UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-02189-KMM-DLM

Emilio San Roman-Gonzalez,

Petitioner,

v.

Markwayne Mullin, *et al.*,

Respondents.

FEDERAL RESPONDENTS' OBJECTIONS TO REPORT AND RECOMMENDATION

Pursuant to Federal Rule of Civil Procedure 72(b) and Local Rule 72.2(b), Federal Respondents object to the Report and Recommendation (R&R) recommending that the Court grant the Petition and order Petitioner's immediate release. ECF No. 8. The R&R incorrectly concludes that Federal Respondents deprived Petitioner of a meaningful opportunity to be heard during his informal interview solely because Federal Respondents conducted the informal interview on the same day of Petitioner's arrest – concluding that the Department of Homeland Security (DHS) Immigration & Customs Enforcement (ICE) conducted the informal interview too "promptly". That conclusion is unsupported by Eighth Circuit precedent or any persuasive district court authority. At best, the R&R advances a novel theory untethered from existing law, and the Court should reject the R&R on that basis alone.

I. The R&R's Informal Interview Analysis Does Not Justify Immediate Release.

The R&R erroneously concludes that ICE violated its regulations by conducting Petitioner's informal interview on the same day he was returned to custody. In doing so,

the R&R imposes an amorphous "meaningful opportunity" requirement untethered to either the text of the governing regulation or existing precedent. Neither the applicable regulations nor due process requires Respondents to provide Petitioner with additional preparation time before conducting an initial informal interview, especially where the regulations require such hearing occur "promptly".

The R&R relies heavily on *Kiwana v. LaRose*, a non-binding district court decision from outside the Eighth Circuit. *See Kiwana v. LaRose*, No. 25-cv-3678 (JES/SBC), 2026 LX 54793, (S.D. Cal. Jan. 14, 2026). But *Kiwana* is materially distinguishable. There, revocation occurred pursuant to 8 C.F.R § 241.13(i)(2) based on alleged changed circumstances—not under 8 C.F.R § 241.13(i)(1) for violation of release conditions, as is the case here. More importantly, the Court in *Kiwana* found a due process concern because that petitioner received defective notice regarding the basis for revocation. The *Kiwana* court held "that the Government violated its regulations when it conducted Petitioner's informal interview *on the same day that it issued him the defective Notice*." *See Kiwana v. LaRose*, No. 25-cv-3678 (JES/SBC), 2026 LX 54793, at *5 (S.D. Cal. Jan. 14, 2026) (emphasis added). Thus, *Kiwana* does not support the R&R's conclusion that conducting the interview on the same day as arrest, standing alone, constitutes a regulatory or constitutional violation.

The governing regulation states that "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." *See* 8 C.F.R § 241.13(i)(3) (emphasis added). The operative term is "promptly". Nothing in the

regulation requires a waiting period, advance evidentiary disclosure, or a formal evidentiary hearing before the initial *informal* interview may occur. The R&R effectively reads additional procedural requirements into the regulation that does not appear in its text and contradicts the textual use of "promptly" and "informal."

Nor does due process require more under these circumstances. Petitioner was properly informed of the violations and afforded an opportunity to respond. *See* Declaration of Angela Minner ¶ 46. He declined to provide a written statement or request more time to gather and provide supporting documentation during the interview. Significantly, even now—more than two months later, Petitioner still has not identified any evidence, witness, or information that additional preparation time would have uncovered or presented. That omission is fatal to any claim of prejudice, *see Al Khouri v. Ashcroft*, 362 F.3d 461, *466 (8th Cir. 2004), especially considering the regulations allowing Petitioner to submit an additional request for custody review. *See, e.g.,* 8 § C.F.R. 241.13(d) (allowing aliens to submit written requests for custody review), (j) (governing subsequent requests for custody review).

Indeed, the constitutional inquiry is not whether additional procedures might hypothetically have been preferable, but whether the procedures employed deprived Petitioner of a meaningful opportunity to contest revocation in a manner that caused actual prejudice. Here, Petitioner has made no showing that the timing of the interview affected the outcome of the revocation determination in any respect. Significantly, the R&R itself acknowledges that "one might struggle to contemplate any defense Petitioner might conjure to show he did not violate his conditions". *See* R&R at p. 14. That observation

underscores the absence of any identifiable prejudice resulting from the timing of the interview.

There is no dispute that Petitioner violated the conditions of his Order of Supervision. Nor is there any dispute that Respondents conducted "an initial informal interview *promptly* after [Petitioner's] return to Service custody," exactly as contemplated and required by the regulation. The R&R further acknowledges that 8 U.S.C. § 1231 governs Petitioner's detention and that Federal Respondents provided adequate notice of revocation. Thus, the R&R's conclusion rests not on the text of the regulation, binding precedent, or any demonstrated prejudice, but instead on a judicially created timing requirement unsupported by law. The Court should reject that conclusion.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court sustain this objection, decline to adopt the R&R, and deny the petition. Even if the Court reads-in more requirements, release would not be the appropriate remedy.

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