

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

MOHAMMAD MUSTAFA HAMIDI,	)	
	)	
PETITIONER,	)	
	)	
v.	)	Case. No. CIV-25-1205-G
	)	
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 November 14, 2025, the Honorable United States Magistrate Judge Amanda L. Maxfield issued a Report and Recommendation ("R&R") (Doc. 16) regarding Petitioner's Verified Petition for a Writ of Habeas Corpus. Respondents object to the R&R insofar as it recommends that Petitioner be granted habeas corpus relief under 28 U.S.C. § 2241. Respondents do not object to Judge Maxfield's recommendation that certain motions and requests for injunctive and declaratory relief be denied. *See* R&R at 16. In support of their objection, Respondents submit the following:

**Brief in Support of Objection**

**I. Respondents re-assert the arguments from their response.**

Respondents re-assert and adopt by reference all arguments presented in their

Response in Opposition to Petitioner’s Verified Petition for Writ of Habeas Corpus (Doc. 14) and assert their right to appellate review of all arguments presented therein.

## **II. Compliance with Federal Regulations.**

The R&R states that “the issue before the Court is whether Petitioner’s OOS was properly revoked when he was re-detained into ICE custody.” R&R at 9. 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. Rather, Petitioner seeks to turn this well-settled statutory framework on its head, seemingly arguing that because he was previously detained and released by ICE, he has already made the requisite showing regarding the likelihood of removal in the reasonably foreseeable future for his *current* detention.

Petitioner appears to conflate his *Zadvydas* request for immediate release with his challenge to ICE’s basis for the revocation of his release. In other words, he attempts to piggyback his *Zadvydas* request on his challenge to ICE’s basis for his revocation of release. ICE’s determination, however, does not somehow change the analysis for a noncitizen’s request for habeas relief based on *Zadvydas*. To hold otherwise would infringe on the discretion given the Executive Branch to execute removal orders. ICE’s decision to revoke his release and this Court’s evaluation of *Zadvydas* involve different standards and different mechanisms regarding review (if any) by federal courts.

The Code of Federal Regulations sets forth specific provisions regarding the release and revocation of release of a noncitizen with a final order of removal. Specifically, 8 C.F.R. § 241.4 is entitled “Continued detention of inadmissible, criminal, and other [noncitizens] beyond the removal period” and relates to the release (and the revocation of

release) of such noncitizens. Generally, regulations grant authority to designated officials with ICE (formerly the Immigration and Naturalization Service) to grant release or parole to a noncitizen, and the agency may continue a noncitizen's custody under the provisions of the C.F.R. 8 C.F.R. § 241.4(a).

Revocation of release is governed by 8 C.F.R. § 241.4(l). This can occur for two reasons: the noncitizen violates the conditions of release, or ICE determines in its discretion to revoke release. *Id.* § 241.4(l)(1)-(2). If release is revoked due to a violation of conditions under § 241.4(l)(1), the noncitizen must be notified of the reasons for revocation and afforded an initial informal interview promptly after his return to custody, to afford the noncitizen an opportunity to respond to the reasons for revocation stated in the revocation of release notification. *Id.* § 241.4(l)(1). In contrast, the regulation providing for revocation of release in the discretion of ICE has no such language requiring notice of the reason for revocation or for an informal interview upon being taken into custody. *Id.* § 241.4(l)(2). Factors allowing for the revocation of release in the discretion of ICE include: (1) the purpose of the release has been served; (2) the noncitizen violated a condition of release; (3) revocation is appropriate to enforce a removal order or to commence removal proceedings; and (4) the conduct of the noncitizen, or any other circumstance, indicates release would no longer be appropriate. *Id.* §§ 241.4(l)(2)(i)-(iv).

DHS has also enacted regulations for noncitizens who have “provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future.” *Id.* § 241.13(a). Pursuant to that regulation, DHS will release a noncitizen who has made such a showing, subject to

appropriate conditions of release. *Id.* § 241.13(g)(1). Similar to the regulations described above, § 241.13 provides for the revocation of release if ICE determines “that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.” *Id.* § 241.13(i)(2). Upon such revocation, the non-citizen 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 non-citizen 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 September 10, 2025, he was picked up and redetained by ICE. Petition (Doc. 1) at ¶ 7. “Hamidi 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 ¶ 50. Respondents are unable to verify that upon his re-detention Mr. Hamidi received a formal Notice of Revocation of Release. However, even if he did not, habeas relief is an inappropriate remedy.

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).<sup>1</sup> 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 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. Hamidi effectively argues that, as a condition of his confinement, he should have received a Notice of Revocation of Release and a prompt interview. That alleged harm does not warrant immediate release. Although Mr. Hamidi disputes that his removal from the United States is reasonably foreseeable, he does not dispute that he is removable as a non-citizen.

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 Respondents to comply by issuing a Notice of Revocation of Release and conducting an interview.<sup>2</sup>

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<sup>1</sup> 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.”).

<sup>2</sup> At that interview, if so directed by the Court, Mr. Hamidi 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

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 failures 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)).

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.

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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).

**III. 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 on 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. Hamidi was issued an OOS, “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 10 (citing 8 C.F.R. § 241.13(a), (b)(1)). Assuming arguendo that ICE made that determination, 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 Respondents in this habeas proceeding.

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.

Dated: November 21, 2025

Respectfully Submitted,

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