

1 VERONICA BARBA, CSB # 254155
2 veronica@lucasandbarba.com
3 Lucas & Barba LLP
4 234 E. Colorado Blvd., Suite 220
5 Pasadena, CA 91101
6 Telephone: (213) 802-0633

7 NANCY ALEXANDER, CSB # 293572; OSB # 185664 (Pro Hac Vice)
8 nancy@lucasandbarba.com
9 Lucas & Barba LLP
10 1201 SW 12th Ave., Suite 410
11 Portland, OR 97205
12 Telephone: (503) 457-4495

13 Attorneys for Petitioner

14 **UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
16 **EASTERN DIVISION**

17 **Sunday Kayode Kunkushi,**

18 Petitioner,

19 v.

20 **Warden**, Desert View Annex; **Ernesto**
21 **Santacruz Jr.** Acting Field Office Director
22 of Los Angeles Field Office, U.S.
23 Immigration and Customs Enforcement;
24 **Kristi Noem**, Secretary of the U.S.
25 Department of Homeland Security; and
26 **Pamela J. Bondi**, Attorney General of the
27 United States, in their official capacities,

28 Respondents.

No. 5:25-cv-01608-SRM-PVC

**PETITIONER'S OBJECTIONS TO
REPORT & RECOMMENDATION
OF UNITED STATES
MAGISTRATE JUDGE & POINTS
AND AUTHORITIES**

Honorable Serena R. Murillo
United States District Judge

Honorable Pedro V. Castillo
United States Magistrate Judge

1 Mr. Sunday Kunkushi here files objections to the Magistrate Judge's Report and
2 Recommendations. Doc. No. 17.1. In particular, Mr. Kunkushi asks that his procedural
3 due process and regulatory violation arguments be addressed and raises recent precedent
4 related to the Magistrate Judge's suggestion that "district courts lack jurisdiction over
5 immigration matters generally." Doc. No. 17.1 at 4.

6 Concurrent with these objections, Mr. Kunkushi files a motion for leave to file
7 amended complaint along with that complaint alleging Administrative Procedure Act
8 violations as he now faces imminent removal to Nigeria despite his pending motion to
9 reopen with the Board of Immigration Appeals (BIA) alleging he will be tortured because
10 of his severe mental illnesses of Post Traumatic Stress Disorder (PTSD) and major
11 depressive disorder with psychotic features, new diagnoses the Agency has never
12 considered. *See Guerra v. Barr*, 951 F.3d 1128, 1138 (9th Cir. 2020) (citing with approval
13 an immigration judge's grant of CAT relief to Mexican man with severe mental illness who
14 faced "regressive, primitive, and extremely harmful practices in Mexican mental health
15 institutions, as well as evidence of harsh conditions and harm amounting to torture against
16 detainees in Mexican prisons"); *Alao v. AG United States*, 859 Fed. Appx. 643, 648 (3rd
17 Cir. 2021) (unpublished) (remanding to the BIA to consider Nigerian Petitioner's CAT
18 claim raised in his second motion to reopen based on new evidence of his severe mental
19 illness).

20 Mr. Kunkushi asks that the order prohibiting ICE transfer from the Central District
21 of California remain in effect considering his pending motion to reopen with the BIA and
22 amended complaint.

23 **1. Mr. Kunkushi asks that the Court consider his lack of notice**
24 **constitutional and regulatory violation arguments not addressed in the**
25 **Report and Recommendation.**

26 Mr. Kunkushi's case exemplifies the reason notice prior to re-detention is necessary.
27 Immigration regulations and "the Constitution require notice before an immigrant who is
28 subject to a final removal order, but has been released despite that removal order (often for

