

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

**Emmanuel McSweeney v. Warden of the Otay Mesa Detention
Facility, et al.**

McSweeney · No. 3:25-cv-02488-RBM-DEB · Decided October 24, 2025

OPINION

Emmanuel McSweeney v. Warden of the Otay Mesa Detention Facility, et al.

PER CURIAM.

1 2 3 4 5

6 UNITED STATES DISTRICT COURT

7 SOUTHERN DISTRICT OF CALIFORNIA

8 9 EMMANUEL MCSWEENEY, Case No.: 3:25-cv-02488-RBM-DEB 10 Petitioner,

ORDER GRANTING PETITION

11 v. FOR WRIT OF HABEAS CORPUS

12 WARDEN OF THE OTAY MESA

[Docs. 1, 12] DETENTION FACILITY, et al., 13 Respondents. 14 15 16 On September 15, 2025, Petitioner Emmanuel McSweeney (“Petitioner”) filed a 17 Petition for Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2241 challenging 18 the lawfulness of his detention by United States Immigration and Customs Enforcement 19 (“ICE”). (Doc. 1.) After the Court granted Petitioner’s Motion for Appointment of 20 Counsel (see Docs. 8, 10), Petitioner filed the following: a Motion in Support of Temporary 21 Restraining Order (“TRO Motion”) (Doc. 12); a Supplemental Brief in Support of 22 Temporary Restraining Order (“Supplemental Brief”) (Doc. 18); and an Amendment and 23 Supplement to Habeas Petition (“Amended Petition”). (Doc. 19.) Respondents filed: a 24 Return to the Petition (“Response”) (Doc. 9); a Response in Opposition to the TRO Motion 25 (“TRO Opposition”) (Doc. 15); and a Supplemental Brief addressing “issues raised by the 26 Amended Petition” (“Supplemental Response”). (Doc. 21 at 1.) Having considered these 27 filings and the arguments of counsel at the hearing on October 3, 2025 (Doc. 16), and for 28 the reasons set forth below, the Court GRANTS the Petition.

1 I. BACKGROUND

2 A. Factual Background 3 Petitioner was born in The Bahamas in 1996 and was admitted into the United States 4 with his mother on a B2 visa with instructions to depart on or before February 14, 1999. 5 (Doc. 12 at 2; Doc. 9 at 2.1) Petitioner overstayed his departure date without authorization 6 and, beginning on March 31, 2010, submitted several applications for Temporary Protected 7 Status (“TPS”) to United States Citizenship and Immigration Services (“USCIS”). 8 (Doc. 9-2 at 5.) USCIS granted Petitioner TPS on five occasions over the next few years. 9 (See id.) On April

