

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

Adonis Constantinovici,

Case No.: 3:25-CV-02405-RBM-AHG

Petitioner

v.

Pamela Bondi, Attorney General; Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of U.S. Immigration & Customs Enforcement; Marcos Charles, Acting Executive Associate Director for Enforcement and Removal Operations; Patrick Divver, Field Office Director for Enforcement and Removal Operations; U.S. Immigration & Customs Enforcement; U.S. Department of Homeland Security; Christopher J. LaRose, Warden of Otay Mesa Detention Center.

Respondents.

**PETITIONER’S REPLY RE:
HABEAS PETITION &
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER UNDER FRCP 65(b) AND
PRELIMINARY INJUNCTION
UNDER FRCP 65(a)**

**EXPEDITED HANDLING
REQUESTED**

ARGUMENT

I. Jurisdiction

Respondents argue that this Court lacks jurisdiction under 8 U.S.C. § 1252(g). That is incorrect. The Supreme Court has held repeatedly that § 1252(g) must be read narrowly. In *Reno v. American-Arab Anti-Discrimination Committee* (“AADC”), the Court explained that the statute applies only to the Attorney General’s decisions to commence proceedings, adjudicate cases, or execute removal orders. 525 U.S. 471, 482–83 (1999). The Court expressly rejected the notion that § 1252(g) covers the entire universe of

deportation-related claims.

In *Jennings v. Rodriguez*, the Supreme Court reaffirmed this narrow reading and specifically refused to conflate immigration detention with actions to remove. 583 U.S. 281, 294–95 & n.3 (2018). The Ninth Circuit has likewise recognized that habeas petitions challenging detention—rather than removal orders—remain reviewable. See *Martinez v. Clark*, 36 F.4th 1219, 1223–25 (9th Cir. 2022).

Other circuits agree. The First Circuit in *Kong v. United States*, 62 F.4th 608, 614 (1st Cir. 2023), and the Second Circuit in *Ozturk v. Hyde*, 136 F.4th 382, 397–98 (2d Cir. 2025), both confirmed that detention challenges are “independent of, and collateral to, the removal process.”

Most recently, in *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025), the District of Minnesota rejected the government’s identical argument. The court held that § 1252(g) does not bar habeas review of detention challenges, stressing that respondents could identify no alternative forum for review. The court explained that habeas corpus has historically been the proper vehicle for testing the lawfulness of executive detention, citing *I.N.S. v. St. Cyr*, 533 U.S. 289 (2001), *Demore v. Kim*, 538 U.S. 510 (2003), and *Zadvydas v. Davis*, 533 U.S. 678 (2001). Although not binding in this Circuit, *Maldonado* reinforces the consensus that habeas jurisdiction over detention claims remains intact.

Numerous other recent decisions from the District of Minnesota confirm that Respondents’ expansive reading of § 1252(g) is incorrect. In *Roble v. Bondi*, the court, exercising its independent duty to confirm subject-matter jurisdiction, found no

jurisdictional defects and granted habeas relief to a similarly situated individual redetained in violation of ICE's own regulations. *Roble v. Bondi*, No. 25-cv-3196, 2025 WL 2443453 (D. Minn. Aug. 25, 2025). The same was true in *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673 (D. Minn. Sept. 3, 2025). And in *Sonam T. v. Bondi*, the magistrate judge recommended granting habeas relief, recognizing jurisdiction to review detention claims under § 2241, and the district court subsequently ordered the petitioner's immediate release by agreement after the governmental respondents waived their opportunity to object to the R&R. *Sonam T. v. Bondi*, No. 25-CV-2834, *slip op.*, ECF No. 19 (D. Minn. Sept. 16, 2025); *see also Sonam T. v. Bondi*, No. 25-CV-2834, ECF No. 25 (D. Minn. Sept. 19, 2025) (ordering release). Together with *Maldonado*, these cases demonstrate a clear judicial consensus that district courts retain jurisdiction to review unlawful immigration detentions notwithstanding § 1252(g).

Thus, Petitioner's claims—challenging unlawful detention and regulatory violations—fall outside § 1252(g)'s narrow scope. Jurisdiction is proper under 28 U.S.C. § 2241.

