

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

Chong Pham,

Case No.: 25-CV-1157-SLP

Petitioner

**PETITIONER'S RESPONSE TO
RESPONDENTS' OBJECTIONS TO
REPORT & RECOMMENDATION**

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 then filed their response in opposition to the habeas petition on October 15, 2025, explaining, in their view, why Petitioner is lawfully detained. *See* ECF Nos. 16, 16-1, 16-2, 16-3. Petitioner filed a reply on October 16, 2025. ECF No. 17. On October 30, 2025, Magistrate Mitchell issued a Report and Recommendation (“R&R”) recommending that Petitioner’s habeas petition be granted and Petitioner be immediately released. ECF No. 18. On November 6, 2025, Respondents filed an objection to the R&R. ECF No. 19. Respondents also submitted a new declaration from either Deportation Officer George McGettrick or someone named Jessie Gonzalez. *See* ECF No. 19-1.

Respondents first reassert the arguments from their opposition response. ECF No. 19 at 1-2. Respondents claim Petitioner substantially complied with 8 C.F.R. § 241.13(i)(2)-(3). *Id.* at 2-3. Respondents next argue that even if they failed to comply with 8 C.F.R. § 241.13(i)(2)-(3), the appropriate remedy is a mulligan. *See id.* at 3-6. Lastly, Respondents submit that the R&R incorrectly placed the burden of establishing the likelihood of removal in the reasonably foreseeable future on Respondents. *Id.* at 6-8.

For the reasons that follow, Respondents' objections should be disregarded, and the Court should affirm the R&R, ordering Petitioner's immediate release.

PROCEDURAL & FACTUAL HISTORY

Pham incorporates by reference the facts alleged in his verified habeas corpus petition, his memorandum in support of his emergency motions, and as found in the R&R. *See* ECF No. 1; ECF No. 6 at 5-6; ECF No. 18 at 2-4.

In objecting to the R&R, Respondents now allege new facts and submit new evidence. *See* ECF No. 19 at 7, ECF No. 19-1. More specifically, Respondents allege, for the first time, that "ERO is currently working on obtaining travel documents for Pham from the government of Vietnam" and further allege various other facts related to prior efforts to obtain Vietnamese travel documents for other individuals. *See* ECF No. 19-1. Respondents also now allege, for the first time, that Petitioner's "removal... to Vietnam is significantly likely within the reasonably foreseeable future." ECF No. 19-1, ¶ 5.

ARGUMENT

I. Petitioner reasserts the arguments from his principal and reply memorandums.

Petitioner incorporates by reference and reasserts his prior arguments in his principal and reply memorandums. *See* ECF Nos. 6, 17. Magistrate Mitchell properly determined that Petitioner has met his burden for habeas relief and immediate release.

II. Respondents' submission of a new declaration is improper.

As a different Assistant U.S. Attorney in this district recently acknowledged, “a party may not present an issue for the first time in its objection to a magistrate judge’s report.” *Momennia v. Bondi*, No. 5:25-CV-1067-J (W.D. Okla. Oct. 22, 2025), ECF No. 19 at 5 n.6; *see also Rocha v. Price*, 51 F.3d 286, 1995 WL 143116, at *2 (10th Cir. 1995) (unpublished); *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”); *Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985, 990-91 (1st Cir. 1988) (“[A]n unsuccessful party is not entitled as of right to de novo review by the judge of an argument never seasonably raised before the magistrate.”). Thus, Respondents have waived their new factual claims relating to ERO’s removal of 569 Vietnam citizens to Vietnam since September 11, 2025. *See* ECF No. 19 at 7. Moreover, considering Respondents never previously argued in their response that the substantial compliance or harmless error doctrines apply, such arguments must be deemed waived since they are raised for the first time on appeal and could have been raised previously in the initial response.

Even if the Court were to consider the new deportation officer affidavit, no reason exists to disturb the magistrate's R&R. As Magistrate Mitchell explained in the R&R, Respondents have failed to address the 2020 Memorandum of Understanding ("MOU") between Vietnam and the United States even after being put on notice by the magistrate of the importance of addressing the MOU. *Compare* R&R at 13-15 *with* ECF No. 19-1. Because Pham is subject to that MOU, and because the facts of his verified habeas petition demonstrate he is incapable of being repatriated to Vietnam under the terms of the MOU and the facts specific to his own case (most specifically, lacking proof of Vietnamese citizenship), the new declaration is irrelevant, especially considering nothing in the new declaration addresses whether any of the 569 repatriations to Vietnam in FY 2025 were for persons subject to the 2020 MOU.