1 years or decades) and committed no further crimes, may be re-detained for purposes of
2 removal.” *Nak Kim Chhoeun v. Marin*, 442 F. Supp. 3d 1233, 1244 (C.D. Cal. 2020); 8
3 CFR §§ 241.13(i)(2), (3). This is because, without notice, non-citizens have “no
4 opportunity to contact counsel, evaluate the latest legal developments, or gather documents
5 relating to their immigration and conviction histories necessary to file motions to reopen.”
6 *Nak Kim Chhoeun v. Marin*, 442 F. Supp. 3d at 1247. Once in detention, as for Petitioners
7 in *Kim Chhoeun*, it was much more difficult for Mr. Kunkushi to obtain full and accurate
8 information necessary for his motion to reopen. *Nak Kim Chhoeun v. Marin*, 442 F. Supp.
9 3d at 1248. Mr. Kunkushi has a valid basis for a motion to reopen of changed country
10 conditions and his re-detention without notice interfered with his ability to pursue that relief
11 expeditiously.

12 Mr. Kunkushi asks that the district court address his lack of notice arguments.
13 *Petition*, Doc. No. 1 at ¶ 59–60; *Reply*, Doc. No. 12 at 8–13.

14 Here, Mr. Kunkushi, who is diagnosed with PTSD and major depressive disorder
15 with psychotic features, and diabetes was re-detained by ICE after almost 5 years at liberty
16 on June 4, 2025 without notice or formal interview or informal interview as required by
17 due process and 8 CFR 241.13(i)(2), (3). *Nak Kim Chhoeun v. Marin*, 442 F. Supp. 3d at
18 1244 (procedural due process requires notice prior to re-detention in circumstances like
19 those of Mr. Kunkushi’s); *Kunkushi Decl.*, Doc. No. 12-1, ¶ 26–¶ 27.

20 Government agencies are required to follow their own regulations. *United States ex*
21 *rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). ICE has not done so here.

22 As recently provided by this Court, “these procedures are not optional or
23 discretionary; they must be followed, and failure to do so renders the detention unlawful.”
24 *Delkash v. Noem*, No. 5:25-cv-01675, Doc. No. 18 at 9 (C.D. Cal. Aug. 28, 2025).

25 The remedy for failing to comply with 8 CFR §§ 241.13(i)(2), (3) and constitutional
26 notice requirements is release, which is warranted in Mr. Kunkushi’s case. Indeed, a
27 “growing number of courts have unequivocally found that the government’s failure to
28 follow its release revocation procedures — in particular the failure to give a detainee the

1 required notice and interview — renders the re-detention unlawful,” and requires release.
2 *Delkash v. Noem*, No. 5:25-cv-01675, Doc. No. 18 at 9 (C.D. Cal. Aug. 28, 2025) *citing*
3 *Quoc Chi Hoac v. Becerra et al.*, 2:25-cv-01740-DC-JDP, 2025 U.S. Dist. LEXIS 136002,
4 *9 (E.D. Cal. July 16, 2025) (“Because there is no indication that an informal interview
5 was provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that
6 his re-detainment was unlawful”); *Sering Ceesay v. Kurzdorfer*, No. 25-cv-00267-LJV,
7 2025 WL 1284720, at *21 (W.D. N.Y. May 2, 2025) (“[B]ecause ICE did not follow its
8 own regulations in deciding to re-detain Ceesay, his due process rights were violated, and
9 he is entitled to release.”); *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *3 (D.
10 Kan. June 17, 2025) (“[B]ecause officials did not properly revoke petitioner’s release
11 pursuant to the applicable regulations, that revocation has no effect, and petitioner is
12 entitled to release.”); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387–88 (D. Mass. 2017)
13 (holding that ICE’s failures to follow the release revocation procedures in 8 C.F.R. § 241.4
14 rendered the petitioner’s detention unlawful).

15 Mr. Kunkushi therefore asks this Court find that ICE violated its own regulations
16 and order Mr. Kunkushi released, relief critical here where he has a pending motion to
17 reopen with the BIA based on changed country conditions, evidence never previously
18 considered by the Agency.