II. ICE Violated Its Own Regulations.

The central defect in this case is that ICE failed to comply with its own governing regulations. Federal agencies are bound by the rules they promulgate; failure to follow those rules violates due process. *See Bridges v. Wixon*, 326 U.S. 135, 153 (1945); *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

Section 241.13(i)(3) requires that, upon revocation of supervised release, ICE must notify the noncitizen of the reasons for revocation and must promptly conduct an initial

informal interview to allow a response. Here, the government's filings do not state that any such written Notice was issued or served, and they attach no copy of a Notice. *See* ECF No. 1 (alleging uncertainty whether any Notice exists, e.g., "The Notice, if any ..."); ECF Nos. 8 & Barroga Decl. (ECF No. 8-1) (silent as to issuance/service of a Notice and attaching no Notice); ECF No. 8-2 (no Notice). That omission is dispositive. Because there is no proof that a Notice was issued/served, ICE violated § 241.13(i)(3) on its face.

The point is not academic. As *Roble v. Bondi* explained when faced with a notice that merely parroted the regulation issued subsequent to redetention, due process requires meaningful notice and opportunity to respond, and the decision to detain in the absence of such notice both "border[s] on the Kafkaesque" and "is also contrary to law." *Roble v. Bondi*, No. 25-cv-3196, 2025 WL 2443453, at *3 (D. Minn. Aug. 25, 2025). In *Roble*, at least some notice existed (albeit deficient). Here, the record suggests none, and the government neither asserts service nor provides a copy. This case presents an even plainer violation than in *Roble* and warrants immediate relief on regulatory grounds alone. The burden is on the government to establish compliance with the regulation, and its silence on the most basic prerequisite — issuance and service of a Notice — requires the Court to conclude the regulation was violated.

Moreover, ICE has not identified why the Court should believe their current attempts to effect removal somehow constitute a changed circumstance creating a significant likelihood of removal in the reasonably foreseeable future, especially in light of the factors ICE must consider listed at 8 C.F.R. § 241.13(f) (history of removal efforts, ongoing nature, reasonably foreseeable results, State Department views, etc.).

Even assuming *arguendo* that a Notice exists, the government offers no document with individualized reasons supporting revocation. Boilerplate language is not enough. *Roble* held that parroting the regulation in a Notice, should one be issued, “provides zero reasons as to *what* changed circumstances exist” and fails § 241.13(i)(3). *Roble*, 2025 WL 2443453, at *3 (alteration in original).

Adding to the foregoing problems, the record contains no indication that ICE conducted the required informal interview to allow Petitioner to “respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3). That omission independently invalidates the redetention.

ICE has also failed to show any contemporaneous changed circumstances. The Barroga Declaration confirms that ICE is only now, in direct response to Petitioner’s filing of a habeas corpus petition and motions seeking emergency preliminary injunctive relief, “putting together” a travel-document request and that no third-country removal is being pursued. *See* Barroga Decl. (ECF No. 8-1). Generic assertions that ICE “routinely obtains” Romanian travel documents are not individualized evidence of foreseeability for Mr. Constantinovici, particularly given his long history on supervision and prior failed removal efforts, nor does the government address how often Romania fails to provide travel documents. *See* ECF No. 1 ¶¶ 51–61. As *Roble* observed, such scant submissions fall “woefully short,” and courts repeatedly reject them as inadequate to show changed circumstances. *Roble*, 2025 WL 2443453, at *4 (collecting cases).

When an agency violates its own regulations, the detention cannot stand. The Court need not reach *Zadvydas* to resolve this case because ICE’s noncompliance with §

241.13(i) is dispositive. *Roble*—on materially similar facts—ordered immediate release, stressing that “this case is not a close call.” *Roble*, 2025 WL 2443453, at *5. Mr. Constantinovici’s case is, if anything, stronger than *Roble*’s because, here, the government has not shown that any Notice exists or was served, making the violation clearer than in *Roble* in which a Notice was drafted and served a few hours after *Roble* was detained.

III. Detention Is Unlawful Under *Zadvydas*.

Petitioner has previously demonstrated his detention is unlawful under *Zadvydas*.

