

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HIFIS EDGARDO CABALLERO-
MURILLO,

Petitioner,

v.

Case No. 2:26-cv-45-KCD-DNF

IMMIGRATION AND CUSTOMS
ENFORCEMENT, SECRETARY,
U.S. DEPARTMENT OF
HOMELAND SECURITY, U.S.
ATTORNEY GENERAL, WARDEN
MATTHEW MORDANT, WARDEN
OF SOUTH FLORIDA
DETENTION CENTER;

Respondents,

**REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS
CORPUS**

COMES NOW, the Petitioner, HIFIS EDGARDO CABALLERO-
MURILLO, by and through undersigned counsel, and respectfully submits this
Reply to Respondents' Response to Petition for Writ of Habeas Corpus, and in
support thereof shows the following:

I. INTRODUCTION

Respondents' Response does not cure the core defect identified in the
Petition. It confirms it.

Petitioner was detained on December 29, 2025. He was previously released under an Order of Supervision following the entry of an Order of Withholding of Removal on August 2, 2022. (Doc. 11-1 at 21-25).

Respondents now assert that they do not possess the A-File and have not provided documentation demonstrating lawful revocation of supervision, notice of reasons, or compliance with the procedures mandated by 8 C.F.R. § 241.4. (Doc. 11 at 9).

The procedures set forth in both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 are intended to provide noncitizens with fundamental due process protections that courts have found to be constitutionally required. *See Santamaria Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087, at *5-6 (D. Md. Aug. 25, 2025); *D'Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 388-403 (W.D.N.Y. 2009). This is a principle that Justice Sotomayor recently reaffirmed in a pivotal immigration case. *See Noem v. Abrego Garcia*, 604 U.S. ----, 145 S. Ct. 1017, 1019 (2025) (statement of Sotomayor, J.) (recognizing that the Government was required to provide the petitioner, Mr. Kilmar Abrego Garcia, “with all the process to which he would have been entitled had he not been unlawfully removed to El Salvador,” including the procedures set forth in 8 C.F.R. § 241.4(l)).

Therefore, ICE violates a noncitizen's due process rights when the agency re-detains them and fails to comply with these revocation procedures. *Santamaria Orellana*, 2025 WL 2444087, at *6.

Detention without the administrative record authorizing it is not a procedural oversight. It is a due process failure.

II. DETENTION OCCURRED WITHOUT DOCUMENTED REVOCATION

Under 8 C.F.R. § 241.4(l), release under an Order of Supervision may be revoked. However, revocation is not self-executing. It is a custody determination governed by regulatory procedure. Section 1231(a) of the INA authorizes the Department of Homeland Security (“DHS”) to detain noncitizens who have been “ordered removed.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022) (quoting 8 U.S.C. § 1231(a)). “After the entry of a final order of removal against a noncitizen, the Government generally must secure the noncitizen's removal during a 90-day ‘removal period.’ ” *Id.* (quoting 8 U.S.C. § 1231(a)(1)(A)). “During the removal period, detention is mandatory.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 528 (2021) (citing 8 U.S.C. § 1231(a)(2)). If the noncitizen is not deported within the 90-day removal period, then they are only subject to discretionary detention, meaning they “ ‘may be detained’ or may be released under terms of supervision.” *Arteaga-Martinez*, 596 U.S. at 575 (2022) (quoting 8 U.S.C. § 1231(a)(6)).

Nevertheless, under Section 1231(a) of the INA, ICE officials themselves are responsible for making decisions regarding continued detention and supervised release. Two regulations primarily govern their decision-making: 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13. *See Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Santamaria Orellana*, 2025 WL 2444087, at *4.

Section 241.4(d) requires that a decision to retain custody set forth the reasons for detention. Service must comply with 8 C.F.R. § 103.8.