11, 2018, USCIS denied Petitioner’s application for TPS. (Id.) On
10 February 25, 2020, ICE “encountered Petitioner in Broward County Jail . . . after his
11 February 20, 2020 arrest for cocaine possession and February 25, 2020 arrest for burglary.”
12 (Doc. 9 at 2–3.) On May 21, 2020, Petitioner was “ordered removed from the United States 13
to Bahamas or in the alternative to Haiti.” (Id. at 3 (citing Doc. 9-2 at 8); Doc. 12 at 2.) 14 The
removal order became final on April 20, 2021, when the Board of Immigration 15 Appeals
 (“BIA”) dismissed Petitioner’s appeal of the removal order. (Doc. 9-2 at 13.) 16 On December 10,
2020, Petitioner was released from ICE custody on an order of 17 supervision. (Doc. 9 at 3 (citing
Doc. 9-1, Declaration of Jason Cole [“Cole Decl.”] ¶ 4).) 18 On March 18, 2025, Petitioner went
to an immigration check-in in Florida. (Doc. 12 at 2.) 19 At that check-in, ICE re-detained
Petitioner to “effectuate his removal from the United 20 States.” (Cole Decl. ¶ 5.) According to
the Form I-213 completed that same day, Petitioner 21 was asked if he feared “persecution,
torture, or physical harm if returned to his native 22 country of Venezuela.” (Doc. 9-2 at 19)
(emphasis added). The Notice of Revocation of 23 Release provided to Petitioner that day also
stated: 24 This letter is to inform you that your order of supervision has been revoked, and you
will be detained in the custody of U.S. Immigration and Customs 25 Enforcement (ICE) at this
time. This decision has been made based on a 26 27 1 The Court cites the CM/ECF electronic
pagination for all citations unless otherwise 28 1 review of your official alien file and a
determination that there are changed circumstances in your case. . . . The Government of Cuba has
issued a travel 2 document for your removal. . . . You will promptly be afforded an informal 3
interview at which you will be given an opportunity to respond to the reasons for the revocation.
You may submit any evidence or information you wish to 4 be reviewed in support of your
release. 5 6 (Doc. 18-1 at 2) (emphasis added). 7 On September 11, 2025, after reviewing his
custody status, ICE determined that 8 Petitioner should remain in custody. (Doc. 9 at 4 (citing
Doc. 9-2 at 18–19, 22–24).) “ICE 9 based its decision, in part, on Petitioner’s numerous criminal
convictions . . . and concluded 10 that Petitioner poses both a risk to public safety and a
significant flight risk.” (Doc. 9 at 4 11 (citing Doc. 9-2 at 19, 22–24).) On September 19, 2025,
Petitioner was provided an 12 interview by ICE Enforcement and Removal Operations (“ERO”).
(Doc. 9 at 4 (citing
13 Doc. 9-2 at 31–33; Cole Decl. ¶ 10).) On September 23, 2025, the Embassy Consular
14 Annex of the Commonwealth of The Bahamas (“Bahamian Consulate”) provided ERO an 15
email confirming that Petitioner is not a citizen of The Bahamas. (Cole Decl. ¶ 10.) The 16 email
reads: “Good afternoon Officer Cole, The Bahamas Embassy Consular Annex 17 wishes to advise
that it has been determined that Mr. Emmanuel Ishmael McSweeney is 18 not a citizen of the
Commonwealth of The Bahamas. Therefore, he should not be 19 repatriated to The Bahamas.”
(Doc. 21-1 at 3.) On September 30, 2025, ERO obtained a 20 travel document for Petitioner’s
removal to Haiti. (Id. ¶ 11.) Respondents represent that 21 with the issuance of that travel
document, and with ICE currently “attempting to secure a 22 flight itinerary for Petitioner,”

Petitioner can be “expected to be removed to Haiti within a 23 week.” (Doc. 9 at 2, 8.) 24 B. Procedural Background 25 Petitioner, initially proceeding pro se, filed his Petition (Doc. 1) and Motion for 26 Appointment of Counsel (“Motion to Appoint Counsel”) (Doc. 2) in the Eastern District 27 of California on September 15, 2025. (See Doc. 3.) The case was transferred to this Court 28 on September 19, 2025. (Doc. 4.) On September 24, 2025, the Court set a briefing 1 schedule on the Petition and denied without prejudice Petitioner’s Motion to Appoint 2 Counsel. (Doc. 6.) Two days later, Petitioner filed a renewed Motion for Appointment of 3 Counsel (Doc. 8), which the Court granted. (Doc. 10.) On October 1, 2025, Petitioner, 4 now represented by Federal Defenders of San Diego, Inc., filed the TRO Motion. 5 (Doc. 12.) 6 Respondents filed their Response on September 30, 2025 (Doc. 9) and their TRO 7 Opposition on October 3, 2025. (Doc. 15.) The Court held a hearing on the TRO motion 8 on October 3, 2025. (Doc. 16.) At the hearing, “the Court observed that counsel for both 9 Parties appeared to speculate as to the contents of underlying documents that they have not 10 submitted, and were unable to answer several of the questions posed.” (Doc. 17 at 1.) 11 Accordingly, the Court ordered the Parties to submit supplemental briefs. (Id. at 1–2.) 12 Petitioner filed his Supplemental Brief (Doc. 18) and Amended Petition (Doc. 19) on

13 October 10, 2025. The Amended Petition was filed against Respondents Kristi Noem, 14 Pamela Bondi, Todd Lyons, Jesus Rocha, and Christopher LaRose (collectively, 15 “Respondents”). Respondents filed their Supplemental Response on October 15, 2025. 16 (Doc. 21.)

17 II. LEGAL STANDARD

18 A writ of habeas corpus is “available to every individual detained within the United 19 States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, § 9, cl. 2). 20 “The essence of habeas corpus is an attack by a person in custody upon the legality of that 21 custody, and . . . the traditional function of the writ is to secure release from illegal 22 custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “Writs of habeas corpus may 23 be granted by the Supreme Court, any justice thereof, the district courts and any circuit 24 judge within their respective jurisdictions.” 28 U.S.C. § 2241(a). The petitioner bears the 25 burden of demonstrating that “[h]e is in custody in violation of the Constitution or laws or 26 treaties of the United States.” *Id.* § 2241(c)(3).

