seek a travel document from and have not provided any evidence to show that they have obtained a travel document from any other country.

ICE/DHS made this same determination when it released the Petitioner from custody on February 26, 2002, when the Petitioner was detained for 392 days. (ECF 7-1 page 17). The document printout provided to show the Petitioner has been detained, this time, for 44 days, also shows that he was detained from February 9, 2001, until February 26, 2002. ICE has not identified a third country that might accept the Petitioner, therefore the burden thus shifts to the respondents, where they have made no attempt at rebuttal.

CONCLUSION

WHEREFORE, Petitioner renews his requests that this Court

a. Exercise jurisdiction over this matter;

b. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

c. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations and the *Accardi* doctrine;

d. Order Petitioner's immediate release;

e. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

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