Section 241.4(l)(1) expressly requires that upon revocation, the government must provide notice and promptly arrange an informal interview to afford the alien an opportunity to respond. Section 241.4(d) requires that a decision to retain custody “briefly set forth the reasons for the continued detention.” Section 241.4(d)(2) further requires service of such decisions in accordance with 8 C.F.R. § 103.8. *See Zhu v. Genalo*, 798 F. Supp. 3d 400, 412 (S.D.N.Y. 2025) (citing *Santamaria Orellana v. Baker*, No. 25-cv-01788, 2025 WL 2444087, at *6-8 (D. Md. Aug. 25, 2025)). These requirements apply to custody determinations generally. They are not limited to revocations based on violations of release conditions. Nothing in § 241.4(l)(2) exempts discretionary revocations from the notice and service provisions that govern custody decisions throughout § 241.4.

Petitioner alleges that no notice was provided and no interview occurred.

While the regulations are admittedly not models of clarity, the text of 8 C.F.R. § 241.4(l) cannot be reconciled with Respondents contention that “Section 241.4(l)(2) does not require notice, explanation, or an interview for the alien to respond. *Compare id., with id.* § 241.4(l)(1); *Tanha v. Warden, Balt. Detention Facility*, No. 1:25-cv-02121-JRR, 2025 WL 2062181, at *6 n.10 (D. Md. July 22, 2025).” (Doc. 11 at 8).

Respondents cite to *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *6 (S.D. Fla. July 8, 2025), for the proposition that there is a substantive difference between subsections (l)(1) and (l)(2). However, the court in *Grigorian* dealt with the petitioner’s emergency motion for temporary restraining order, and found that the petitioner “fail[ed] to establish a substantial likelihood of success on the merits on any of his claims and therefore fails to demonstrate that the “extraordinary and drastic remedy” of a TRO is appropriate here.” *See Grigorian* 2025 WL 1895479, at *8.

Following this, the court in *Grigorian* ruled upon Grigorian’s Petition for Writ of Habeas Corpus, and found, contrary to Respondents’ assertion (Doc. 11 at 8), that:

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). *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163

(W.D.N.Y. 2025) (collecting cases); *see also Noem v. Abrego Garcia*, 604 U.S. —, 145 S. Ct. 1017, 1019, 225 L.Ed.2d 655 (2025) (Sotomayor, J., statement respecting the Court's disposition of the application) (stating that under 8 C.F.R. § 241.4(l), “in order to revoke conditional release the Government must provide adequate notice and ‘promptly’ arrange an ‘initial informal interview...to afford the alien an opportunity to respond to the reasons for the revocation stated in the notification’ ”); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), — F.Supp.3d —, —, 2025 WL 2452352, at *6 (S.D.N.Y. Aug. 26, 2025) (“[P]aragraph (l) sets forth a unified set of procedures for the revocation of removal.”); *but see Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *6 (S.D. Fla. Aug. 8, 2025) (finding that “it does not appear that Petitioner was entitled notice or an informal interview” because Petitioner's OSUP was revoked pursuant to § 241.4(l)(2), not § 241.4(l)(1)).

As a matter of text, the Court is persuaded that 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. **“This overlap belies the...argument that these are two separate processes, and suggests that paragraph (l) sets forth a unified set of procedures for the revocation of removal.”** *Zhu*, — F.Supp.3d at —, 2025 WL 2452352, at *6.

Grigorian v. Bondi, No. 25-CV-22914-RAR, 2025 WL 2604573, at *7 (S.D. Fla. Sept. 9, 2025) (emphasis added).

Respondent claims that the process in l(1) does not apply when ICE proceeds under paragraph (l)(2) because that subsection does not require notice, and “[w]hile some courts disagree, *see Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025), those decisions ignore the plain language of § 241.4(l)(2).” (Doc. 11 at 8). But this reading is fundamentally inconsistent with the structure of the regulation itself: paragraph (l)(2) expressly

encompasses situations in which a violation of supervised release is the basis for revocation. *See* 8 C.F.R. § 241.4(l)(2)(ii); *see also Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *7 (S.D. Fla. Sept. 9, 2025) (“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.”)