27 III. DISCUSSION

28 Petitioner argues that the Petition should be granted because: (1) “procedural due 1 process prevents his removal during the adjudication of his motion to reconsider and 2 reopen” his immigration court case; (2) ICE must first seek removal of Petitioner to The 3 Bahamas under 8 U.S.C. § 1231(b)(2) and *Jama v. Immigr. & Customs Enforcement*, 4 543 U.S. 335 (2005); and (3) ICE violated the regulations set forth in 8 C.F.R. § 241.4(l) 5 and § 241.13(i). (Doc. 12 at 8–15; Doc. 19 at 3–9.) Petitioner also argues that ICE may 6 not remove him to a third country without providing him with adequate notice and an 7 opportunity to be heard. (Doc. 19 at 9–10.) 8

Respondents argue that: (1) Petitioner is jurisdictionally barred from bringing his 9 claims under 8 U.S.C. § 1252(g) and *Rauda v. Jennings*, 55 F. 4th 772 (9th. Cir. 2022); 10 (2) The Bahamas refused to accept Petitioner for repatriation; and (3) ICE complied with 11 its regulations or, in the alternative, its failure to comply did not substantially prejudice 12 Petitioner. (Doc. 9 at 4–5; Doc. 21 at 2–9.) 13 The Court finds that it has jurisdiction over all but one of Petitioner’s claims because 14 the Petition challenges the manner in which ICE executed the removal order rather than 15 the removal order itself. The Court also finds that the Petition should be granted because 16 ICE violated Petitioner’s due process rights by failing to comply with 8 C.F.R. § 241.4(l) 17 and § 241.13(i). 18 A. Jurisdiction 19 As the Court has an obligation “to determine that [it has] jurisdiction before 20 proceeding to the merits” of any case, it will first address Respondents’ jurisdictional 21 arguments. *Lance v. Coffman*, 549 U.S. 437, 439 (2007); see *Steel Co. v. Citizens for a 22 Better Env’t*, 523 U.S. 83, 94–95 (1998). For the reasons set forth below, the Court finds 23 that it has jurisdiction over each of Petitioner’s claims except his claim that “procedural 24 due process prevents his removal during the adjudication of his motion to reconsider and 25 reopen” his immigration court case. (Doc. 12 at 8.) 26 Respondents argue first that district courts do not have jurisdiction “to stay removal 27 for the adjudication of pending motions to reopen removal proceedings.” (Doc. 21 at 2–4 28 (citing *Rauda*, 55 F. 4th at 777)).) Petitioner argues that he “not only seeks a stay of 1 removal—he seeks ‘a remedy for unlawful executive detention.’” (Doc. 18 at 9) (quoting 2 *Rauda*, 55 F. 4th at 779). Respondents argue second that the Court lacks jurisdiction to 3 hear the Petition under 8 U.S.C. § 1252(g). (Doc. 9 at 4–5.) This statutory bar against 4 judicial review precludes the Court from exercising jurisdiction over the Attorney 5 General’s decision to “commence proceedings, adjudicate cases, or execute removal orders 6 against any [noncitizen].” 8 U.S.C. § 1252(g). The Supreme Court has narrowly 7 interpreted § 1252(g) as applying “only to [those] three discrete actions that the Attorney 8 General may take.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 9 (1999) (emphasis omitted) (quoting 8 U.S.C. § 1252(g)). 10 In *Rauda*, the petitioner was denied relief under the Convention Against Torture 11 (“CAT”) and ordered removed. *Rauda*, 55 F.4th at 776. The petitioner unsuccessfully 12 appealed to the BIA and the Ninth Circuit. *Id.* Several months later, the petitioner moved 13 the BIA to reopen his case so that it could consider new developments relevant to his 14 request for CAT relief. *Id.* After the Ninth Circuit’s stay of removal terminated, the 15 petitioner filed a habeas petition with the district court, “asking the court to enjoin the 16 government from removing him until the BIA ruled on his motion to reopen and the court 17 ruled on his habeas petition.” *Id.* The district court denied his motion, holding that the 18 petitioner was challenging the execution of his removal order, which falls within 19 § 1252(g)’s limitation of jurisdiction upon federal courts. *Id.* In affirming the district 20 court’s decision, the Ninth Circuit found that what the petitioner “fundamentally [sought 21 was] a stay of removal pending the BIA’s resolution of his motion to reopen. Because [the 22 petitioner] asks [the Ninth Circuit] to review an interim order and not a final order of 23 removal that may give rise to a petition for

