

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Chong Pham,

Case No.: 25-CV-01157-SLP

Petitioner

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE TO
THE ORDER TO SHOW CAUSE**

v.

Pamela Bondi, Attorney General; et al.,

**EXPEDITED HANDLING
REQUESTED**

Respondents.

INTRODUCTION

Petitioner, Chong Pham, filed a petition for a writ of habeas corpus and concurrently filed a motion for a temporary restraining order ("TRO") and preliminary injunction ("PI") on October 6, 2025 alleging that he is being detained in violation of law. ECF Nos. 1, 4-6. On October 8, 2025, the Court issued an Order to Show Cause ordering Respondents to state the true cause of Petitioner's detention by October 15, 2025. ECF No. 14. Respondents filed their opposition response to the habeas petition on October 15, 2025, explaining why, in their view, Petitioner is lawfully detained. *See* ECF Nos. 16, 16-1, 16-2, 16-3. Notwithstanding Respondents' contentions, a preponderance of the evidence demonstrates that Petitioner is being held in violation of the laws or constitution of the United States. Consequently, the Court must order Petitioner's immediate release.

PROCEDURAL & FACTUAL HISTORY

Pham incorporates by reference the facts alleged in his verified habeas corpus petition and his memorandum in support of his emergency motions. *See* ECF No. 1; ECF

No. 6 at 5-6.

Respondents have provided a deportation officer declaration. ECF No. 16-3 (DO Alex Hudson). Hudson's declaration admits that Respondents have been unable to deport Petitioner to Vietnam since at least December 9, 2004. Hudson's declaration admits that Pham was redetained under 8 C.F.R. § 241.13(i). Hudson's declaration claims that Petitioner was "informed" that his release was revoked due to ICE's newfound belief "that he could be removed to Vietnam," but fails to state whether Pham was given written notice. *See* ECF No. 1, ¶ 49 ("Pham does not recall ever having been served with a Notice of Revocation of Release ('Notice') purporting to revoke his [Order of Supervision ('OOS')], nor does he recall having been given any sort of informal interview to challenge the Notice."). Hudson's declaration claims that an informal interview was provided, but provides no copies of any notes that were made, nor does Hudson address whether Petitioner was provided with an interpreter during the informal interview. *See id.*

The Hudson declaration does not identify *why* ICE believes that Pham can now be deported to Vietnam despite Pham lacking a birth certificate or any proof of Vietnamese citizenship. *Compare* ECF No. 16-3 *with* ECF No. 1, ¶ 12 ("Pham cannot be deported to his country of origin, Vietnam, because he does not have a valid travel document and Vietnam will not issue one to him. Vietnam has no record of Pham's alleged citizenship."). The Hudson declaration does not claim that Pham or the government is in possession of any proof of Pham's Vietnamese citizenship, nor does Hudson's declaration claim that Vietnam issues travel documents to individuals in the absence of proof of Vietnamese citizenship.

The Hudson declaration does not claim that third-country deportation is being attempted. The Hudson declaration does not claim that travel documents have been requested from Vietnam in the 57 days since Pham's arrest on August 19, 2025. Instead, the declaration states that Pham was provided with documents for completion of a Vietnam travel document on September 14, 2025, indicating it took the government 26 days to give Pham the ability to request a travel document. The Hudson declaration does not state whether these documents have been completed by Pham, collected by the government, sent to ERO Headquarters, or sent to Vietnam. The Hudson declaration does not state when, if ever, the government plans to actually request a travel document from Vietnam. The Hudson declaration does not state the likelihood of Vietnam issuing a travel document, nor when such a travel document is expected if one is issued. The Hudson declaration does not state any facts that support the government's conclusion that changed circumstances make deportation more likely to occur now than has been true for the last 21 years.

