IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BINTOU BARRO, Petitioner, v. MARKWAYNE MULLIN, in his official capacity as Secretary of the U.S. Dept. of Homeland Security, et al., Respondents.	Case No. 3:26-cv-0854 Judge Dan Aaron Polster

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

This case involves a non-citizen with a final order of removal who had been complying with her Order of Supervision (OSUP) for over sixteen years without violating its terms. She requests this Court release her from detention because ICE violated due process and its own regulations when it abruptly redetained her without complying with mandatory regulatory procedures. Petitioner does not contest the authority or discretion of the U.S. government officials to effectuate her final order of removal. However, Petitioner avers that Respondents failed to follow their own regulations and procedures when they decided to detain her.

LEGAL BACKGROUND

Following an administratively final order of removal, 8 U.S.C. § 1231(a)(1)(A) mandates that a non-citizen be removed within a period of 90 days, i.e., the "removal period." During this 90-day period, the statute mandates detention for the non-citizen. § 1231(a)(2)(A). However, if the noncitizen does not leave or is not removed within the 90-day removal period, then that person "shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3). A non-citizen found to be inadmissible, or who is determined to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the 90-day removal period. 8 U.S.C. § 1231(a)(6). But if released, these persons are still subject to the supervision required by §1231(a)(3). *Id.*

These regulations are contained in 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13. Section 241.4 governs the detention of noncitizens under a final order of removal unless the government has made the specific determination that there is no significant likelihood of removal in the reasonably foreseeable future, in which case section 241.13 governs. 8 C.F.R. § 241.13(b)(1) ("Relationship to § 241.4"). Respondents have not alleged that Petitioner's original release was because it

determined there was no significant likelihood of removal in the reasonably foreseeable future when the OSUP was issued, or that circumstances have changed such that there is a significant likelihood of removal in the future. ECF 6-1, Notice of Revocation.

> Under § 241.4, Before being released, the government must conclude that:
>
> (1) Travel documents for the alien are not available or, in the opinion of the Service, immediate removal, while proper, is otherwise not practicable or not in the public interest;
> (2) The detainee is presently a non-violent person;
> (3) The detainee is likely to remain nonviolent if released;
> (4) The detainee is not likely to pose a threat to the community following release;
> (5) The detainee is not likely to violate the conditions of release; and
> (6) The detainee does not pose a significant flight risk if released.

8 C.F.R. § 241.4(e). A noncitizen who has been released under an OSUP or who violates their conditions of release may have their release revoked, subject to the regulations. 8 C.F.R. § 241.4(l). The authority to determination whether to revoke release lies with the Executive Associate Commissioner "under the procedures in [§ 241.4(l)]" or the District Director when "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." 8 C.F.R. § 241.4(l)(2). Release may be revoked in the official's discretion when:

> (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.

Id. Upon revocation, the regulations provide that the noncitizen "will be notified of the reasons for revocation of his or her release or parole," and "will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l)(1) .

DOCUMENTS/FORMS NECESSARY FOR DETENTION

In its April 17, 2026 Order, the Court directed the parties to address what forms were required to detain petitioner and how these forms were deficient if Petitioner's detention is unlawful. ECF 7, PageID # 95. It is Petitioner's position that no particular form itself, standing alone, is sufficient to detain Petitioner. The government may exercise its discretion to detain a Petitioner previously released on an Order of Supervision only by fully complying with 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13. A Form I-205 Warrant of Removal is a related document but is outside of these regulatory procedures. 8 C.F.R. § 241.2. The warrant of removal just directs immigration officers to carry out the agency's authority to take someone with a final order of removal into custody, the procedures for which are governed by the regulations.[1] *See* ECF 6-2, PageID # 89.

A Notice of Revocation of Release is a necessary element of these procedures, § 241.4(l)(1), but is not sufficient on its own absent compliance with the regulations and due process. As Petitioner explains below, the Notice of Revocation in her case was deficient because it was not properly issued by an Individual making the required findings, did not contain specific reasons for why the release was being revoked, and because Respondents did not provide Petitioner with an adequate interview to respond to the reasons for revocation.

ARGUMENT

I. Respondents failed to follow regulations and their own procedures in revoking Petitioner's OSUP and re-detaining her.

[1] Petitioner notes that the Warrant of Removal presented by Respondents appears to be deficient in a number of respects. First, it is not signed, but lists an officer purporting to issue it with the title "Deportation Officer". A Deportation Officer is not a valid official to issue this document. 8 C.F.R. § 241.2(a). In addition, it states that Petitioner entered the United States at an unknown date and time, but the government charged Petitioner with entering the United States in Miami, Florida on December 17, 1999. ECF 1-4, Notice to Appear.