This overlap undermines Respondents’ argument that paragraphs (l)(1) and (l)(2) create two entirely separate procedural tracks. Instead, it strongly suggests that paragraph (l) establishes a unified procedural framework governing all revocations of release. *See, e.g., M.S.L. v. Bostock*, No. 25-cv-01204, 2025 WL 2430267, at *11-12 (D. Or. Aug. 21, 2025) (Respondents’ argued that Notice of Revocation invoked 8 C.F.R. § 241.4(l)(2)(ii) as the basis for finding a violation of release conditions rather than 8 C.F.R. § 241.4(l)(1), and the court found that “ICE failed to follow its own regulations in detaining Petitioner by (1) failing to provide a timely Notice of Revocation of Petitioner’s Order of Supervision; (2) failing to provide a Notice of Revocation signed by an official authorized to revoke Petitioner’s release; and (3) failing to provide Petitioner with a ‘prompt’ informal interview so that she could contest the reasons for her revocation.”).

Respondents have not produced a Notice of Revocation, a custody review worksheet, a written decision setting forth reasons, or any documentation showing compliance with § 241.4(d) or § 241.4(l).

Instead, they state they do not possess the A-File. (Doc. 11 at 9).

As such, this Honorable Court should hold Respondents' accountable for their untenable and inapposite argument in the same way Judge Roy B. Dalton Jr., in a recent decision from this District, held that:

Every attorney who presents a filing to the Court represents that the factual contentions have evidentiary support and the legal contentions are warranted. *See* Fed. R. Civ. P. 11. If the Government is going to argue for expanding the interpretation of a law or maintain a widely rejected position to preserve its appellate rights, it may do so. But its lawyers must make those arguments in a way that comports with their professional obligations, as lawyers have done since time immemorial: Cite the contrary binding authority and argue why it's wrong. **Don't hide the ball. Don't ignore the overwhelming weight of persuasive authority as if it won't be found.** And don't send a sacrificial lamb to stand before this Court with a fistful of cases that don't apply and no cogent argument for why they should.

Rivero v. Mina, No. 6:26-CV-66-RBD-NWH, 2026 WL 199319 at *5 (M.D. Fla. Jan. 26, 2026) (emphasis added).

Here, too, Respondents' position conflicts with the overwhelming weight of persuasive authority. Courts have consistently found that the procedural requirements outlined in (l)(1) equally apply to revocation under (l)(2). *See, e.g., Ceesay*, 781 F. Supp. 3d at 164 n.25; *Zhu*, 798 F.Supp.3d at 408-14 (S.D.N.Y. 2025); *Zhang v. Genalo*, No. 25-CV-06781 (NRM), 2025 WL 3733542

(E.D.N.Y. Dec. 28, 2025); *Khamba v. Albarran*, No. 1:25-CV-01227 JLT SKO, 2025 WL 2959276 (E.D. Cal. Oct. 17, 2025); *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025); *Grigorian*, 2025 WL 2604573 (S.D. Fla. Sept. 9, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267 (D. Or. Aug. 21, 2025); *Furies*, — F.Supp.3d at ———, 2025 WL 3263896, at *14–17; *Perez-Escobar v. Moniz*, 792 F. Supp. 3d 224, 225–26 (D. Mass. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *see also M.Q. v. United States*, 776 F. Supp. 3d 180, 187, 190, 190 n.1 (S.D.N.Y. 2025) (holding § 241.4(l) required ICE to provide petitioner, who had not violated conditions of release, with notice and an informal interview); *Noem v. Abrego Garcia*, 604 U.S. ———, 145 S. Ct. 1017, 1019, 225 L.Ed.2d 655 (2025) (Sotomayor, J., statement respecting disposition of the application) (describing 8 C.F.R. § 241.4(l) as requiring the Government to provide notice and an informal interview). By contrast, Respondents have cited *no* case in which a court has adopted their novel, dual-track interpretation of § 241.4.

