

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

K.E.O.,

Plaintiff-Petitioner,

v.

Jason WOOSLEY, et.al,

Defendants-Respondents.

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) Case No. 4:25-cv-00074-RGJ
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)
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**SUPPLEMENTAL BRIEF IN
SUPPORT OF VERIFIED PETITION
FOR A WRIT OF HABEAS CORPUS**

INTRODUCTION

Noncitizens, even those subject to a final removal order, have constitutional rights just like everyone else in the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). And while the United States Department of Homeland Security . . . might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Torres-Jurado v. Biden*, 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023).

Ceesay v. Kurzdorfer, 2025 WL 1284720, at *1 (W.D.N.Y. May 2, 2025).

The Court asked the parties to brief what effect, if any, ICE's issuance of a purported Notice of Revocation of Release (Notice) on August 1, 2025, has on these proceedings. The answer is none. It is undisputed that ICE did not create or issue a valid Notice on April 28, 2025, when ICE revoked K.E.O.'s supervision, arrested her, and detained her, or any reasonable time thereafter. Therefore, ICE cannot rely on the August 1, 2025 Notice to argue K.E.O. was lawfully arrested or detained for more than three months.¹ "[B]ecause ICE did not follow its own regulations in deciding to re-detain [K.E.O., her] due process rights were violated, and [s]he is entitled to

¹ KEO assumes the Notice was to be attached to Respondents' Supplemental Brief as **Exhibit 1**. If not made part of the record, the Court cannot consider it which also requires granting the Petition.

release.” *Ceesay*, 2025 WL 1284720, at *21 (ordering release).

ARGUMENT

A. Notice Has No Effect On K.E.O.’s Claims

Because K.E.O.’s claims were not mooted by the Notice and Respondents waived any argument the Notice provided them authority to arrest and detain K.E.O., the Notice has no effect on K.E.O.’s claims and the Court should grant her Petition.²

First, Respondents’ argument that the Notice somehow cured K.E.O.’s unlawful arrest and detention fails. The Notice has not mooted K.E.O.’s claims. “Ultimately, the ‘test for mootness is whether the relief sought would, if granted, make a difference to the legal interests of the parties.’” *Sullivan v. Benningfield*, 920 F.3d 401, 410 (6th Cir. 2019) (citation omitted). K.E.O. seeks relief in the form of release from custody. “Because [she] is still ‘in custody’ for the purposes of 28 U.S.C. § 2241 and because the relief [s]he seeks, if granted, would make a difference to h[er] legal interests, [her case] is not moot.” *Rosales-Garcia v. Holland*, 322 F.3d 386, 394 (6th Cir. 2003).

Second, if Respondents argue the Notice issued after her Petition was filed retroactively provides a lawful basis for or cures her unlawful arrest and detention three months prior, that is illogical. K.E.O. has shown ICE unlawfully arrested her on April 28, 2025. Even if the August 1st Notice somehow provides a lawful basis for her detention as of that date (it does not), it cannot turn an unlawful arrest and over three months of unlawful detention into lawful agency action.

² Respondents’ Supplemental Brief reargues this Court’s jurisdiction, but it ignores *Hamama v. Adducci*, 912 F.3d 9869 (6th Cir. 2018), which recognizes that detention-related claims are not barred, and the Supreme Court’s repeated assertions that the jurisdictional bars Respondents rely on are narrow. (Doc. 10, PageID 156-60). The idea that K.E.O.’s supervised release “was revoked to execute a removal,” (Doc. 17, PageID 241) also contradicts the language of the arrest warrant and notice of custody determination (Doc. 8-1, 8-2, PageID 89-90) and is impossible since ICE knew she had a fear of removal when she was detained so she could not be removed until she had her reasonable fear interview. *See* 8 C.F.R. §1208.31.

Finally, the Response failed to argue that a revocation notice gave ICE authority to arrest and detain K.E.O. The Petition, filed on July 18, 2025, claimed that ICE had to provide her with notice of revocation of her supervision, but did not. (Doc. 1, PageID 3, 10, 12, 13, 17 ¶¶ 7, 34, 45, 64). ICE first issued K.E.O. a revocation notice on August 1, 2025. However, the Response never mentioned or included the Notice, and indeed disavowed the idea that a notice was necessary, arguing K.E.O.'s "petition is predicated on the false assumption that she is detained due to issuance of a revocation of supervised release pursuant to 8 C.F.R. § 241.4(l)(2)." (Doc. 8, PageID 75). It claimed she was "actually detained" "pursuant to ... 8 C.F.R. § 236.1(b) and (g)." (*Id.*). The Response also included a Declaration by Supervisory Detention and Deportation Officer Carly A. Schilling that also never mentioned the Notice. (Doc. 8-4). Nor did Respondents introduce the Notice at any time before or during the hearing. Any argument a revocation notice provided authority to arrest and detain K.E.O. is waived. *See United States v. Huntington Nat. Bank*, 574 F.3d 329, 331 (6th Cir. 2009) ("a party does not preserve an argument by raising it for the first time at oral argument") (citation omitted); *Woods v. U.S. Bank Nat'l Ass'n*, 2019 WL 1255229, at *3 (N.D. Ohio Mar. 19, 2019) (argument not raised in responsive brief is waived).