Additionally, even if the new affidavit is considered, it does not claim that third-country deportation is being attempted, nor that travel documents have been requested from Vietnam in the 81 days since Chong's arrest on August 19, 2025. *See* ECF No. 19-1; ECF No. 1, ¶ 6. The new affidavit does not even state that Chong was provided with documents for completion of a Vietnam travel document, but instead states that the government "is currently working on obtaining travel documents for Pham from the government of Vietnam." ECF No. 19-1, ¶ 4.

Thus, even if the new affidavit is considered, which would be improper, it does not justify reversing the magistrate.

III. The substantial compliance doctrine is inapplicable in the present context. Even if the doctrine did apply, Respondents have not substantially complied with 8 C.F.R. § 241.13(i)(2)-(3).

Respondents admit that they “are unable to verify that upon [Pham’s] redetention [he] received a formal Notice of Revocation of Release.” ECF No. 19 at 3. This is as good as admitting that Pham did not receive the Notice. *Accord* Fed. R. Civ. P. 8(b)(6). Nonetheless, Respondents submit that Pham ““was informed that the reason for his revocation was that ICE believed that he could be removed to Vietnam”” and ““was given the opportunity to respond during this informal interview.”” ECF No. 19 at 3 (quoting ECF No. 16-3, ¶ 7).

Respondents use these allegations to submit that Respondents have substantially complied with regulation. In so arguing, Respondents fail to cite a single case indicating that the substantial compliance doctrine applies in the context of Petitioner’s habeas corpus proceedings. *See* ECF No. 19 at 2-3. Legal authorities indicate that the substantial compliance doctrine has no application here. *See, e.g., Baccei v. United States*, 632 F.3d 1140, 1145 (9th Cir. 2011) (“ **‘the doctrine of substantial compliance can have no application in the context of a clear statutory prerequisite that is known to the party seeking to apply the doctrine.’** ”) (emphasis added) (quoting *Sawyer v. Sonoma County*, 719 F.2d 1001, 1008 (9th Cir. 1983)); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (agencies are required to follow their own regulations); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required.”);

Constantinovici v. Bondi, --- F. Supp. 3d ---, 2025 WL 2898985, at *6 (S.D. Cal. Oct. 10, 2025) (“It is well-established that government agencies are required to follow their own regulations.”); *United States v. Ramos*, 623 F.3d 672, 683 (9th Cir. 2010) (“It is a well-known maxim that agencies must comply with their own regulations.”) (quoting *Ramon-Sepulveda v. INS*, 743 F.2d 1307, 1310 (9th Cir. 1984)); *Sanchez v. Barr*, 919 F.3d 1193, 1196 (9th Cir. 2019) (“A court’s duty to enforce an agency regulation is most evident when compliance with the regulation is mandated by the Constitution or federal law.”) (Paez, J., concurring) (quoting *United States v. Caceres*, 440 U.S. 741, 749 (1979)); *Rokhfirooz v. Larose*, Case No.: 25-cv-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) (“where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner’s release must be ordered”); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387–88 (D. Mass. Nov. 8, 2017) (holding that ICE’s failures to follow the revocation procedures in § 241.4 rendered the petitioner’s detention unlawful); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. May 2, 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”); *Momennia v. Bondi*, No. 25-CV-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025) (recommending habeas relief based on a variety of regulatory violations similar to those presented by Petitioner), *report and recommendation adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025).

As the cases string-cited above demonstrate, substantial compliance is insufficient when fundamental liberty interests are at stake. The regulations explicitly require a formal Notice of Revocation of Release and a prompt informal interview, creating mandatory

procedural safeguards. Pham denies receiving either proper notice or an adequate interview. The declaration from Alex Hudson merely claims Pham “was informed” of the reason and “given the opportunity to respond” but provides no specifics about the timing, content, or format of this alleged interview, making it impossible to determine if it satisfied regulatory requirements. Moreover, as was recently noted by a judge in the District of Minnesota:

Here, the notice to Roble provided that “ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in [his] case” and that “[s]ince being released, removal from the U.S. is now significantly likely in the reasonably foreseeable future. Based on changed circumstances in [his] case [he] will be brought back into ICE custody.” ECF No. 8-10 at 1.

