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

KHAI NGUYEN,	)	
	)	
Petitioner	)	
	)	
v.	)	**Case No. CIV-25-1204-JD**
	)	
PAMELA BONDI et al.,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

Khai Nguyen seeks habeas corpus relief under 28 U.S.C. § 2241. (ECF No. 1). Petitioner also requests a temporary restraining order and preliminary injunction "enjoining Respondents . . . [from] continuing to infringe on [his] constitutional rights," "an emergency preliminary order requiring Respondents to give [him] due process prior to removing him to an allegedly safe third country in the form of a full merits hearing for asylum, withholding of removal, and [Deferral of Removal under the Convention Against Torture (DCAT)] before an immigration judge . . . with a right to an administrative appeal to the Board of Immigration Appeals." (ECF No. 6:1-2).[1]

United States District Judge Jodi Dishman referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). Respondents filed a Response and Petitioner replied. (ECF Nos. 14 & 15). For the reasons

[1] Petitioner also asks the Court "to order Respondents to provide 72-hour notice of any intended movement of [his person] pending the adjudication of [his] habeas corpus petition." (ECF No. 6:2). Petitioner's request is moot as the Court ordered Respondents to provide 72-hour "advance notice of any scheduled removal or transfer of Petitioner" in its order directing Respondents to respond to the Petition. (ECF No. 11:2).

set forth below, the undersigned recommends the Court **GRANT** habeas corpus relief and order Petitioner's immediate release.

I. FACTUAL BACKGROUND

Petitioner is a citizen of Vietnam who was admitted to the United States in 1990 as a Lawful Permanent Resident. (ECF No. 14:8). Following a November 1997 conviction for sexual assault of a child, an Immigration Judge ordered Mr. Nguyen removed from the United States in 1998. (ECF Nos. 1:1 & 14:8). Petitioner did not appeal his order of removal, rendering it final on April 2, 1998, or alternatively, on March 3, 1998 if he waived the appeal. (ECF No. 1:1). Petitioner remained in detention for "an unknown period of time believed to be about three years, far in excess of six months." (ECF No. 1:2). Petitioner was eventually released on an Order of Supervision (OOS) in 2001. (ECF No. 1:2) On August 5, 2004, a grand jury indicted Petitioner with intentionally and knowingly exposing his genitals to a child and on October 27, 2004, he was indicted for failing to register as a sex offender. (ECF No. 14-4:1, 8). On February 23, 2006, he was sentenced to a 5-year prison term and ordered to pay a $1,500.00 fine after having pled guilty to third-degree felonies of indecency to a child younger than 17 years and failure to register as a sex offender. (ECF Nos. 14-1:2 & 14-4:2, 5). Following his release from prison, Mr. Nguyen entered ICE custody, and on November 19, 2009, he was released on an order of supervision (OOS). (ECF Nos. 14:8-9; 14-4:2, 5). Petitioner complied with the OOS's requirements to appear for routine check-ins with Immigration and Customs Enforcement (ICE) and updated his address, as required, whenever he relocated. (ECF No. 1:2).

Petitioner alleges that he was wrongfully detained while reporting to his regular check-in on August 26, 2025. (ECF No. 1:2). He further alleges that he was never served with a proper Notice of Revocation of Release ("Notice") providing an explanation of why his OOS was being revoked, nor was he afforded any opportunity to challenge any Notice. (ECF No. 1:12). Petitioner contends that his detention is "designed to send a message to other individuals with final orders of removal that they need to leave the United States or they will be jailed indefinitely and without any process." (ECF No. 1:3). Petitioner alleges he cannot return to Vietnam because he does not have the requisite travel documents. (ECF No. 1:2. 3). He states that he has applied for travel documents before, but his applications have consistently been denied. (ECF No. 1:2) And Vietnam, his alleged country of origin, has no record of his citizenship. (ECF No. 1:3). Petitioner alleges that "to the best of [his] knowledge" no attempts at removal to a third country have been attempted since he was detained. (ECF No. 1:3). Mr. Nguyen states that he has not been asked to apply for a travel document for any country since being detained. (ECF No. 1:2, 3).[2] Petitioner contends that removal is unlikely to occur any time in the reasonably foreseeable future and his "aggregate period of civil immigration confinement exceeds six months and continues to grow." (ECF No. 1:3, 8).