Petitioner was not properly redetained because ICE revoked her release without complying with due process. ICE had not met its burden to show that circumstances had changed such that it was appropriate for her to be detained in order to effectuate her removal. Individuals cannot be re-detained without warning after years of supervised release simply because ICE says it can now effectuate a removal without an individualized showing of how they are able to do so and whether, even if they are, re-detention is actually necessary to effectuate the removal. ICE failed to comply with the procedures provided in the regulations for Petitioner to reply to ICE's reasons for revoking her Order of Supervision and therefore deprived her of due process.

Respondents also detained Petitioner before her scheduled appointment and prevented her access to counsel in what process ICE did provide when they decided to detain her. Most concern is ICE's decision to detain Petitioner even though she plead with them to wait until her attorney arrived. ECF 1. The documents were not timely served on counsel. *See* ECF 1, PageID # 5-7, ECF 6-1, 6-2 (no checked boxes for service on counsel). This occurred despite counsel appearing with Petitioner at a previous check-in appointment and counsel having documentation specifically requested by ICE at that prior check-in. Although there is no Sixth Amendment right to counsel at government expense in immigration proceedings, courts recognize that the Due Process Clause of the Fifth Amendment guarantees noncitizens the right to counsel at their own expense.[2] *See, e.g.*, *Tawadrus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004); *Torres v. United States Dep't of Homeland Sec.*, 411 F. Supp. 3d 1036, 1060 (C.D. Cal. 2019).

a. Individual revoking release did not make required findings

The regulations provide that the only individual with authority to exercise their discretion to revoke release is the Executive Associate Commissioner, i.e. the Executive Associate Director

[2] Noncitizens have a statutory right to counsel in removal proceedings. 8 U.S.C. § 1362.

of ICE following the transfer of legacy INS functions to the Department of Homeland Security. The regulations provide that a District Director, i.e., a Field Office Director or other certain officials delegated such authority for a particular district, region, or area, may also revoke release, but only upon finding that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to [the Executive Associate Director]." 8 C.F.R. § 241.4(l)(2); 8 C.F.R. § 1.2; *see Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 159-61 (W.D.N.Y. May 2, 2025).

The Notice of Revocation of Release is signed by Acting Field Office Director Kevin Raycraft. ECF 6-1. And Respondents also identify him as the individual with the proper authority to revoke Petitioner's release. ECF 6, PageID # 73. But a Field Office Director is only authorized to revoke release when they make specific findings, per the regulation. Respondents have made no argument or produced any documents purporting to support findings made by Kevin Raycraft that the revocation of Petitioner's order of supervision was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director of ICE. As there is no evidence Mr. Raycraft made these required findings, Petitioner's order of supervision was not lawfully revoked and she is entitled to release on that basis alone. *See Ceesay*, 781 F. Supp. 3d at 161 (citing *Rombot v. Souza,* 296 F. Supp. 3d 383, 386-89 (D. Mass. 2017) (finding failure to make required findings required release of petitioner)); M.S.L. v. Bostock, No. 25-cv-01204, 2025 WL 2430267, at *9-10 (D. Or. Aug. 21, 2025) (ordering immediate release where there was no record of the revoking official's authority to revoke or the requisite findings being made). This reasoning is an important safeguard, as it was necessarily in the public interest to originally release a petitioner with an order of supervision and not execute her order of removal when the person was originally released according to 8 C.F.R. § 241.4(e). Due process requires the Petitioner be notified of the reasons for why her revocation was in the public interest and that she have an opportunity to respond.

b. No individualized determination

Respondents state that the reason for revocation of Petitioner's release was because "the purposes of release have been served" and "It is appropriate to enforce the removal order entered against you." *See* Notice of Revocation of Release ECF 6-1; Respondents' Response, ECF 6, PageID # 73. Respondents did not produce any documentation regarding Petitioner's original release on the order of supervision issued on June 15, 2009. However, Petitioner's prior release necessarily must have been contingent on the determination that Petitioner satisfied the factors enumerated in 8 C.F.R. § 241.4(e). At that time, ICE found that Petitioner was not a flight risk, nonviolent, was likely to comply with any conditions of release, and that she either could not be removed because travel documents were not available or should not be removed because it was not practicable or not in the public interest. *Id.*; *see also* 8 C.F.R. § 241.4(h)(3), (i)(6)(noting that the Executive Associate Commissioner and district director "must [also] be able to reach the conclusions set forth in paragraph (e) of this section" "[b]efore making any decision to release a detainee").