review, [the Ninth Circuit] lack[s] jurisdiction 24 to consider his claim.” Id. (cleaned up). 25 The Court similarly finds that § 1252(g) and Rauda preclude jurisdiction only as to 26 Petitioner’s claim seeking a stay of removal so that his motion to reconsider and reopen his 27 immigration court case may be adjudicated. Accord *Louangmilith v. Noem*, Case No.: 25- 28 cv-2502-JES-MSB, 2025 WL 288178, at *3 (S.D. Cal. Oct. 9, 2025) (“Rauda seems to 1 stand for the proposition that a due process violation cannot solely rest on the argument 2 that removal must be prevented so that a motion to reopen can play out in immigration 3 court.”). 4 Petitioner’s other claims, though, are not barred. Petitioner does not challenge the 5 legitimacy of his May 2020 order of removal. Rather, he challenges the legality of his 6 detention, which does not require judicial review of the Attorney General’s decisions to 7 commence proceedings, adjudicate cases, or execute removal orders. See *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. 2025) (noting courts have “distinguished 9 between challenges to ICE’s discretion to execute a removal order, which are barred, and 10 challenges to the manner in which ICE executes the removal order, which are not.”). 11 Respondents argue that Petitioner’s claims “necessarily arise” from the Attorney 12 General’s decision to commence removal proceedings against him. (Doc. 9 at 5.) This 13 interpretation of 8 U.S.C. § 1252(g) would “eliminate judicial review of immigration 14 [detainees’] claims of unlawful detention . . . inconsistent with *Jennings v. Rodriguez* and 15 the history of judicial review of the detention of noncitizens under 28 U.S.C. § 2241.” 16 *Sanchez v. LaRose*, Case No.: 25-cv-2396-JES-MMP, 2025 WL 2770629, at *2 (S.D. Cal. 17 Sept. 26, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018)); *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 19 2022)). Accordingly, as other courts in this District have found in similar cases, the Court 20 has jurisdiction to hear Petitioner’s claims that his detention is unlawful under 28 U.S.C. 21 § 2241. See *Sanchez*, 2025 WL 2770629, at *2; *Palma v. LaRose*, Case No. 3:25-cv-1942- 22 BJC-MMP (S.D. Cal. Aug. 11, 2025), ECF No. 14; *Rokhfirooz v. LaRose*, Case No.: 25- 23 cv-2053-RSH-VET, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025). 24 B. Removal to The Bahamas 25 On May 21, 2020, Petitioner was “ordered removed from the United States to 26 Bahamas or in the alternative to Haiti.” (Doc. 9 at 3 (citing Doc. 9-2 at 8).) Petitioner 27 argues that ICE may not remove Petitioner to the alternatively designated country of Haiti 28 without first attempting to remove him to the primary designated country of The Bahamas. 1 (Doc. 19 at 6.) Petitioner claims that ICE’s decision to seek travel documents from Haiti 2 before first seeking them from The Bahamas violates the “consecutive removal commands” 3 within 8 U.S.C. § 1231(b). (Id. (citing *Jama*, 543 U.S. at 341).)

4 Under 8 U.S.C. § 1231(b)(2)(C)(iii), the Attorney General “may disregard a 5 designation under subparagraph (A)(i) if . . . the government of the country is not willing 6 to accept the alien into the country.” Respondents include in their Supplemental Response 7 an email exchange between Deportation Officer Cole and the Bahamian Consulate. 8 (Doc. 21-1.) According to the exchange, Officer Cole emailed the Bahamian Consulate on