[2] Respondents submit an affidavit from George McGettrick, ICE deportation officer, which states that he is working on a travel document request to the government of Vietnam for Petitioner and he has sent documents to be translated from English to Vietnamese to be sent to the government of Vietnam, and he has requested and received from Petitioner information regarding his family, including their location and ties to Vietnam. (ECF No. 14-1:2).

II. PETITIONER'S CLAIMS

Petitioner alleges that "ICE has denied [him] release because: (A) it incorrectly believes [he] is responsible for reestablishing that removal is not substantially likely to occur in the reasonably foreseeable future; (B) ICE seeks to punish [him] for remaining in the United States after previously having been ordered removed; and (C) ICE seeks to punish [him] to send a message to similarly situated persons who have not yet been detained as a way to encourage those similarly situated people to immediately leave the United States to avoid [his] fate." (ECF No. 1:12).

In Count One, Petitioner requests "declaratory judgment pursuant to 28 U.S.C. § 2201 that [he] is detained pursuant to 8 U.S.C. § 1231(a)(1)," "that [he] has previously demonstrated to ICE's satisfaction that there is no significant likelihood of his removal in the reasonably foreseeable future ("NSLRRFF")," "that ICE did not rebut [his] prior NSLRRFF showing prior to redetaining him," and "that until ICE rebuts [his] prior NSLRRFF showing, [he] may not be redetained." (ECF No. 1:20-21).

In Count Two, Petitioner contends that his detention by Respondents violates the Immigration and Nationality Act and applicable ICE regulations. (ECF No. 1:21).

In Count Three, Petitioner raises two due process claims. He states that his continued detention in excess of six months violates his "Fifth Amendment guarantee of due process" established in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) as Respondents have not rebutted his prior showing of no substantial likelihood of removal in the foreseeable future. (ECF No. 1:22). And he states a separate due process claim based on his allegations that he has been detained "to punish him and to otherwise send a message

to similarly situated individuals that they must leave the United States to avoid a similar fate." (ECF No. 1:22).

In Count Four, Petitioner alleges that Respondents have violated the Administrative Procedures Act [APA] as "[their] decisions, which represent changes in the agencies' policies and positions, have considered factors that Congress did not intend to be considered, have entirely failed to consider important aspects of the case, and have offered explanations for their decisions that run counter to the evidence before the agencies." (ECF No. 1:23). Petitioner also seeks a temporary restraining order and preliminary injunction preventing Respondents from removing or transferring him outside of the State of Oklahoma pending the disposition of his habeas petition. (ECF No. 6). Respondents are sued in their official capacities. (ECF No. 1:8-9).

III. STANDARD OF REVIEW

An application for a writ of habeas corpus "is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Habeas corpus relief is warranted only if the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

IV. ANALYSIS

Petitioner argues that "ICE has no information that could reasonably lead it to believe changed circumstances exist that justify redetention under 8 C.F.R. § 241.13(i)(2)-(3)." (ECF No. 1:13-14). He further argues that Respondents have failed to comply with these provisions prior to detaining Petitioner after his release on an OOS and

that no independent alternative basis supports Respondents' decision to renew his detention. (ECF No. 1:21).

A. Statutory and Regulatory Framework

Petitioner contends that his prolonged detention following his renewed detention after the final order for his removal violates 8 U.S.C. § 1231(a). (ECF No. 1:1, 16, 21). This statute dictates that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." 8 U.S.C. § 1231(a)(1)(A). "During the removal period, the Attorney General shall detain the alien." *Id.* § 1231(a)(2). The removal period begins on the latest of the following dates:

> (i) The date the order of removal becomes administratively final;
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order; or
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Id. § 1231(a)(1)(B).

The removal period may be extended "and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents . . . or conspires or acts to prevent the alien's removal." *Id.* § 1231(a)(1)(C).