Respondents’ suggestion that the 90-day removal period under 8 U.S.C. § 1231 resets upon each redetention finds no support in statute or precedent. The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001), made clear that detention authority under § 1231 is limited to a period reasonably necessary to bring about the noncitizen’s removal, which is presumptively constitutional for up to a period of six months. That presumption attaches once the order of removal is administratively final and does not start anew whenever ICE elects to redetain a noncitizen after years of supervision. Were it otherwise, ICE could evade *Zadvydas* indefinitely by cycling individuals in and out of custody, an approach the Court has rejected. *See Clark v. Martinez*, 543 U.S. 371, 384-87 (2005) (rejecting interpretations that would permit indefinite, perhaps permanent, detention). Moreover, the government’s theory is factually untenable here because, as Barroga admits, ICE only began “putting together” a travel-document request after Petitioner filed this habeas petition, confirming that no contemporaneous changed circumstances existed to justify restarting the removal clock assuming *arguendo* it is somehow capable of being reset notwithstanding the plain language of 8 U.S.C. § 1231.

Petitioner has lived for decades under a final order without removal after having accrued more than six months of post-administratively-final-removal-order detention. Romania previously declined to confirm his nationality and refused to issue travel documents, and Petitioner has credibly alleged under penalty of perjury that he “lost his Romanian citizenship in 1987 when he illegally crossed the border from Romania to Hungary.” *Accord* ECF No. 1 ¶ 2. Respondents opted not to address Petitioner’s claim of statelessness. *See* Barroga Decl. (ECF No. 8-1). Instead, Respondents essentially stated that it can obtain travel documents sometimes for some Romanian citizens, and they are unaware of whether Petitioner is a Romanian citizen. *See id.*, ¶¶ 11-12.

Lastly, even though Petitioner was redetained on August 21, 2025, ICE did not bother to so much as begin the process of applying for a travel document from Romania until September 19, 2025, immediately after Petitioner filed his habeas corpus petition. General statements that ICE “routinely obtains” Romanian travel documents are insufficient, especially when the agency fails to address the unique facts of Petitioner’s case that demonstrate he is not similarly situated to other Romanians for whom ICE has received travel documents because he is not a Romanian citizen.

IV. TRO Factors Are Satisfied.

The record satisfies all four elements required under *Winter v. NRDC*, 555 U.S. 7 (2008).

Likelihood of Success. Petitioner is likely to succeed because ICE plainly violated 8 C.F.R. § 241.13(i) by failing to issue or serve a Notice, failing to provide individualized reasons, and failing to conduct the required informal interview. The government’s belated

claim of future removal steps cannot cure these defects. Independently, detention is substantively unlawful under *Zadvydas* because removal is not reasonably foreseeable, because Respondents possess no evidence of changed circumstances, and because the purpose and effect of Petitioner's detention is punitive and to send a message to other individuals with final orders of removal living in the United States.

Irreparable Harm. Unlawful civil detention deprives Petitioner of liberty every day. Courts consistently recognize this as irreparable injury. There is no monetary or retrospective remedy that can compensate for the time spent in unlawful custody.

Balance of Equities. The equities weigh heavily in Petitioner's favor. Return to the status quo via release under an order of supervision fully protects the government's interests while preserving Petitioner's liberty. Continued detention serves no legitimate purpose where removal is speculative at best. Petitioner was in compliance with his OOS at the time he was detained, having been arrested while checking in with ICE pursuant to the conditions of the OOS.

Public Interest. The public interest is served when the government complies with its own binding regulations and constitutional limits. Requiring ICE to follow § 241.13(i) safeguards against arbitrary detention and reinforces the rule of law. Releasing Petitioner would also save the taxpayers significant unnecessary costs associated with Petitioner's unlawful detention.

CONCLUSION

For the foregoing reasons, the Court must grant Petitioner's habeas corpus petition and order his immediate release. Alternatively, the Court must grant Petitioner's

emergency motion for a temporary restraining order and order his immediate release pending a decision on the habeas petition.

DATED: September 21, 2025

Respectfully submitted,

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