

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

ZHE MIN JIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. CIV-25-1232-JD
PAMELA BOND, ATTORNEY	)	
GENERAL, et al.,	)	
	)	
Respondents.	)	

**RESPONDENTS' OBJECTION TO THE REPORT AND RECOMMENDATION**

In this immigration habeas proceeding, Petitioner makes numerous claims regarding his detention. The only proper claim before this Court, to the extent he makes it,<sup>1</sup> is Petitioner's request for immediate release under the United States Supreme Court's *Zadvydas v. Davis* case, which held that once removal is no longer reasonably foreseeable, continued detention is no longer authorized by law.<sup>2</sup> His remaining claims and requests for extraordinary relief are improper in a habeas proceeding such as this; specifically, his challenge to the basis for his re-detention, his demand for injunctive and declaratory relief, his demand for relief under the Administrative Procedure Act, and his demand (for which there appears to be no ripe controversy) that the Court enjoin action for any *future*

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<sup>1</sup> See Respondents' Resp. in Opp'n to Pet.'r's Pet. for Writ of Habeas Corpus ("Resp. to Pet.") at 17-18 (Doc. 13) (Nov. 4, 2025) (explaining how his invocation of *Zadvydas* is less than clear). References to page numbers reflect the CM/ECF pagination.

<sup>2</sup> 533 U.S. 678, 699 (2001).

revocations of Orders of Suspension or re-detention unless specified conditions are met.<sup>3</sup>

On November 24, 2025, the Honorable Magistrate Judge Shon T. Erwin issued a Report and Recommendation (“R&R”) solely addressing Petitioner’s assertion that Respondents violated its regulations in the process of Petitioner’s re-detention and recommending immediate release as an appropriate remedy.<sup>4</sup> 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 Petition for Writ of Habeas Corpus for purposes of appellate review.

### Argument

#### **I. The Court is stripped of jurisdiction to review re-detention for the purpose of executing a removal order.**

For the reasons discussed in the Response, this Court lacks jurisdiction to consider the validity of Petitioner’s re-detention in order to effectuate his removal.<sup>5</sup> In addressing this argument, the R&R recognized that “the Tenth Circuit has clarified that district courts’ habeas jurisdiction is limited regarding orders of removal,” and correctly noted that challenges to final orders of removal are severely limited and must be filed in the circuit

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<sup>3</sup> See Pet. for Writ of Habeas Corpus (“Pet.”) at 21-23 (Doc. 1) (setting out the various Counts, but not expressly raising *Zadvydas*). See also Resp. to Pet. at 24-26, 29-36 (explaining why Petitioner cannot seek such relief in this case).

<sup>4</sup> R&R at 6 (Doc. 18) (“The Court should assume jurisdiction over the matter, find that ICE violated its own regulations in revoking Petitioner’s OOS, and order his immediate release.”); *id.* at 11 (finding “Habeas Relief is Warranted Due to ICE’s Failure to Comply with its Regulations”); *id.* at 17 (“Based on ICE’s violations of its own regulations, the undersigned concludes that Petitioner’s detention is unlawful and that his release is appropriate under 28 U.S.C. § 2241(c)(3).”)

<sup>5</sup> See Resp. to Pet. at 24-26.

courts of appeal.<sup>6</sup> But then the R&R concluded that “the Court should find it has subject matter jurisdiction over the petition,” citing cases involving mandatory detention under 8 U.S.C. § 1226 to support its conclusion.<sup>7</sup> But cases involving mandatory detention under § 1226, where there is no final order of removal, are inapposite here. Indeed, § 1226 relates to arrests and detentions “pending a decision on whether the alien is to be removed from the United States.”<sup>8</sup>