Besides merely parroting the regulatory text governing re-detention, ICE’s notice to Roble provides zero reasons as to *what* changed circumstances exist such that Roble’s removal is now significantly likely in the reasonably foreseeable future. See 8 C.F.R. § 241.13(i)(2). The notice does not state, for example, that ICE had received or was seeking a travel document for Roble. See *Chavez Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at *6 (S.D. Fla. Aug. 8, 2025); *Tran v. Baker*, No. 1:25-cv-01598-JRR, 2025 WL 2085020, at *4–5 (D. Md. July 24, 2025). Nor does the notice state—as the Government now asserts a month after Roble was detained—that ICE was attempting to find a third country to accept Roble. ECF No. 8 ¶ 25. Rather, the notice summarily asserts that changed circumstances render Roble’s removal from the U.S. significantly likely in the reasonably foreseeable future. ECF No. 8-10 at 1. That language is not individualized to Roble; in fact, it applies to *any* noncitizen detained under 8 C.F.R. § 241.13(i)(2), since the notice simply mirrors the legal standard applicable to detaining a noncitizen released on an Order of Supervision. Providing a notice that simply recites the language of the regulation does not satisfy the Government’s obligation to provide the “reasons” why Roble’s Order of Supervision was revoked. 8 C.F.R. § 241.13(i)(3); see *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), ECF No. 9 at 5 (D. Minn. June 17, 2025) (recommending habeas relief when ICE similarly provided a notice that only parroted the regulatory text).

That conclusion makes good sense here. The essence of due process is notice and an opportunity to respond. See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); *Baldwin v. Hale*, 68 U.S. 223, 233, 1 Wall. 223, 17 L.Ed. 531 (1863) (“Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence.”). Indeed, DHS’s own regulations contemplate that a noncitizen will have an opportunity to “respond to the reasons for revocation stated in the notification” during the initial informal interview after re-detention. 8 C.F.R. § 241.13(i)(3). But Roble cannot be expected to “respond to the reasons for revocation stated in the notification” if the notification does not actually *state* any reasons for revocation. Not only does this scenario border on the Kafkaesque; it is also contrary to law. Because ICE violated its own regulations when it detained Roble without notifying him of the reasons why he was being detained, Roble is entitled to habeas relief.

Roble v. Bondi, --- F. Supp. 3d ---, 2025 WL 2443453, at *3 (D. Minn. Aug. 25, 2025) (bold emphasis added; italics as original).

The situation presented in Pham’s case is even more Kafkaesque than that presented in *Roble* because Roble at least received a *written* decision. Regardless, Roble’s and Pham’s notifications as to the reasons for their redetention are both deficient for the same reason. That is, both simply parrot the regulatory text while failing to give the noncitizen enough information to meaningfully respond to the reasons for redetention during an informal interview.

As the record demonstrates, Respondents have failed utterly to comply with 8 C.F.R. § 241.13. Characterizing Respondents’ actions as “substantially compliant” requires redefining both “substantially” and “compliant.”

IV. A mulligan is an improper remedy.

Respondents submit that even if they failed to comply with binding regulations

governing their detention authority and basic constitutional due process requirements, the appropriate remedy is to collectively stick our hands in our pockets and look the other way. *See* ECF No. 19 at 4-6. By suggesting an order to comply with regulation instead of release, Respondents propose a mulligan as a constitutional remedy. In support of this concerning proposition, Respondents cite only one case. *See* ECF No. 19 at 5 (citing *Bahadorani v. Bondi*, No. 25-CV-1091-PRW (W.D. Okla. Oct. 31, 2025), Order (ECF No. 22) at 5).¹ To the undersigned’s knowledge, *Bahadorani* is the only case that has ever held in the manner it did; it is contrary to the overwhelming weight of other authorities to have considered the issues. *Supra* at 4-7. Moreover, to the extent that *Bahadorani* claims that “[h]abeas relief is reserved for errors constitutional in scale,” it ignores plain statutory language that demonstrates habeas relief is available when one is “in custody in violation of the... laws... of the United States.” 28 U.S.C. § 2241(c)(3) (emphasis added).

Using *Bahadorani* as their guide, Respondents throw a Hail Mary and attempt to wrest jurisdiction from the Court by recharacterizing Petitioner’s claim as an impermissible “condition-of-confinement” claim. *See* ECF No. 19 at 4-6. This is an artful way to interpret Petitioner’s habeas corpus petition, but there is no support for such a claim

¹ The undersigned is the petitioner’s counsel in *Bahadorani* and has already filed an appeal to the Tenth Circuit, in a pro bono capacity, along with a docketing statement explaining the issues on appeal and a motion to expedite the appeal. *See Bahadorani v. Bondi*, No. 25-6177 (10th Cir., appeal filed Nov. 5, 2025), ECF Nos. 1-1 (Notice of Appeal), 3 (Docketing Statement with issues on appeal), 9 (Emergency Motion to Expedite Appeal). The undersigned expects to prevail on the appeal for the reasons highlighted in the docketing statement filed on November 5, 2025 and noted herein.

on the face of the petition.² Where detention authority turns on compliance with mandatory predicates, habeas release is the proportionate remedy because the detention itself—and not merely a condition of confinement—is unlawful. *Supra*.