To revoke release now and detain Petitioner, Respondents must demonstrate that circumstances have changed such that it is no longer the case that "(1) Travel documents for the alien are not available or, in the opinion of the Service, immediate removal, while proper, is otherwise not practicable or not in the public interest". 8 C.F.R. 241.4(e)(1). Respondents have not alleged that any of the other elements of the release subpart, relating to Petitioner's non-violence, likelihood of violating conditions of release, and no significant flight risk, were at issue or could have changed to support the revocation of her order of supervision. *Id.* (2-6). Nor could they have, as Petitioner has no criminal or violent history, has never violated the terms of her order of supervision, and does not pose any flight risk.

Without a specific reason why these circumstances have changed for the Petitioner and why such a change requires detention after 16 years of compliance with the order of supervision, Petitioner would be unable to respond to the reasons for the revocation in any way contemplated by the regulations. Personalized reasons specific to the Petitioner, and not just boilerplate phrases or parroting of the regulatory sections, must be provided to the noncitizen before they are taken into custody. See *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *5 (D. Minn. Sept. 3, 2025); *Perez-Escobar v. Moniz*, 792 F. Supp. 3d 224, 225 (D. Mass. July 24, 2025); *M.S.L. v. Bostock*, No 25-CV-01204, 2025 WL 2430267 at *4 (D. Or. Aug. 21, 2025)

Respondents' documents confirm that no travel documents have been obtained to remove Petitioner to Mauritania. ECF 6-1 ("ICE is seeking a travel document…"). This does not appear to be a changed circumstance or revision from the Petitioner's original release on an order of supervision, as travel documents supposedly could have been sought at any point in the last 16 years and yet the Petitioner's detention was not deemed necessary to that process. And because ICE does not have travel documents for the Petitioner or any specific plan to effectuate her departure, the reason for her detention appears to be because they are seeking a travel document. *See* ECF 6-1, Notice of Revocation. This is an impermissible reason to revoke someone's order of supervision. 8 C.F.R. § 241.4(e)(iii) (allowing revocation when "[i]t is appropriate to *enforce* a removal order")(emphasis added).

c. Respondents failed to provide Petitioner with the required informal interview and/or the informal interview did not comport with due process

Respondents have not cited to any case law supporting their belief that the regulations requiring notice of revocation and a prompt interview to respond apply only to noncitizens who have violated the conditions of their release. ECF 6, PageID # 78-79. 8 C.F.R. § 241.4(l) requires an informal interview regardless of the reason for the revocation, even if they have not violated

the conditions of release. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d at 163-64 (collecting cases); *see also Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025) (Sotomayor, J., statement respecting the Court's disposition of the application)("in order to revoke conditional release" under 8 C.F.R. § 241.4(l), "the [g]overnment must provide adequate notice and 'promptly' arrange an 'initial informal interview to afford the [noncitizen] an opportunity to respond to the reasons for the revocation stated in the notification'"); *see also Mbonga v. Raycraft*, 4:25-cv-02315-DAP, at *7 (N.D. Ohio November 7, 2025) ("[I]t does not make sense that someone who does not violate the conditions of their release would be afforded less procedural safeguards than someone who does.")[3]

Petitioner alleges that ICE never provided her with an interview where she could rebut the reasons for her redetention. Despite clearly invoking her desire that her attorney be present for her appointment, ICE apparently deliberately took steps to detain and question the Petitioner before her attorney had arrived at the ICE Office in Westerville, Ohio. *See* ECF 1, PageID # 5-6. Respondents presented a document purporting to be related to a post-custody interview that claims to summarize a statement Petitioner made. ECF 6-1. Petitioner disputes the nature and circumstances of the interview and claims that she was not interviewed. Petitioner alleges that no interpreter was provided and she did not understand the documents she was provided or what the officer was saying to her in English.

Assuming an officer did attempt to conduct a post-custody interview, the fact that Petitioner states she was not interviewed about the reason for detention is strong evidence that

[3] Respondents' position in their brief is also contradicted by their own documents. The Notice of Revocation of Release at ECF 6-1 states: "[Y]ou will be afforded an informal interview at which you will be given an opportunity to respond to the reasons for this revocation" and does not differentiate between subsections or reasoning. And the "Alien Informal Interview Upon Revocation of Order of Supervision" lists 8 C.F.R. § 241.4(l) inclusively.