9 August 28, 2025, asking if “it is possible for the Bahamian consulate to provide an official
10 letter indicating that [Petitioner] does not derive Bahamian citizenship.” (Id. at 6.) On
11 September 23, 2025, the Bahamian Consulate responded that “it has been determined that
12 [Petitioner] is not a citizen of the Commonwealth of The Bahamas. Therefore, he should 13 not
be repatriated to The Bahamas.” (Id. at 3.) Because ICE did seek to remove Petitioner 14 to The
Bahamas, and the Bahamian government is not willing to accept Petitioner, the 15 Court finds that
ICE did not violate § 1231(b). 16 C. Due Process 17 Petitioner challenges his detention as
unlawful based on ICE’s decision to revoke 18 his release without providing the required notice or
opportunity to be heard. (Doc. 18 at 19 5–7; Doc. 19 at 3–6.) Petitioner’s claims therefore
implicate the Due Process Clause. The 20 Due Process Clause prohibits deprivations of life,
liberty, and property without due process 21 of law. U.S. Const. amend. V. Due process rights
extend to noncitizens present in the 22 United States, including those subject to final removal
orders. *Zadvydas*, 533 U.S. at 693– 23 94. The fundamental requirements of due process are that a
person be afforded notice and 24 opportunity to be heard “at a meaningful time and in a
meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). 26 The detention and
release of noncitizens who are subject to a final order of removal 27 are governed by 8 U.S.C. §
1231. Under that statute, “when [a noncitizen] is ordered 28 removed, the Attorney General shall
remove the [noncitizen] from the United States within 1 a period of 90 days,” also known as the
“removal period.” 8 U.S.C § 1231(a)(1)(A). “If 2 the [noncitizen] does not leave or is not removed
within the removal period, the 3 [noncitizen], pending removal, shall be subject to supervision
under regulations prescribed 4 by the Attorney General.” § 1231(a)(3). Those regulations, which
govern release and 5 revocation of release of noncitizens subject to a final order of removal, are 8
C.F.R. § 241.4 6 and § 241.13. The Parties discuss both regulations in their filings, and even after
7 supplemental briefing, it is unclear which regulation controls. Under either regulation, 8
however, ICE failed to comply with the required procedures, thereby violating Petitioner’s 9 due
process rights. 10 1. Agency Regulations 11 In relevant part, release may be revoked under 8
C.F.R. § 241.4 when the Executive 12 Associate Commissioner or a district director believes
revocation “is appropriate to enforce 13 a removal order or to commence removal proceedings
against [a noncitizen].” 8 C.F.R. 14 § 241.4(l)(2)(iii). Section 241.13 provides “special review
procedures” that apply where a 15 noncitizen “has provided good reason to believe there is no
significant likelihood of 16 removal to the country to which he or she was ordered removed . . . in
the reasonably 17 foreseeable future.” § 241.13(a). Release may be revoked under this section if,
“on 18 account of changed circumstances, the Service determines that there is a significant 19
likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.” 20 §
241.13(i)(2). Under both regulations, “[u]pon revocation,” the noncitizen “will be 21 notified of
the reasons for revocation of his or her release or parole” and will be given “an 22 initial informal
interview promptly after his or her return to Service custody” to “respond 23 to the reasons for
revocation stated in the notification.” § 241.4(l)(1); § 241.13(i)(3). 24 Petitioner argues his