In short, the Hudson declaration is incapable of supporting the conclusion that there is currently a significant likelihood of Pham being removed to Vietnam in the reasonably foreseeable future. The Hudson declaration is likewise incapable of supporting the conclusion that changed circumstances exist which justified revoking Pham's OOS. If anything, Hudson's declaration confirms that there is no significant likelihood of Pham's removal in the reasonably foreseeable future.

ARGUMENT

Respondents argue Pham's petition should be dismissed because: (1) Pham has failed to meet his burden of demonstrating no significant likelihood of removal in the

reasonably foreseeable future (“NSLRRFF”); and (2) the 6-month period for *Zadvydas* automatically resets every single time someone is redetained after being released on an Order of Supervision (“OOS”).

Respondents’ primary error lies in failing to recognize that because Pham has already been released on an Order of Supervision pursuant to 8 C.F.R. § 241.4(e)(1)-(6) and 8 C.F.R. § 241.13, *after having previously established NSLRRFF*, it is Respondents who bear the initial burden of establishing “changed circumstances” to redetain under both federal regulation and *Zadvydas*. *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001) (“once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, **the Government must respond with evidence sufficient to rebut that showing**”) (emphasis added); 8 C.F.R. § 241.13(i)(2) (“The Service may revoke an alien's release under this section and return the alien to custody **if, on account of changed circumstances**, the Service determines that **there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.**”) (emphasis added); *see also Roble v. Bondi*, No. 25-cv-3196, 2025 WL 2443453 (D. Minn. Aug. 25, 2025) (granting habeas and ordering release based on less egregious regulatory violations); *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673 (D. Minn. Sept. 3, 2025) (same); *Yee S. v. Bondi*, No. 25-CV-02782-JMB-DLM, ECF No. 13 (D. Minn. Oct. 9, 2025) (same); *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG, ECF No. 15 (S.D. Cal. Oct. 10, 2025) (same); *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) (granting habeas and ordering release); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July

16, 2025) (finding petitioner was likely to succeed on unlawful redetention claim because “there is no indication that an informal interview was provided”); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (holding that ICE’s failures to follow regulatory revocation procedures rendered detention unlawful); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025) (“because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release”).

Nothing in Respondents’ responses or supporting declarations rebuts the prior finding of NSLRRFF or otherwise demonstrates changed circumstances regarding NSLRRFF. Therefore, Petitioner’s detention is unlawful, in excess of statutory and regulatory authority, and is unconstitutional.

None of the government’s citations change this analysis. Each case the government relies upon regarding a failure to establish NSLRRFF is a failure to establish NSLRRFF in the first instance prior to release on an OOS. Some of those cases also deal with an entirely different detention authority, referencing 8 U.S.C. § 1226 rather than 8 U.S.C. § 1231, which is the statute governing Petitioner’s detention and redetention. The cases that are much more on point are those that have recently granted habeas petitions to persons that are identically (or less favorably) situated to Petitioner. *Roble*, 2025 WL 2443453 (D. Minn. Aug. 25, 2025) (ordering release based on violation of 8 C.F.R. § 241.13(i)); *Sarail A.*, 2025 WL 2533673 (D. Minn. Sept. 3, 2025) (ordering release based on violation of 8 C.F.R. § 241.13(i)); *Sonam T.*, No. 25-CV-2834, *slip op.*, ECF No. 19 (D. Minn. Sept. 16, 2025) (R&R recommending order of release based on violation of 8 C.F.R. § 241.13(i));

Kong v. United States, 62 F.4th 608, 619-20 (1st Cir. 2023) (“ICE’s decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE’s own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.”); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (“The[] regulations clearly indicate, upon revocation of supervised release, it is [ICE’s] burden to show a significant likelihood that the [noncitizen] may be removed.”); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 n.2 (D. Mass. June 20, 2025); *Va V. v. Bondi*, No. 25-CV-2836 (LMP/JFD), *slip op.* at *6-12 (D. Minn. Aug. 11, 2025) (holding that until ICE proved it had a travel document allowing for immediate deportation, it failed to demonstrate changed circumstances justifying redetention of an individual under 8 C.F.R. § 241.13(i)).