Finally, detention of an alien subject to a final order of removal may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *Zadvydas*, 533 U.S. at 701. After that, the detainee may bring a habeas action to

challenge his detention. *Id.* at 684-85, 688. To obtain habeas relief, the petitioner has the initial burden to show "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Presuming the petitioner does so, the burden shifts, requiring "the Government [to] respond with evidence sufficient to rebut that showing." *Id.*

B. ICE Failed to Abide By its Regulations When it Revoked Petitioner's OOS

In Count Two, Petitioner alleges that Respondents failed to comply with the Immigration and Nationality Act and ICE's applicable regulations "prior to redetaining [him] after [his] release on an OOS." (ECF No. 1:21).

The revocation of Petitioner's OOS is governed by 8 U.S.C. § 1231(a)(3) as Petitioner was released from ICE detention on November 19, 2009, ECF No. 14-1:2, following "an unknown period of time believed about three years, far in excess of six months," (ECF No. 1:2). Petitioner alleges that "[t]he OOS [was] issued pursuant to 8 C.F.R. § 241.4(e) because it was determined there was no significant likelihood of removal in the reasonably foreseeable future," and "it was necessarily determined at that time that Nguyen did not present an ongoing danger or a flight risk." (ECF No. 1:2). So, the issue before the Court is whether Petitioner's OOS was properly revoked when he was retaken into ICE custody. And the undersigned has determined that it was not.

Respondents do not specify why the OOS was originally issued or rebut Petitioner's allegations that he was released because there was no significant likelihood of his removal in the reasonably foreseeable future. *See* ECF No. 14-1:2. Petitioner alleges that he was detained past the 90-day removal period, and in excess of six months before being

released pursuant to the OOS. (ECF No. 1:2). And ICE Deportation Officer McGettrick, assigned to Petitioner's case, states:

> I am currently working on a travel document request to the government of Vietnam. I have sent documents to be translated from English to Vietnamese to be sent to the government of Vietnam, and I have requested and received from Nguyen information regarding his family, including their location and ties to Vietnam.
>
> In Fiscal Year 2025, as of September 11, 2025, ERO has removed 569 Vietnam citizens to Vietnam. In Fiscal Year 2024, ERO removed only 58 Vietnam citizens to Vietnam. When ERO has identification documents, the government of Vietnam will issue travel documents without interviewing the subject. 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.
>
> Based on the Vietnam's willingness to accept its citizens, and the number of successful removals ERO has made to Vietnam this Fiscal Year, I believe removal of Nguyen to Vietnam is significantly likely in the reasonably foreseeable future.

(ECF No. 14-1:2-3). However, 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" 8 C.F.R. § 241.13(a), (b)(1), before issuing the OOS in 2009.

ICE may revoke an OOS and "return the alien to custody" when, "on account of changed circumstances . . . there [becomes] a significant likelihood [of] the alien['s] remov[a]l in the reasonably foreseeable future," or the alien violates the conditions of supervised release. 8 C.F.R. § 241.13(i)(1) (2). Respondents do not allege that Petitioner violated any conditions of release, *see* ECF No. 14, so it appears that Respondents rely on the "changed circumstances" prong as the justification for revocation.

"'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025)

(per curiam) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). The Due Process Clause is also implicated where "an individual has reasonably relied on agency regulations promulgated for his guidance or benefit and has suffered substantially because of their violation by the agency." *United States v. Caceres*, 440 U.S. 741, 752–53 (1979).

As Petitioner notes, the declaration from Officer McGettrick and Respondent's brief "do[] not claim that Petitioner was informed orally or in writing of the reason for his redetention on August 25, 2025 and thereby concedes Nguyen's claims that such notice was not provided." (ECF No. 15:2). Under § 241.13(i)(3), "*[u]pon revocation*, the alien will be notified of the reasons for revocation of his or her release," after which the alien will be afforded "an initial informal interview promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* (emphasis added).

There is no indication in the record that Petitioner received formal written notification of the reasons for his renewed detention when he was detained on August 25, 2025, or at any time thereafter. "[Petitioner] does not recall ever having been served with a [Notice] purporting to revoke his OOS," (ECF No. 1:12), and Respondents have not provided a written copy of said Notice to this Court.