Petitioner did not even understand that a post-custody interview was taking place. An interview where someone does not understand what is occurring or that she even had the opportunity to rebut the reasons given for detention does not comport with due process.

The Notice of Revocation of Release states that it was served on the Petitioner at "1420" or 2:20 p.m and that an informal interview would occur in the future on March 17, 2026. ECF 6-1. As Petitioner was detained around 8:00 a.m. on March 17, 2026, which included the placement of arm and leg restraints, this means she had been placed in detention for over six hours before she was given even nominal notice of why she was being detained. This is also the first time she was given notice she would be able to have an informal interview. This was all ineffective to allow her to actually reply to the reasons why she was detained, because the notice was inadequate and the affording of the informal interview failed to allow her to answer.

II. Respondents have not met their burden to prove removal is reasonably foreseeable following the revocation of Petitioner's OSUP or that detention is necessary to ensure Petitioner's presence at removal

The Supreme Court has held that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Reasonable foreseeability of removal should be considered in terms of the decision to detain someone pursuant to 8 U.S.C. § 1231(a)(6) and ithe detention's purpose of ensuring an individual's "presence at the moment of removal." *See Zadvydas*, 533 U.S. at 699. In this instance, detention is and was unreasonable because ICE had not begun the process to acquire travel documents at the time of Petitioner's detention. ICE also imposed preceding supervision measures through check-ins that were successful in securing Petitioner's appearance.

ICE has not shown that circumstances have changed such that Petitioner must be detained now to effectuate her removal order, particularly when travel documents have not been obtained, no removal is planned, and Petitioner had not shown any unwillingness not to appear for her removal when the appropriate time came. Because ICE did not follow its own regulations in providing notice and an opportunity to respond to ICE's new determination that she needed to be detained, they violated due process when she has a significant liberty interest in her continuing freedom.

III. Petitioner can bring other claims in a habeas petition

Contrary to Respondents' characterization of her Petition, Petitioner is not challenging "the agency policies" themselves, or even ICE's decision to seek her removal itself, but pleads that her detention was carried out in violation of those policies. *See* ECF 6, Part E, PageID # 11-12. In *Trump v. J.G.G.*, 604 U.S. ___, slip op. at 2–3 (2025) (per curiam), the Supreme Court reaffirmed that challenges to removal—even without a request for release—fall within the core of habeas:

> "Regardless of whether the detainees formally request release from confinement, because their claims for relief 'necessarily imply the invalidity' of their confinement and removal under the [AEA], their claims fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas. … And 'immediate physical release [is not] the only remedy under the federal writ of habeas corpus.'" *Id.* (quoting *Peyton v. Rowe*, 391 U.S. 54, 67 (1968); *Nance v. Ward*, 597 U.S. 159, 167 (2022); *In re Bonner*, 151 U.S. 242, 254, 259 (1894)).

The APA and *Accardi* violations alleged in this case are the *but for* causes of the illegal deprivation of Petitioner's freedom, and therefore appropriate to bring in this action. Claims under the APA are permitted in "any applicable form of legal action, including . . . habeas corpus." 5 U.S.C. § 703.

IV. Witnesses

The Court has directed the parties to identify which witnesses are necessary for the scheduled evidentiary hearing. Petitioner believes that the appropriate witnesses would be: 1. The Petitioner, Ms. Bintou Barro, 2. Acting Field Office Director Kevin Raycraft, as the individual identified by Respondents who decided to revoke Petitioner's Order of Supervision 3. Deportation Officer Simo, as the officer who conducted Petitioner's informal interview, ECF 6-1.

CONCLUSION

Based on the foregoing, Ms. Barro respectfully reiterates her request that the Court grant her Petition for Writ of Habeas Corpus and order her immediate release from detention.

DATED this 1st day of May, 2026.

Respectfully submitted,

s/ David L. Dawson
David L. Dawson, Esq.
Simakovsky Law
1450 East Main Street
Columbus, OH 43215
Phone: 614-695-4605
Email: dawson@simakovskylaw.com

Attorney for Petitioner

CERTIFICATE OF COMPLIANCE WITH RULE 7.1(f)

I certify that Petitioner's Reply to Respondent's Reply Brief In Support Of Petition For Writ Of Habeas Corpus comports with the page limitations identified in Local Rule 7.1(f). This is a civil case, and the Response is under twenty pages in length.

s/ David L. Dawson
David L. Dawson