B. Notice Fails To Comply With Constitutional And Regulatory Requirements

Even if the Court considers the Notice on the merits, it cannot justify K.E.O.'s arrest and subsequent detention because it does not comply with constitutional or regulatory requirements.

First, Respondents' pivot to now argue that K.E.O. was lawfully detained pursuant to 8 C.F.R. § 241.4(l)(2) and 8 U.S.C. § 1231, (Doc. 17, PageID 243), directly contradicts the Response's position that this was a "false assumption." It is simply a post hoc rationalization that need not be credited.³ *See Oakbrook Land Holdings, LLC v. Comm'r of Internal Revenue*, 28 F.4th

³ Any argument K.E.O.'s supervision was revoked based on ICE's inherent or regulatory discretion is also unavailing. First, the purported Notice does not say it was issued based on the officer's

700, 728 (6th Cir. 2022). Likewise, the assertion that the OSUP's purpose was to permit breastfeeding is a post hoc rationalization; it is not mentioned anywhere as a purpose on the OSUP. (Doc. 1-3, PageID 29-32). In fact, the OSUP itself says nothing about breastfeeding or time limits, rather that K.E.O. was "placed under supervision. . . [b]ecause the agency has not effected your deportation or removal during the period prescribed by law." (Doc. 1-2, PageID 23). The declaration over a year later of the records custodian who has no first-hand knowledge does not change that fact. (Doc. 8-4, PageID 107, ¶2).

Second, the Notice does not satisfy the Constitution. "Due process requires notice that is 'reasonably calculated, under all the circumstances, to apprise interested parties' " and the affected party "must have sufficient time and information to reasonably be able to [respond]" *A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1367–68 (2025) (citation omitted). ICE's Notice provides no information to allow K.E.O. to challenge the revocation of her supervision. The Notice simply states, "This decision has been made based on a review of your file and/or ICE has received a Travel Document to affect your removal." Respondents have not and cannot argue ICE received a Travel Document that would justify issuance of a Notice⁴, and a review of file is an action taken by ICE, not a reason for revocation that would provide K.E.O. the information necessary to respond to the Notice.

discretion. Moreover, 8 C.F.R. § 241.4(l)(2) allows ICE to revoke supervision in the exercise of discretion only "under the procedures in this section" and "when, in the opinion of the revoking official: (i) The purposes of release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." The Notice does not address which, if any, of the enumerated factors the ICE official considered, as required to provide K.E.O. proper notice. *See also* 8 C.F.R. §241.4(d) ("A decision to retain custody shall briefly set forth the reasons for the continued detention."). Unfettered discretion to revoke also swallows all of 8 C.F.R. §241.4(l)'s provisions.

⁴ If "travel document" is a passport, an ICE contractor confiscated K.E.O.'s passport in May 2024 and has had possession of it since. (Doc. 10-2, PageID 174, ¶10). If "travel document" is a plane ticket, there is no evidence a plane ticket has been purchased. Obtaining a travel document makes no sense because ICE cannot remove her because of her withholding proceedings.

Even assuming, arguendo, that the Notice provided the constitutionally required notice, notice provided after the deprivation of a protected right can never satisfy due process. *See Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (“the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect”). As stated in Petitioner’s reply, Respondents had no statutory, regulatory, or constitutional authority to arrest and detain K.E.O. on April 28, 2025. Because the Notice was issued on August 1, 2025, months after Respondents arrested and detained K.E.O., it cannot satisfy the Constitution.

ICE also failed to comply with the regulatory requirements for revoking supervision. First, the regulations and basic logic only allow for revocation before ICE takes custody of a noncitizen. *See* 8 C.F.R. § 241.4(l). Second, section 241.4(l) requires “an initial informal interview promptly” after detention and “[c]ourts . . . have interpreted section 241.4(l) as requiring an informal interview upon the revocation of release regardless of the reason for the revocation.” *Ceesay*, 2025 WL 1284720, at *18. K.E.O. has not received such an interview, despite being detained for over three months. Third, that informal interview comes *after* the “notification to the alien of a records review,” 8 C.F.R. §241.4(l)(3), which, like other custody determination record reviews, requires 30 days notice to the detainee so she can “submit information in writing in support of [her] release” with assistance of counsel. *Id.*, §241.4(h)(2). None of that has ever happened.

Having unlawfully arrested and detained a nursing mother, irreparably harming her and her child via separation for over three months, ICE’s belated Notice that fails to comply with the Constitution or regulations cannot cure their unlawful action. Habeas enables the Court to “grant[] such relief as the ends of justice demand.” *Liberty Nat’l Bank & Tr. v. Life Ins. Co.*, 901 F.2d 539, 547 (6th Cir. 1990). Here, justice demands nothing more nor less than the “traditional remedy” of habeas -- “removing the injury of unjust and illegal confinement.” *Hamama*, 912 F.3d at 875.

DATED: August 13, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been filed using this court's ECF system on all counsel of record on August 13, 2025.

/s/ Brian E. Casey

Brian E. Casey