Respondents may contend that verbally informing Petitioner of the reasons for revocation suffices for Notice under ICE regulations, but a review of other district court cases involving renewed detentions to effectuate removal shows that ICE typically will provide the detainee with written notice at some point during detention and provide it to the Court when responding to the detainee's habeas petition. *Zhu v. Genalo*, No. 1:25-

cv-06523, 2025 WL 2452352, at * 8 (S.D.N.Y. Aug. 26, 2025) (citing cases); s*ee also Yee S. v. Bondi*, No. 25-CV-02782 (JMB/DLM), 2025 WL 2879479, at *2 (D. Minn. Oct. 9, 2025) ("The next day, having already detained Petitioner, ICE served a [Notice] on him."); *see e.g., K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, at (W.D. Ky. Sept. 4, 2025) (noting that the United States provided the district court a copy of the Petitioner's Notice to correct deficiencies identified by the Petitioner and recognizing that "[he was] entitled to a Notice . . . pursuant to authority delegated by regulation") (internal quotation marks omitted); *Umanzor-Chavez v. Noem*, SAG-25-01634, 2025 WL 2467640, at *2 (D. Md. Aug. 27, 2025) (noting that when Petitioner reported to ICE check-in his OOS "was revoked, and he was served with a notice that ICE intends to remove him to Mexico.") (internal quotation marks omitted).

This requirement of written notice is bolstered by another ICE regulation, § 214.4(d), which provides:

> A copy of any decision by the district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner to release or to detain an alien shall be provided to the detained alien.

8 C.F.R. § 241.4(d) (emphasis added).

Respondents have also failed to demonstrate to the Court that they made the required determination for revocation pursuant to § 241.13(i)(2). Section 241.13(i)(2) provides that ICE "may revoke an alien's release under [§ 241.13] and return the alien to custody if, on account of changed circumstances, . . . [it] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." As discussed, the officer assigned to Mr. Nguyen's case states: (1) he is "working on a

travel document request to the government of Vietnam;" (2) he is in receipt of information regarding Petitioner's familial ties to Vietnam; (3) 569 citizens have been removed to Vietnam in fiscal year 2025, exhibiting Vietnam's "willingness to accept its citizens." *See supra.*

Other Courts have found similar declarations insufficient to prove a significant likelihood of removal in the reasonably foreseeable future; especially in light of the fact that, although Vietnam is exhibits its "willingness to accept its citizens," Mr. Nguyen has stated that Vietnam has no record of his alleged citizenship, and Nguyen does not have a Vietnamese birth certificate.[3] See *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 kinds 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").

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[3] (ECF No. 1:3).

To this end, one sister court has noted:

After the Vietnam War, many Vietnamese people "fled the country to escape political persecution." Until 2008, Vietnam refused to repatriate Vietnamese immigrants whom the United States had ordered removed. In 2008, the United States and Vietnam reached an agreement under which Vietnam agreed to consider repatriation requests for Vietnamese immigrants who had arrived in the United States after July 12, 1995. This meant that Vietnamese immigrants who had arrived before that date would not be considered for repatriation.

Until 2017, ICE "maintained that the removal of pre-1995 Vietnamese immigrants was unlikely given Vietnam's consistent refusal to repatriate them." Thus, ICE typically detained pre-1995 Vietnamese immigrants for no more than ninety days after their removal orders became final. After that time expired, most detainees were released on orders of supervision.

In 2017, the United States and Vietnam began to renegotiate the 2008 agreement. Though the 2008 agreement was not formally amended, Vietnamese officials "verbally committed to begin considering ICE travel document requests for pre-1995 Vietnamese immigrants on a case-by-case basis, without explicitly committing to accept any of them." In accordance with this change, ICE began detaining pre-1995 Vietnamese immigrants for longer than ninety days after their final orders of removal. ICE reasoned that Vietnam might issue the necessary travel documents for repatriation. ICE also began re-detaining some individuals who had been released on orders of supervision.