III. THE ABSENCE OF THE A-FILE IS DISPOSITIVE

The A-File is the official administrative record of custody determinations, supervision orders, and revocation documentation.

If ICE has re-detained Petitioner but cannot produce:

(1) the Order of Supervision, (2) the revocation notice (3) any documentation of changed circumstances, (4) any custody review memorandum or (5) any service record;

Then there is no record evidence that revocation occurred in accordance with law.

Habeas review under 28 U.S.C. § 2241 requires the custodian to justify detention. The burden does not rest on the detainee to disprove undocumented custody authority.

Without the A-File, Respondents cannot establish:

1. That revocation occurred;
2. That revocation preceded detention;
3. That reasons were set forth;
4. That notice was served; or
5. That Petitioner was afforded an opportunity to respond.

Administrative detention cannot rest on post-hoc explanation or litigation argument. Otherwise, that detainee would lack the ability to seek habeas relief as long as the government kept their reason for re-detention a secret, thus granting “the political branches ... the power to switch the Constitution on or off at will,” “leading to a regime in which ... the President, not th[e Supreme] Court, say[s] ‘what the law is.’” *Boumediene v. Bush*, 553 U.S. 723, 765 (2008) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)).

Respondents’ own explanation that ICE will hold Petitioner in “custody pending third-country removal” that might accept Petitioner falls far short of demonstrating that removal is imminent or that the purpose of release has

been served, as required under 8 C.F.R. § 241.4(l)(2). (Doc. 11-1 at 17).; *see also Khamba v. Albarran*, No. 1:25-cv-01227-JLT-SKO, 2025 WL 2959276, at *10 (E.D. Cal. Oct. 17, 2025) (holding that DHS must provide a timely, specific, and meaningful factual explanation to a detainee to satisfy notice and post-deprivation procedural requirements).

IV. NOTICE MUST PRECEDE OR ACCOMPANY CUSTODY

Respondents appear to suggest that notice may occur later or that formal documentation is unnecessary.

That position conflicts with the regulatory structure.

Section 241.4(d) requires that decisions to continue detention set forth reasons.

Section 241.4(l) requires notification upon revocation. Section 241.13(i)(3), if applicable, requires notice of reasons and an opportunity to respond. (Doc. 11 at 9). *See Grigorian*, 2025 WL 2604573, at *6 (“Although [the petitioner’s release] was subject to § 241.4(l) and not § 241.13(i), the Court nevertheless finds that ICE failed to provide [him] with a meaningful opportunity to contest the revocation of his [order of supervision] through an informal interview [in violation of] both ICE’s own regulations and the Due Process Clause of the Fifth Amendment.”).

Section 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. *Id.* § 241.4(3). 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.” *Cesay*, 781 F. Supp. 3d at 164.

Physical detention first and explanation later is not what the regulation provides. Both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 were intended to “provide due process protections to [noncitizens] following the removal period as they are considered for continued detention, release, and then possible revocation of release ...” *Santamaria Orellana v. Baker*, Civil Action No. 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025). Under the Government's proposed interpretation of this regulation, noncitizens re-detained for violating a condition of release would be entitled to more due process than noncitizens, like Petitioner, who have otherwise complied with their obligations. See *Cesay*, 781 F. Supp. 3d at 164 (“Under the government's interpretation of the regulation, someone arrested based on the revocation of an order of supervision not related to a violation of conditions might spend three months or more in custody before getting *any* opportunity to contest the person's detention.”) (emphasis in original); *Zhu*, 2025 WL 2452352, at *7 (“The Government's

interpretation of paragraph 241.4(l) would ... result in imbalanced procedural safeguards for noncitizens” re-detained under § 241.4(l)(2)).