19
20 **2. This Court has jurisdiction over Mr. Kunkushi’s regulatory and**
21 **constitutional violation claims.**

22 The Report and Recommendation states that “district courts lack jurisdiction over
23 immigration matters generally.” Doc. No. 17-1 at 4. However, the Ninth Circuit in *Ibarra-*
24 *Perez v. United States* recently clarified that limits to federal court jurisdiction over
25 immigration matters are narrow. *Ibarra-Perez v. United States*, Case No. 24-631, 2025
26 U.S. App. LEXIS 22089, *20 (9th Cir. 2025).

27 While true that 8 USC § 1252(g) provides some limits on federal court jurisdiction
28 as it states that “no court shall have jurisdiction to hear any cause or claim by or on behalf

1 of any [non-citizen] arising from the decision or action by the Attorney General to
2 commence proceedings, adjudicate cases, or execute removal orders against any [non-
3 citizen].” 8 U.S.C. § 1252(g); *see also Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022).
4 However, the Ninth Circuit in *Ibarra-Perez* found that 8 USC § 1252(g) is narrow and a
5 “discretion protecting provision.” *Ibarra-Perez*, Case No. 24-631, 2025 U.S. App. LEXIS
6 22089 at *20. It does not “prohibit challenges to unlawful practices merely because they
7 are in some fashion connected to removal orders.” *Id.* at *21. 8 USC § 1252(g) does not
8 bar due process claims as raised here. *Id. citing Walters v. Reno*, 145 F.3d 1032 (9th Cir.
9 1998).

10 Mr. Kunkushi “does not contend that ICE [is] categorically forbidden to remove him
11 to [Nigeria]. Rather, he contends that he had a right to meaningful notice” of his re-
12 detention and removal and an opportunity to present new facts giving rise to his fear based
13 claim. *Ibarra-Perez*, Case No. 24-631, 2025 U.S. App. LEXIS 22089 at *18–19. His
14 arguments that ICE violated its own regulations and due process claim that he was not
15 provided adequate notice prior to re-detention do “not arise from a ‘decision or action by
16 the Attorney General to commence proceedings, adjudicate cases, or execute removal
17 orders against any [non-citizen],’ but instead constitute ‘general collateral challenges to
18 unconstitutional practices and policies used by the agency.” *Id.* at *21–22; *see also*
19 *Delkash v. Noem*, Case N. 5:25-cv-01675-HDV-AGR, (C.D. Cal. Aug. 28, 2025)
20 (providing that “the court can hear a non-citizen’s claims where, as here, a non citizen is
21 challenging “advance notice and an opportunity to have a hearing . . . to determine the
22 lawfulness of re-detention prior to taking [him] into custody”); *Garcia v. Andrews*, Case
23 No. 2:25-cv-01884-TLN-SCR, 2025 U.S. Dist. LEXIS 133521, *3 (E.D. Cal. July 14,
24 2025) (“Section 1252(g) strips a court of jurisdiction to enjoin the removal of a noncitizen
25 when a noncitizen challenges the removal itself. Here, however, the basis of Petitioner’s
26 claim is not a challenge to a removal but rather, that his redetention is unconstitutional. As
27 such, § 1252(g) is inapplicable...”).
28

1 Given this, this Court has jurisdiction to consider Mr. Kunkushi's regulatory and
2 due process violations.

3 In conclusion, Mr. Kunkushi asks that the Court consider his regulatory and
4 procedural due process claims and asks that the order prohibiting ICE transfer from the
5 Central District of California remain in effect considering these arguments and his pending
6 motion to reopen with the BIA and amended complaint.

7
8
9 Dated: September 15, 2025

Respectfully Submitted,

10 s/Nancy Alexander

11 Veronica Barba, CSB # 254155
12 veronica@lucasandbarba.com
13 Lucas & Barba LLP
14 234 E. Colorado Blvd., Suite 220
Pasadena, CA 91101
Telephone: (213) 802-0633

15 Nancy Alexander, CSB # 293572
16 OSB # 185664 (Pro Hac Vice)
17 nancy@lucasandbarba.com
18 Lucas & Barba LLP
19 1201 SW 12th Ave., Suite 410
20 Portland, OR 97205
Telephone: (503) 457-4495
Attorneys for Petitioner