detention is procedurally deficient because he was not provided 25 a sufficient notice of the reasons for revocation of his release nor a prompt interview to 26 respond to those reasons. (Doc. 18 at 6; Doc. 19 at 4–5.) Specifically, the “only record 27 provided by ICE . . . informed [Petitioner] that the reason for his detention was that Cuba 28 had already issued travel documents for his removal,” and “[n]o one from ICE has ever 1 invited [Petitioner] to contest his detention.” (Doc. 19 at 4–5.) 2 Respondents argue that ICE complied with its regulations when it detained 3 Petitioner. ICE provided a written notice to Petitioner on March 18, 2025 “set[ting] forth 4 the reasons for Petitioner’s re-detention as follows: 5 ICE has determined that you can be expeditiously removed from the United States pursuant to an outstanding order of removal against you. On April 20, 6 2021, the Board of Immigration Appeals dismissed your case appeal, and you 7 are subject to an administrative final order of removal. 8 (Doc. 21 at 7.) 9 Respondents concede that the written notice provided to Petitioner incorrectly stated 10 that the government of Cuba had issued travel documents for Petitioner, arguing instead 11 that Petitioner should have understood the document to contain a typo. (Doc. 21 at 8.) 12 Petitioner notes that the Form I-213 completed on March 18, 2025 indicates Petitioner 13 “stated that he is not afraid of persecution, torture, or physical harm if returned to his native 14 country of Venezuela.” (Doc. 12 at 2) (citing Doc. 9-2 at 19.) Petitioner also represents 15 that after being re-detained on March 18, 2025, he was “placed in a detention center in 16 Florida where he did not speak to an immigration officer and remained in the same clothes 17 he was arrested in for five days. Weeks later, he was placed on a plane and not told where 18 he was going,” before being “brought to the detention center in San Diego.” (Doc. 12 at 2.) 19 Under the circumstances, the Court concludes Petitioner was not provided adequate 20 notice of the reasons for revocation of his release. Between the order of removal, the notice 21 of revocation of release, and the conversation reflected on the Form I-213, Petitioner was 22 told that he may be removed to at least three different countries. ICE’s conclusory and 23 unclear explanation for revoking Petitioner’s release “did not offer him adequate notice of 24 the basis for the revocation decision such that he could meaningfully respond at the post- 25 detention informal interview.” *Diaz v. Wofford*, Case No. 1:25-CV-01079 JLT EPG, 2025 26 WL 2581575, at *8 (E.D. Cal. Sept. 5, 2025) (citing *Memphis Light, Gas & Water Div. v. 27 Craft*, 436 U.S. 1, 14 (1978) (“The purpose of notice under the Due Process Clause is to 28 apprise the affected individual of, and permit adequate preparation for, an impending 1 hearing.”) (citation omitted)). 2 Nor was Petitioner given the opportunity to respond “at a meaningful time.” 3 *Mathews*, 424 U.S. at 333. Petitioner was taken into ICE custody on March 18, 2025. 4 (Doc. 12 at 2.) Despite the requirement in both 8 C.F.R. § 241.4(l) and § 241.13(i) that 5 Petitioner be afforded “an initial informal interview promptly after his or her return to 6 Service custody,” he was not interviewed until September 19, 2025. (Doc. 9 at 4 (citing 7 Doc. 9-2 at 31–33; Cole Decl. ¶ 10).) That six-month delay violated § 241.4(l) and 8 § 241.13(i)’s requirement that the interview occur “promptly” after Petitioner’s re- 9 detention. See *M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 10 (D. Or. Aug.

21, 2025) (finding an informal interview given 27 days after petitioner was 11 taken into ICE custody “cannot reasonably be construed as . . . prompt” and granting habeas 12 petition); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 13 (E.D. Cal. Aug. 20, 2025) (finding “the failure to provide an informal interview during that 14 lengthy [two-month] period of time renders petitioner’s re-detention unlawful”). 15 Respondents argue that ICE provided Petitioner a prompt opportunity to respond in 16 that the notice of revocation of release advised Petitioner: “[y]ou may submit any evidence 17 or information you wish to be reviewed in support of your release.” (Doc. 18-1 at 2.) And 18 Petitioner did provide ICE “with information related to ICE’s detention decision” on

19 February 25, 2025.² (Doc. 21 at 9.) But the purpose of the informal interview is to give a 20 noncitizen “an opportunity to respond to the reasons for revocation stated in the 21 notification.” § 241.4(l)(1); § 241.13(i)(3). The information Petitioner provided on

22 February 25, 2025 necessarily came before he was provided with notice of the reasons for 23 revocation of his release on March 18, 2025. Petitioner could not have meaningfully 24 25 26 2 It is unclear what information Petitioner provided. As Respondents note, “[t]he Court 27 has ordered Respondents to provide any additional documentation confirming that the information was provided on that date. Respondents have been unable to locate any.” 28 1 responded to the proffered reasons for revocation when he had not yet even been informed 2 of those reasons. 3 2. Prejudice 4 Respondents next argue that “[e]ven assuming the agency’s compliance with the 5 regulations fell short, Petitioner has not established substantial prejudice.” (Doc. 21 at 8 6 (citing *Carnation Co. v. Sec’y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“Although 7 there is little discussion of when the Accardi supervisory powers should be invoked, courts 8 have indicated that the standard is whether violation of the regulation prejudiced the party 9 involved.”).) 10 Where there is a regulatory violation, the Court should assess “whether violation of 11 the regulation prejudiced the party involved.” *Carnation Co.*, 641 F.2d at 804 n.4. In the 12 immigration context, “violation of a regulation does not invalidate a deportation 13 proceeding unless the regulation serves a purpose of benefit to the [noncitizen].” *United 14 States v. Calderon-Medina*, 591 F.2d 529, 531 (9th Cir. 1979). 15 The Court finds that ICE failed to comply with the requirements of § 241.4 and 16 § 241.13, and that those failures “prejudiced interests of [Petitioner] which were protected 17 by the regulation[s].” *Id.* Both § 241.4 and § 241.13 were intended “to provide due process 18 protections to [noncitizens] following the removal period as they are considered for 19 continued detention, release, and then possible revocation of release.” *Orellana v. Baker*, 20 Civil Action No. 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025). ICE 21 deprived Petitioner of these due process protections when it failed to provide him with 22 sufficient notice or a prompt interview to respond to the reasons for revocation of his 23 release. “It is well established that the deprivation of constitutional rights unquestionably 24 constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) 25 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976); see also *Hernandez v. Sessions*, 872 26 F.3d