Custody is a deprivation of liberty. The procedural safeguard is not optional.

V. RESPONDENTS EFFECTIVELY ADMIT NON-NOTICE

Petitioner alleges that he was detained at Home Depot on December 29, 2025 without notice and without an interview.

Respondents have not produced any contrary documentation.

If notice existed, it would be in the A-File.

If an interview occurred, it would be documented.

If a custody decision set forth reasons, it would be in writing.

The absence of the A-File, combined with the absence of documentary proof, confirms that the required regulatory process did not occur before detention.

The record therefore establishes that Petitioner did not receive notice at any point before, or at the time of his arrest. *See M.S.L.*, 2025 WL 2430267, at *11 (holding ICE failed to provide the petitioner a timely notice of revocation where it was issued “after nearly a month in detention.”).

VI. WITHHOLDING OF REMOVAL HEIGHTENS THE DEFECT

Petitioner remains subject to an Order of Withholding of Removal entered August 2, 2022.

That means he may not be removed to Honduras. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention beyond the removal period is constitutionally limited where removal is not reasonably foreseeable.

Where a noncitizen with withholding protection has been living under supervision and is re-detained without any identified new removal prospects or changed circumstances, the absence of documented justification is particularly significant.

Respondents have not identified:

1. A country willing to accept Petitioner;
2. Newly obtained travel documents;
3. Changed diplomatic conditions;
4. Any violation of supervision – essentially re-detaining Mr.

Caballero without any reason, at least any reason known to him, and no reason provided in the Government's response.

VII. DETENTION WITHOUT RECORD AUTHORITY EXCEEDS STATUTORY POWER

Under 8 U.S.C. § 1231 and implementing regulations, detention authority is structured and limited.

An agency may not detain first and justify later. Agencies must follow their own regulations. *See Morton v. Ruiz*, 415 U.S. 199 (1974). Failure to adhere to regulations governing liberty interests renders detention unlawful.

If the administrative record authorizing detention cannot be produced, continued detention cannot stand.

ICE's failure to follow such regulations thereby also violated Petitioner's constitutional due process rights. *See Diaz*, 2025 WL 2581575, at *7 ("DHS's failure to follow its own procedural regulations may constitute a due process violation."); *Santamaria Orellana*, 2025 WL 2444087, at *8 ("[T]here is absolutely no record of the decision to revoke [the petitioner's] release ... which reveals an even more significant due process problem because no one ... knows with any degree of certainty what legal and factual basis was relied upon in making the determination, which hinders any meaningful challenge to the decision.").

VIII. CONCLUSION

Respondents have not demonstrated that:

1. The Order of Supervision was lawfully revoked;
2. Notice was provided;
3. An interview was conducted;
4. A written custody determination was issued; or
5. Removal is reasonably foreseeable.

They admit they do not possess the A-File.

Without the administrative record, the government cannot meet its burden to justify detention.

For these reasons, Petitioner respectfully requests that the Court grant the writ and order his immediate release; in the alternative, order Respondents

to produce the complete A-File and demonstrate lawful compliance with 8 C.F.R. § 241.4 before further detention continues.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court grant the writ and order his immediate release, or alternatively order Respondents to produce the complete A-File and demonstrate lawful compliance with: 8 U.S.C. § 1231 *et al.*, and 8 C.F.R. § 241.4, *et al.*, before further detention continues.

DATED this 10th day of February 2026.

By: /s/Joel Alexis Caminero
Joel Alexis Caminero, Esq.
Florida Bar # 127294
Caminero Law, PLLC
5728 Major Blvd, STE 750
Orlando, FL 32819
Tel. (407) 409-2529
Email: joel@caminerolawfirm.com
Attorney for Petitioner

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to all counsel in this case on February 10th, 2026.

/s/Joel Alexis Caminero
Joel Alexis Caminero, Esq.
Florida Bar # 127294
Attorney for Petitioner