On October 15, 2025, Magistrate Maxfield issued a Report and Recommendation (“R&R”) in *Momennia v. Bondi*, No. 25-CV-01067-J, ECF No. 18 (W.D. Okla. Oct. 15, 2025) recommending the release of a similarly situated noncitizen. Magistrate Maxfield noted that 8 C.F.R. § 241.4 “specifically requires ICE to cross-reference § 241.13, the regulation codifying *Zadvydas*, in certain cases.” *Momennia*, ECF No. 18 at 11. The regulation Magistrate Maxfield relies upon states:

No significant likelihood of removal. **During the custody review process as provided in this paragraph (i), or at the conclusion of that review, if the alien submits, or the record contains, information providing a substantial reason to believe that the removal of a detained alien is not significantly likely in the reasonably foreseeable future, the [Headquarters Post-Order Detention Unit] shall treat that as a request for review and initiate the review procedures under § 241.13. To the**

extent relevant, the HQPDU may consider any information developed during the custody review process under this section in connection with the determinations to be made by the Service under § 241.13. The Service shall complete the custody review under this section unless the HQPDU is able to make a prompt determination to release the alien under an order of supervision under § 241.13 because there is no significant likelihood that the alien will be removed in the reasonably foreseeable future.

Id. at 11 (quoting 8 C.F.R. § 241.4(i)(7) (emphasis added by Magistrate Maxfield)). As was true in *Momennia*, here, “it is clear that [Petitioner’s] ‘record contain[ed] information providing a substantial reason to believe that the removal of a detained alien is not significantly likely in the reasonably foreseeable future.’” *Id.* at 11.

Magistrate Maxfield thoroughly analyzed 8 C.F.R. § 241.13(e)-(g) and noted, *inter alia*, that “the prospects for the timeliness of removal must be reasonable under the circumstances,” and that “ICE is required to issue a written decision.” *See id.* at 13 (quoting 8 C.F.R. § 241.13(f) and citing 8 C.F.R. § 241.13(g)). As was true in *Momennia*:

Respondents, through their opposition to Mr. [Pham]’s habeas petition, have had the opportunity to apprise the Court as to all facts ICE has available for administratively evaluating his case. On this record, ICE cannot, under its own regulations, find that there is a significant likelihood that Mr. [Pham] will be removed in the reasonably foreseeable future. Indeed, all of the § 241.13(f) factors weigh in favor of Mr. [Pham]’s release, due to the facts that have been alleged and either corroborated or not controverted by the parties.

• *Momennia*, ECF No. 18 at 13-14. The most significant fact that the government has made no attempt to rebut regarding this issue is Petitioner’s allegation that he lacks any proof of Vietnamese citizenship. ECF No. 1, ¶ 12.

As was true in *Momennia*, as of October 15, “ICE’s sole justification for [Petitioner’s] continued detention appears to be that ‘we’re working on it’ while conceding

‘a lack of visible progress.’” *Momennia*, ECF No. 18 at 15. “That does not suffice under either the regulations or *Zadvydas*.” *Id.* (citing *Yee S. v. Bondi*, 2025 WL 2879479, at *5 (D. Minn. Oct. 9, 2025) (finding that “the record does not support a determination that Petitioner is significantly likely to be removed in the reasonably foreseeable future” when Petitioner’s home country of Burma was not an option for removal, ICE could “direct the Court to no facts in the record supporting a conclusion that any specific country where Petitioner is not a citizen would agree to accept him,” and “Respondents simply repeat the vague and conclusory assertions that ‘ICE is in the process of obtaining a travel document’”); *Sun v. Noem*, 2025 WL 2800037, at *2-3 (S.D. Cal. Sept. 30, 2025) (“Respondents say they are ‘putting together a travel document [TD] request to send to [the] Cambodian embassy,’ and that ‘[o]nce ICE receives the TD, it will begin efforts to secure a flight itinerary for Petitioner.’ The Court finds these kind of vague assertions—akin to promising the check is in the mail—insufficient to meet ICE’s own requirement to show ‘changed circumstances’ or ‘a significant likelihood that the alien may be removed in the reasonably foreseeable future.’”) (record citations omitted); *Hoac v. Becerra*, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (“The fact that Respondents intend to complete a travel document request for Petitioner does not make it significantly likely he will be removed in the foreseeable future.”); *Roble v. Bondi*, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (finding insufficient the government’s assertion that ICE “requested third country removal assistance from [Enforcement and Removal Operations] HQ”).

“ICE, like any agency, has the duty to follow its own federal regulations. As here, where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute . . . and

[ICE] fails to adhere to it, the challenged [action] is invalid.” *Nguyen v. Hyde*, 2025 WL 1725791, *5 (D. Mass. June 20, 2025) (quoting *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

Momennia, ECF No. 18 at 17.

Based on ICE’s violations of its own regulations, the Court must conclude that Petitioner’s detention is unlawful and that his release is appropriate under 28 U.S.C. § 2241(c)(3). *See Momennia*, ECF No. 18 at 17; *Yee S.*, 2025 WL 2879479, at *6 (ordering release because Petitioner has shown that ICE’s re-detention of him . . . violated the law because ICE did not comply with its own regulations under section 241.13(i)(2)"); *Roble v. Bondi*, 2025 WL 2443453, at *5 (D. Minn. Aug. 25, 2025) (holding that “[i]t goes without saying that ICE, like all government agencies, must follow its own regulations” and ordering release based on violation of 8 C.F.R. § 241.13(i)); *Sarail A. v. Bondi*, 2025 WL 2533673 (D. Minn. Sept. 3, 2025) (ordering release based on violation of 8 C.F.R. § 241.13(i)).

With respect to the *Zadvydas* question, it is worth noting that Magistrate Maxfield rejected Respondents’ proposed interpretation of *Zadvydas*, expressly holding that it applies to the circumstances of redetention. *See Momennia*, ECF No. 18 at 18 n.8 (“*Zadvydas* applies here, notwithstanding the somewhat different procedural posture between that case and the present one” and stating *Zadvydas* applies equally to re-detention cases); *Qui v. Carter*, 2025 WL 2770502, at *4 (D. Kan. Sept. 26, 2025) (explaining, in re-detention case, that “petitioner’s release is warranted under the Supreme Court’s *Zadvydas* framework.”). *But see Nguyen v. Hyde*, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (stating *Zadvydas* not applicable to re-detention cases).

Lastly, to the extent that Respondents submit the *Zadvydas* clock should automatically reset every time a noncitizen is released from custody on an Order of Supervision, Petitioner respectfully demurs. Numerous cases indicate otherwise,¹ as does common sense. If Respondents' interpretation wins out, Respondents should simply release noncitizens at 179 days of custody for a 24-hour period before redetaining the noncitizen. This sort of gamesmanship would be rewarded and prevent *Zadvydas* claims from ever arising. It is unlikely the Supreme Court intended such a result.

CONCLUSION

The Court must order Respondents to immediately release Petitioner.

DATED: October 16, 2025

Respectfully submitted,

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¹ See, e.g., *Zadyvdas*, 533 U.S. at 701; *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) ("ICE's decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("The[] regulations clearly indicate, upon revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed."); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 n.2 (D. Mass. June 20, 2025); *Va V. v. Bondi*, No. 25-CV-2836 (LMP/JFD), *slip op.* at *6-12 (D. Minn. Aug. 11, 2025) (holding that until ICE proved it had a travel document allowing for immediate deportation, it failed to demonstrate changed circumstances justifying redetention of an individual under 8 C.F.R. § 241.13(i)).