976, 995, 1000 (9th Cir. 2017) (holding that “[u]nlawful detention” by immigration 27 officials constituted “irreparable harm”). Therefore, Petitioner was prejudiced by ICE’s 28 failure to comply with its own regulations. 1 Government agencies are required to follow their own regulations. *United States ex 2 rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Ramos*, 623 F.3d 3 672, 683 (9th Cir. 2010) (“It is a well-known maxim that agencies must comply with their 4 own regulations.”) (cleaned up). The Court’s research indicates that every district court, 5 except two³, to consider the issue has “determined that where ICE fails to follow its own 6 regulations in revoking release, the detention is unlawful and the petitioner’s release must 7 be ordered.” *Rokhfirooz*, 2025 WL 2646165, at *4; see, e.g., *Rombot v. Souza*, 296 F. Supp. 8 3d 383, 387–88 (D. Mass. 2017) (ordering the petitioner released where, “[b]ased on ICE’s 9 violations of its own regulations, the Court concludes [the petitioner’s] detention was 10 unlawful”); *K.E.O. v. Woosley*, Civil Action No. 4:25-cv-74-RGJ, 2025 WL 2553394, at 11 *7 (W.D. Ky. Sept. 4, 2025) (noting “courts across the country have ordered the release of 12 individuals” in ICE custody where ICE “violated their own regulations”); *Grigorian v. 13 Bondi*, CASE NO. 25-cv-22914-RAR, 2025 WL 2604573, at *10 (S.D. Fla. Sept. 9, 2025) 14 (“The failure to provide [the petitioner] with an informal interview promptly after his 15 detention or to otherwise provide a meaningful opportunity to contest the reasons for 16 revocation violates both ICE’s own regulations and the Fifth Amendment Due Process 17 Clause. This compels [the petitioner’s] release.”). 18 This Court reaches the same conclusion. ICE’s failure to comply with both 8 C.F.R. 19 § 241.4 and § 241.13 violated Petitioner’s due process rights. See *Diaz*, 2025 WL 2581575, 20 at *7 (“DHS’s failure to follow its own procedural regulations may constitute a due process 21 violation.”); *M.S.L.*, 2025 WL 2430267, at *11 (“ICE’s failure to provide Petitioner with a 22 timely Notice of Revocation or conduct an informal interview until nearly a month after 23 taking her into custody is a grave violation of Petitioner’s due process rights in that they 24 25 3 See *Louangmilith*, 2025 WL 2881578, at *3–4; *Medina v. Noem*, Case No. 25-cv-1768- 26 ABA, 2025 WL 2306274, at *12 (D. Md. Aug. 11, 2025) (denying habeas petition without 27 prejudice because the petitioner, unlike in this case, had “not pointed to authority showing that the remedy for a violation of [§ 241.4] (if such a violation has occurred) is release from 28 1 || deprived her both of meaningful notice and an opportunity to be heard.”). 2 Accordingly, the Petition is GRANTED. In light of the disposition herein, the Court 3 || declines to address the remaining grounds in the Petition for seeking release.

4 IV. CONCLUSION

5 For the foregoing reasons, the Petition is GRANTED. Accordingly: 6 1. Respondents are ORDERED to immediately release Petitioner from custody, 7 subject to his preexisting Order of Supervision. 8 2. Petitioner’s TRO Motion (Doc. 12) is DENIED AS MOOT. 9 IT IS SO ORDERED. 10 || DATE: October 24, 2025 Cet Barrie, Wittasyyes >

12 ON. RUTH BERMGDEZ! MONTENEGRO

UNITED STATES DISTRICT JUDGE

13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 14

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