The R&R cites *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018), for the general proposition that district courts have jurisdiction “to consider habeas petitions that challenge determinations by an immigration judge other than orders of removal.”<sup>9</sup> This is generally true, as evidenced by the numerous *Zadvydas* cases challenging the *length* of a habeas petitioner’s detention in the absence of a likelihood of removal in the reasonably foreseeable future. But the R&R then extends this reasoning to find that a district court has jurisdiction to review and evaluate petitioner’s re-detention for purposes of executing a removal order. Such an extension, however, runs headlong into 8 U.S.C. §§ 1252(g) and (b)(9)’s jurisdiction stripping provisions regarding the Attorney General’s decisions or actions to execute removal orders and bring about Petitioner’s removal.<sup>10</sup> As such, the

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<sup>6</sup> R&R at 7 (citing *Thoung v. United States*, 913 F.3d 999, 1001-02 (10th Cir. 2019)).

<sup>7</sup> *Id.* at 8-9 (citing cases where courts have “found subject matter jurisdiction over petitions challenging determinations that a petitioner was statutorily ineligible for bond under § 1226(a)”).

<sup>8</sup> 8 U.S.C. 1226(a).

<sup>9</sup> R&R at 7.

<sup>10</sup> 8 U.S.C. § 1252(g) (stripping district court jurisdiction over “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to

Court lacks jurisdiction to entertain Petitioner's claim in this regard.

In extending this analysis to cases involving re-detention for purposes of removal, the R&R primarily relies on the Tenth Circuit's *Ochieng v. Mukasey* case, which involved a petitioner's challenge in the Circuit Court to the Board of Immigration Appeals' dismissal of his appeal and denial of his motion to reopen.<sup>11</sup> There Mr. Ochieng "challenge[d] his mandatory detention under 8 U.S.C. § 1226(c)," rather than the basis for his re-detention.<sup>12</sup> The Court rightly explained that "an alien may challenge detention under § 1226(c) through a habeas corpus proceeding under 28 U.S.C. § 2241," citing to the Supreme Court's *Demore v. Kim* case.<sup>13</sup> And *Demore* also involved review over an alien's detention under § 1226(c), and a challenge to that statute's constitutionality.<sup>14</sup> Indeed, there the Supreme Court clearly noted that the alien did "not challenge a discretionary judgment by the Attorney General or a decision that the Attorney General [] made regarding his detention or release," but "[r]ather, [he] challenges the statutory framework that permits his detention without bail."<sup>15</sup> Thus, the issue in *Demore* was whether a statutory bar (specifically, Section

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commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.").

<sup>11</sup> 520 F.3d 1110, 1112-13 (10th Cir. 2008).

<sup>12</sup> *Id.* at 1115.

<sup>13</sup> *Id.* (citing *Demore v. Kim*, 538 U.S. 510, 517 (2003)).

<sup>14</sup> *See Demore*, 538 U.S. at 514 (noting that Respondent filed a habeas corpus action pursuant to Section 2241 challenging the constitutionality of § 1226(c)); *id.* at 517 ("Section 1226(e) contains no explicit provision barring habeas review, and we think that its clear text does not bar respondent's constitutional challenge to the legislation authorizing his detention without bail.").

<sup>15</sup> *Id.* at 516-17.

1226(e)), precluded habeas review of the alien’s “constitutional challenge to the legislation authorizing his detention without bail.”<sup>16</sup> And as noted, the Court explicitly distinguished that issue from challenges to discretionary judgment and decisions made regarding detention or release. The Court then narrowly concluded that “federal courts have jurisdiction to review a constitutional challenge to § 1226(c).”<sup>17</sup> This is distinct from Petitioner’s challenge here.<sup>18</sup> Unlike *Demore* and other petitions challenging mandatory detention while removal proceedings are moving forward, Petitioner here challenges decisions made regarding his detention to effectuate a valid removal order. As such, this Court lacks jurisdiction to hear this claim.

**II. Petitioner did not meet his burden in showing that there was a violation of relevant regulations.**

Petitioner has not established an entitlement to habeas relief. Regarding an alleged regulatory violation, Petitioner vaguely notes that he “*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 information interview to challenge the Notice.”<sup>19</sup> Indeed, in support of the conclusory nature of his pleading, he notes that *if* he

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<sup>16</sup> *Id.* at 517 (finding that it does not).