But this policy did not last long. In 2018, following additional meetings between United States and Vietnamese officials, "ICE conceded that, despite Vietnam's verbal commitment to consider travel document requests for pre-1995 immigrants, in general, the removal of these individuals was still not significantly likely." ICE accordingly instructed field offices to release pre-1995 Vietnamese immigrants within ninety days of a final order of removal.

In 2020 the policy changed again when the United States and Vietnam signed a Memorandum of Understanding ("MOU") to create a process for deporting pre-1995 Vietnamese immigrants. Under Section 4 of the MOU, Vietnam affirmed that it "intends to issue travel documents where needed, and otherwise to accept the removal of an individual subject to a final order of removal from the United States" if the individual meets four conditions. First, the individual must have Vietnamese citizenship (and only Vietnamese citizenship). Second, the individual must have violated U.S. law, been

> ordered removed by a U.S. authority, and completed any sentence of imprisonment. Third, the individual must have resided in Vietnam prior to arriving in the United States and have no right to reside in any other country or territory. . . . Petitioner asserts that from September 2021 to September 2023, the United States deported and repatriated only four pre 1995 immigrants to Vietnam. . . .

Tran v. Scott, No. 2:25-cv-01886-TMC-BAT, 2025 WL 2898638, at *2 (W.D. Wash. Oct. 12, 2025) (emphasis added) (internal citations omitted).[4] Petitioner is a pre-1995 Vietnamese immigrant, *see* ECF No. 14:8, and Respondent makes no mention of the MOU in its filings.

In the end, as a result of ICE's failure to provide Petitioner with the required notice before his renewed detention, lack of apparent determination of changed circumstances necessitating revocation, and uncertainty regarding Petitioner's Vietnamese citizenship, the undersigned finds that ICE's revocation of his OOS was unlawful. *Qui*, 2025 WL 2770502, at 1-2. (finding that failure to properly revoke the petitioner's OOS "pursuant to the applicable regulations" rendered revocation ineffective). As a result, Petitioner is entitled to his immediate release subject to the same OOS that governed his earlier release.[5]

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[4] *See United States v. Pursley*, 577 F.3d 1204, 1214 n.6 (10th Cir. 2009) (noting court's "discretion to take judicial notice of publicly-filed records in our court and certain other courts concerning matters bearing directly upon the disposition of the case at hand") (internal quotation marks omitted).

[5] The undersigned does not address Petitioner's remaining arguments as to how the revocation of his release is otherwise unlawful under the APA or under *Zadvydas*. The undersigned also declines to address Petitioner's request for declaratory judgment as to the legality and nature of his detention under ICE regulations and whether ICE's actions were arbitrary and capricious as his immediate release, if this Report and Recommendation is adopted, will moot these requests.

V. RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT

For the reasons set forth above, the undersigned recommends the Court grant Petitioner's request for habeas relief and order his immediate release from custody subject to the terms of his unlawfully revoked OOS. The undersigned further recommends that the Court order Respondents to submit a declaration pursuant to 28 U.S.C. § 1746 affirming that Petitioner has been released from custody.[6]

The parties are advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by **November 19, 2025**, in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2).[7] Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

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[6] Adoption of this Report and Recommendation will render moot Petitioner's pending emergency motion for temporary restraining order and preliminary injunction, ECF No. 6.

[7] Given the expedited nature of these proceedings, the undersigned has reduced the typical objection time to this Report and Recommendation to seven days. See Fed. R. Civ. P. 72(b)(2) advisory committee's note to 1983 addition (noting that rule establishing 14-day response time "does not extend to habeas corpus petitions, which are covered by the specific rules relating to proceedings under Sections 2254 and 2255 of Title 28."); see also Whitmore v. Parker, 484 F. App'x 227, 231, 231 n.2 (10th Cir. 2012) (noting that "[t]he Rules Governing § 2254 Cases may be applied discretionarily to habeas petitions under § 2241" and that "while the Federal Rules of Civil Procedure may be applied in habeas proceedings, they need not be in every instance – particularly where strict application would undermine the habeas review process").

VI. STATUS OF REFERRAL

This Report and Recommendation terminates the referral by the District Judge in this matter.

ENTERED on November 12, 2025.

Shon T. Erwin

SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE