IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

CHONG PHAM,	)	
	)	
PETITIONER,	)	
	)	
v.	)	Case. No. CIV-25-1157-SLP
	)	
PAMELA BONDI, Attorney General, et al.	)	
	)	
RESPONDENTS.	)	

RESPONDENTS' OBJECTION TO THE REPORT AND RECOMMENDATION

In this immigration habeas case, Petitioner seeks immediate release from custody under the United States Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), which held that once removal is no longer reasonably foreseeable, continued detention is no longer authorized by law. *Zadvydas* at 699. On October 30, 2025, the Honorable United States Magistrate Judge Suzanne Mitchell issued a Report and Recommendation ("R&R") (Doc. 18) regarding Petitioner's Verified Petition for a Writ of Habeas Corpus. Judge Mitchell found that "Respondents have failed to demonstrate that ICE determined there was a significant likelihood of Petitioner's removal in the reasonably foreseeable future before revoking Petitioner's OOS and detaining him" and recommended the Court "grant Petitioner's request for habeas relief, and order his immediate release from custody subject to the terms of his unlawfully revoked OSS" or Order of Supervision. R&R at 12 & 16.

Respondents respectfully object to the R&R as specifically addressed below. Respondents further re-assert, adopt by reference, and do not waive the arguments

presented in the Response in Opposition to Petitioner's Verified Petition for Writ of Habeas Corpus for purposes of appellate review. *See* Resp. in Opp'n to Pet.r's Verified Pet. for Writ of Habeas Corpus ("Resp.") (Doc. 16).

Argument

I. The Federal Respondents substantially complied with 8 C.F.R. § 241.13(i)(2)-(3).

The R&R states that "the issue before the Court is whether Petitioner's OOS was properly revoked when he was retaken into ICE custody." R&R at 8. Yet, that is not the proper issue before this Court. The issue is whether Petitioner has established an entitlement to habeas relief – which he has not.

The regulations at issue provide that the Service (*i.e.*, ICE) may revoke an alien's release under an order of supervision "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." 8 C.F.R. § 241.13(i)(2). Upon such revocation, the alien will be notified of the reasons for revocation of his release. "The Service will conduct an initial informal interview promptly…to afford the alien an opportunity to respond to the reasons for revocation stated in the notification," and the alien will be afforded the opportunity to submit any evidence or information that he believes shows no significant likelihood of removal in the reasonably foreseeable future or that he has not violated the order of supervision. *Id.*, § 241.13(i)(3).

Petitioner alleges that on August 19, 2025, he was picked up and redetained by ICE. Petition (Doc. 1) at ¶ 47. "Pham does not recall ever having been served with a Notice of

Revocation of Release ('Notice') purporting to revoke his OOS, nor does he recall having been given any sort of informal interview to challenge the Notice." *Id.* at ¶ 49. The Federal Respondents are unable to verify that upon his redetention Mr. Pham received a formal Notice of Revocation of Release. However, as set forth in the Declaration of Alex Hudson (Doc. 16-3), Mr. Pham "was informed that the reason for his revocation was that ICE believed that he could be removed to Vietnam." *Id.* at ¶ 7. Further, Mr. Pham "was given the opportunity to respond during this informal interview." *Id.*

As Mr. Pham received notice of the reason for the revocation of his supervised release and return to custody and received an informal interview with an opportunity to respond, the Federal Respondents have substantially complied with the procedures set out in 8 C.F.R. § 241.13(i)(2)-(3). Thus, the conclusion that "ICE's failure to provide Petitioner with the required notice before his renewed detention" entitles Petitioner to immediate release is flawed. *See* R&R at 15.

II. Even if the Federal Respondents did not comply with the procedural requirements of 8 C.F.R. § 241.13(i)(2)-(3), the appropriate remedy would be an order directing them to comply, not an order releasing Petitioner from custody.

A petition for a writ of habeas corpus is available to challenge the fact or duration of confinement, not the conditions of confinement. "The writ, while essential to our political system, is a drastic remedy. Permitting conditions-of-confinement claims to be asserted in petitions for writs of habeas corpus would greatly enlarge the writ and fundamentally change its purpose." *Basri v. Barr*, 469 F. Supp. 3d 1063, 1066 (D. Colo.

2020).[1] The writ provides recourse against arbitrary arrest and detention by providing a detainee the right to immediate release from illegal custody. *Id.* The *sine qua non* of a habeas corpus case is an allegation that the petitioner cannot be legally confined under any circumstances. *Id.* at 1071. Assuming *arguendo* that the Federal Respondents have not satisfied all the procedural requirements of 8 C.F.R. § 241.13(i)(2)-(3), the drastic remedy of immediate habeas corpus release would be inappropriate and grossly disproportional to the alleged harm.

Petitioner's claim is in the nature of a condition-of-confinement claim: Mr. Pham effectively argues that, as a condition of his confinement, he should have received a Notice of Revocation of Release and a prompt interview. He "does not recall ever having been served with a Notice of Revocation of Release," nor does he recall having been given an interview to challenge such Notice. Petition at ¶ 49.

That alleged harm does not warrant immediate release. When Mr. Pham was re-detained, an ICE officer met with him, explained that his order of supervision was being revoked, and explained the reason for the revocation. Doc. 16-3 at ¶ 7. Although Mr. Pham disputes that his removal from the United States is reasonably foreseeable, he does not dispute that while in the United States he committed the crime of Endangering the Welfare

[1] *See also Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) ("The writ of habeas corpus is an extraordinary remedy that guards only against extreme malfunctions in the state criminal justice systems.") (internal quotation marks and citation omitted); *Gomez-Arias v. U.S. Immigr. & Customs Enf't*, No. 20-CV-00857-MV-KK, 2020 WL 6384209, at *2 (D.N.M. Oct. 30, 2020) ("As release from custody is an extreme remedy, Congress has circumscribed its use by the courts.").

of a Child – an aggravated felony conviction. *See* Doc. 16-1 & 16-2. Thus, he is a removable alien. *See* 8 U.S.C. § 1227(a)(2)(A)(iii) ("Any alien who is convicted of an aggravated felony at any time after admission is deportable."); *see also* 8 U.S.C. § 1101(a)(43)(A).

Even if there was a violation of 8 C.F.R. § 241.13(i)(2)-(3), that does not mean that Petitioner cannot be confined under any circumstances or that he should not be confined at all. The appropriate remedy for regulatory noncompliance would be to order the Federal Respondents to comply by issuing a Notice of Revocation of Release and conducting an interview.[2] Indeed, a failure to provide a written notice is harmless error. *See Bahadorani v. Bondi*, Case No. CIV-25-1091-PRW (W.D. Okla. Oct. 31, 2025), Order (Doc. 22) at 5. Moreover, this litigation "has effectively cured any administrative deficiencies stemming from the government's failure to comply with 8 C.F.R. § 241.13(i)(2)[.]" *Id.* at 5-6. Thus, any failure to comply with regulations has not prejudiced Petitioner. *See id.* at 7. Simply stated, the "mere failure to comply with such regulations does not support an automatic writ of habeas corpus. *Id.* at 8 (citing *Nguyen v. Noem*, Case No. 25-CV-057-H, 2025 WL 2737803, at *6 (N. D. Tex. Aug. 10, 2025)).

[2] At that interview, if so directed by the Court, Mr. Pham should be afforded an opportunity to respond to the reasons for revocation stated in the notice and an opportunity once again to submit any evidence or information that he believes shows there is no significant likelihood that he should be removed in the reasonably foreseeable future, or that he has not violated the order of supervision. The custody review should include an evaluation of any contested facts relevant to the revocation and a determination whether the facts warrant revocation and further denial of release. 8 C.F.R. § 241.13(i)(3).

As recently explained by the Honorable District Court Judge Wyrick, "[h]abeas relief is reserved for errors constitutional in scale. 'The Supreme Court [has] made clear that error regarding one's confinement does not mean that release is the appropriate remedy.' Petitioner has failed to show that the appropriate remedy for ICE's regulatory violations is a writ of habeas corpus." *Id.* at 8-9 (quoting *Nguyen*, 2025 WL 2737803, at *6) (discussing the holding in *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005), which held that a state's defective parole system does not require release, but rather renewed review for parole eligibility). The same is true in this case.

Thus, the Federal Respondents contend that an order granting immediate release based upon a violation of a regulation is not warranted.

II. The R&R incorrectly placed the burden of establishing the likelihood of removal in the reasonably foreseeable future on the Federal Respondents.

As the Supreme Court articulated in *Zadvydas*, "an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas* at 701. Critically, "the onus is on the alien to 'provide[] good reason to believe that there is no [such] likelihood' before 'the Government must respond with evidence sufficient to rebut that showing.'" *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (citing *Zadvydas*, 533 U.S. at 701); *Diop v. Gonzales*, 2007 WL 2080173, at *1 (W.D. Okla. July 18, 2007); *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001) ("*The burden is upon the alien to show that there is no reasonable likelihood of repatriation.*") (emphasis in original). Yet, in this case, the onus was placed on the Federal Respondents.

The Report and Recommendation stated that since Mr. Pham was issued an OOS in 2005, "it is reasonable to infer that ICE must have made a determination that 'there was no significant likelihood of removal in the reasonably foreseeable future[.]" R&R at 19 (citing 8 C.F.R. § 241.13(a), (b)(1). Assuming arguendo that ICE made that determination in 2005, it does not relieve Petitioner of his initial burden of establishing that there is no significant likelihood of removal in the reasonably foreseeable future in 2025. Nor does that determination, if made, somehow shift the burden to the Federal Respondents in this habeas proceeding.

The R&R was critical of the likelihood of Petitioner's removal to Vietnam in the reasonably foreseeable future. *See* R&R at 13-15. However, "[i]n Fiscal Year 2025, as of September 11, 2025, ERO has removed 569 Vietnam citizens to Vietnam. This has included removal of Vietnam citizens who entered the United States before 1995." Ex. 1, Dec. of McGettrick at ¶ 4. In contrast, for "Fiscal Year 2024, ERO removed only 58 Vietnam citizens to Vietnam." *Id.* In this case, "ERP is currently working on obtaining travel documents for Pham from the government of Vietnam." *Id.* "When ERO does not have identification documents, the government of Vietnam will conduct an interview of its citizen prior to issuing travel documents. ERO has had frequent charter flights to Vietnam." *Id.* Thus, while it remains Petitioner's burden to establish that there is no significant likelihood of removal in the reasonably foreseeable future, the Federal Respondents have shown that there is a significant likelihood of removal. *See* Doc. 16-3 at ¶ 7 & Ex. 1 at ¶ 5 ("Based on the Vietnam's willingness to accept its citizens, and the number of successful removals ERO has made to Vietnam this Fiscal Year, [Deportation Officer McGettrick]

believe[s] removal of Pham to Vietnam is significantly likely in the reasonably foreseeable future.").

Because Petitioner has failed to explain institutional or personal barriers to removal, or show an inference that travel documents are likely to never issue, the Petition for a Writ of Habeas Corpus should be denied.

Conclusion

The Court should decline to adopt the Report and Recommendation. Petitioner has failed to make a showing under *Zadvydas* that there is no significant likelihood of removal in the reasonably foreseeable future.

Dated: November 6, 2025

Respectfully Submitted,

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