<sup>17</sup> *Id.*

<sup>18</sup> The Tenth Circuit in *Ochieng* also cited to a Ninth Circuit case involving a similarly narrow holding inapplicable to the facts here. In that case, the Ninth Circuit held that “a narrow claim of ineffective assistance of counsel in connection with a post-administrative filing of an appeal with the court of appeals does not require review of an order of removal,” and “[t]hus, this claim falls outside the jurisdiction-stripping provisions of the REAL ID Act.” *Singh v. Gonzales*, 499 F.3d 969, 972 (9th Cir. 2007).

<sup>19</sup> Pet. at 13, ¶ 50 (emphasis added).

received a Notice, it was deficient in that it claimed only that ICE had determined that removal was likely based on changed circumstances.<sup>20</sup> More than a lack of recollection, however, is necessary to meet his burden.

Further, Petitioner's allegation that any sort of Notice is deficient if it states "in a conclusory manner that 'ICE has determined there is a significant likelihood of removal in the reasonably foreseeable future in your case' due to 'changed circumstances' is without support."<sup>21</sup> As noted by the regulation Petitioner claims controls, "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."<sup>22</sup> Simply put, nothing more is required by the language.<sup>23</sup>

Moreover, although Petitioner asserts that his Order of Supervision was issued "pursuant to 8 C.F.R. § 241.4(e) and 8 C.F.R. § 241.13," and further claims that various determinations were made, he provides no basis for this assertion.<sup>24</sup> As a result, he cannot establish that his release was revoked under Section 241.13, triggering the procedural

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<sup>20</sup> *Id.* at 13, ¶ 51. Further underscoring the conclusory nature, this language has been included in several petitions filed in this Court. *See e.g.*, Petition at 12, ¶¶ 49-50, *Pham v. Bondi et al.*, No. CIV-25-1157-SLP (W.D. Okla. Oct. 6, 2025); Petition at 11, ¶¶ 46-47, *Bahadorani v. Bondi et al.*, No. 25-01091-PRW (W.D. Okla. Sept. 21, 2025).

<sup>21</sup> *Id.*

<sup>22</sup> 8 C.F.R. § 241.13(i)(2).

<sup>23</sup> As discussed below, 8 C.F.R. § 241.4(l)(2) does not require notification of the reasons for revocation.

<sup>24</sup> Pet. at 2, ¶ 5 (emphasis added); *see* R&R at 12 (citing Petitioner's assertion).

requirements he claims apply. Contrarily, Respondents attached the Petitioner's "Decision to Continue Detention," which explicitly references 8 C.F.R. § 241.4.<sup>25</sup> Accordingly, Respondents have put forth materials suggesting his revocation flows from § 241.4 and *not* § 241.13, which Petitioner claims applies and was violated.<sup>26</sup> And despite the R&R's assertion to the contrary, the regulation under which Petitioner's revocation occurred matters.

The R&R concludes: "Regardless of which regulation is controlling, however, both regulations provide that upon revocation of release, the noncitizen will be notified of the reasons for revocation of his or her release and will be given an initial informal interview."<sup>27</sup> In support of this assertion, the R&R cites to 8 C.F.R. § 241.4(*l*)(1)<sup>28</sup> and 8 C.F.R. 241.13(i)(3).<sup>29</sup> Section 241.13 allows revocation when circumstances have changed and the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. The R&R correctly recognizes that in such circumstances, "the alien will be notified of the reasons for the revocation of his or her release," and "[t]he Service will conduct an initial informal interview promptly after his or

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<sup>25</sup> See Ex. 3, Resp. at 1 (Doc. 13-3).