Rather than follow *Bahadorani*'s tortured reasoning, which is presently on appeal and likely to be overturned in the near future, the Court should follow the logic of Judge Bernard Jones and Magistrate Maxfield in *Momennia* (which the government has not appealed), and of Magistrate Mitchell in this case, and of the myriad other district courts that have granted habeas relief to similarly situated noncitizens, and order Petitioner's immediate release. *Supra*.

V. The R&R correctly placed the burden of rebutting the prior showing of no significant likelihood of removal in the reasonably foreseeable future on Respondents.

Respondents do not dispute that ICE previously determined that “there was no significant likelihood of removal in the reasonably foreseeable future” when the government previously released Petitioner on an Order of Supervision (“OOS”) in 2005. *See* ECF No. 19 at 7; R&R at 19; 8 C.F.R. § 241.13(a), (b)(1). Nonetheless, Respondents argue that the prior determination “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[,] [n]or does that determination... somehow shift the burden to the Federal Respondents in this habeas proceeding.” Again, Respondents fail to cite any legal

² Respondents also raise this conditions-of-confinement issue for the first time in response to the R&R, meaning the issue must be deemed waived. *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”).

authority for their non-intuitive arguments that appear to be plainly contradicted by 8 C.F.R. § 241.13(i)(2)-(3). Considering § 241.13(i)(2)-(3) is the Secretary of Homeland Security's codified interpretation of the Supreme Court's *Zadvydas* decision, some reasoned basis (lacking here) for shifting agency position is necessary. *See Momennia*, 2025 WL 3011896, at *3 n.7³ and accompanying text (W.D. Okla. Oct. 15, 2025) (Magistrate Maxfield's R&R).

8 C.F.R. § 241.13 constitutes Respondents' binding interpretation of *Zadvydas*, which Respondents now attempt to abandon. As recognized by § 241.13, *Zadvydas* requires changed circumstances to justify redetention after release on an OOS. Here, there is no factual basis supporting ICE's half-hearted expression of expectation to receive a travel document. ICE relies solely on unsupported conjecture and speculation. Under these facts, there are no changed circumstances that justified redetaining Petitioner; redetention occurred in violation of *Zadvydas* and regulation. *E.g.*, *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

³ *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56967-01, 56968, 2001 WL 1408247(F.R.) (Nov. 14, 2001) (to be codified at 8 C.F.R. Parts 3 and 241) ("In light of the Supreme Court's decision in *Zadvydas*, this rule revises the Department's regulations by adding a new 8 CFR 241.13, governing certain aspects of the custody determination of a detained alien after the expiration of the removal period. Specifically, the rule provides a process for the Service to make a determination as to whether there is a significant likelihood that the alien will be removed in the reasonably foreseeable future. Except as provided in this new § 241.13, the existing detention standards in § 241.4 will continue to govern the detention or release of aliens who are subject to a final order of removal. Thus, aliens who are determined not to be a danger to the community or a flight risk may be released under § 241.4 regardless of whether there is a significant likelihood of removal.").

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*, --- F. Supp. 3d. ---, 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”).

Because Petitioner was previously released on an OOS, the government, under *Zadvydas* and regulation, has the burden of rebutting Petitioner’s prior showing of non-deportability that was previously sufficient to obtain release.

VI. Petitioner met his initial burden under *Zadvydas*.

Assuming *arguendo* that Petitioner somehow has the initial burden under *Zadvydas* of establishing no significant likelihood of removal in the reasonably foreseeable future despite his prior satisfaction of that burden, he has plainly met his burden in these proceedings.

As a reminder, *Zadvydas* held that “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.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (emphasis added). “Good reason” is less than a

preponderance of the evidence and is akin to a prima facie showing. Petitioner has established that the government was previously unable to deport him to Vietnam, has continued to be unable to deport him to Vietnam since his redetention 81 days ago, and has not so much as applied for travel documents from Vietnam despite 81 days elapsing since Petitioner was re-detained. Petitioner has established that he does not have any proof of Vietnamese citizenship and that he entered prior to 1995 and is thus subject to the 2020 MOU between Vietnam and the United States. The absence of a valid travel document and Vietnam's MOU-based refusal to repatriate such individuals satisfies the *Zadvydas* "good reason to believe" standard. Respondents have presented no credible or persuasive evidence that rebuts these showings. Thus, even if Petitioner bears the initial burden under *Zadvydas*, the Court still must affirm the magistrate's ultimate recommendation of immediate release.

CONCLUSION

The Court must affirm the R&R. Alternatively, the Court must order Petitioner's immediate release in accordance with all prior arguments.

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Respectfully submitted,

RATKOWSKI LAW PLLC

/s/ Nico Ratkowski

Nico Ratkowski (Atty. No.: 0400413)

332 Minnesota Street, Suite W1610

Saint Paul, MN 55101

P: (651) 755-5150

E: nico@ratkowskilaw.com

Attorney for Petitioner