<sup>26</sup> See Reply at 13-22 (Doc. 15). Petitioner does not appear to assert application of § 241.4(*l*)(1) to him. Respondents address only because this subsection was raised in the R&R.

<sup>27</sup> R&R at 13 (cleaned up).

<sup>28</sup> Respondents italicize the lower-case "l" (as "*l*") to distinguish it in Times New Roman font from the numerical 1.

<sup>29</sup> *Id.*

her return to Service custody.”<sup>30</sup> Critically, the regulation does *not* require a written or formal “Notice.” Rather, it merely requires that an alien must “be notified.” As it relates to notice and interview requirements under § 241.4(*I*), the R&R essentially agrees with other courts who have “interpreted” subsection (*I*) to “require[] an informal interview upon the revocation of release regardless of the reason for the revocation—meaning that the notice and informal interview requirement stated in § 241.4(*I*)(1) applies to revocation under § 241.4(*I*)(2).”<sup>31</sup> Such a reading, however, is inconsistent with the language’s plain text and undermines the federal Respondents’ authority to re-detain individuals in order to execute final orders of removal.

Section 241.4 revocations of release are found in at the very end of Section 241.4, at subsection (*I*). There are three sub-*I* sections, codified at § 241.4(*I*)(1) – (3). The R&R cites to § 241.4(*I*)(1), which relates only to a revocation of release when conditions of release are violated. In other words, it deals only with circumstances where an alien is re-detained due to a violation of his or her conditions of release. The paragraph starts off with the sentence “Violation of conditions of release,” and goes on to describe that specific process:

**(1) Violation of conditions of release.** Any alien described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release **who violates the conditions of release** may be returned to custody. **Any such alien who violates the conditions of an order of supervision** is subject to the penalties described in section 243(b) of the Act. **Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an**

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<sup>30</sup> 8 C.F.R. § 241.13(i)(2)-(3).

<sup>31</sup> R&R at 15.

**initial informal interview promptly after his or her return to Service custody** to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.

Because this Section only applies to aliens who are re-detained based on violations of the conditions of their release, it does not apply to Petitioner.

Subsection (l)(2), on the other hand, allows revocation on the basis of a “Determination by the Service,” noting that “*in the exercise of discretion*,” Respondents have the authority to “revoke release and return to Service custody an alien previously approved for release under the procedures in this section.”<sup>32</sup> Release in these circumstances need not be solely for a violation of the condition of release. Rather, “[r]elease may be revoked *in the exercise of discretion* when, in the opinion of the revoking official:”

- (i) The purposes of release have been served;
- (ii) The alien violates any condition of release;
- (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
- (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.<sup>33</sup>

This subsection gives Respondents wide discretion to re-detain. Given the “or” language, any one of these categories may be a basis for revocation. And notably, there is no requirement in this subsection—unlike subsection(l)(1) detailing revocation of release due to violations of the conditions of release—that requires an alien be notified or receive an

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<sup>32</sup> 8 C.F.R. § 241.4(l)(2) (emphasis added). The regulation inherently recognizes the discretionary nature of these determinations, as protected by the Immigration and Nationality Act (“INA”).

<sup>33</sup> *Id.* (emphasis added).

initial informal interview “promptly” after their return to custody, which even the R&R acknowledges.<sup>34</sup> And because the subsections clearly relate to separate circumstances resulting in revocation of release, it cannot be argued that they each apply to *all* revocations.

Underscoring this point is that *both* sections allow revocation for violations of a condition of release.<sup>35</sup> This does not mean, however, that these regulations are redundant. Rather, Section 241.4(l)(1), which requires notification and a prompt interview, also comes with increased penalties under INA § 243(b), whereas Section 241.4(l)(2) does not. In other words, the government has choices as to which subsection to utilize in revoking release due to violations of a condition of release. It can revoke release and impose penalties under Section 241.4(l)(1), in which case notification and a prompt interview must occur,<sup>36</sup> or it can determine to revoke under Section 241.4(l)(2)(ii), which does *not* reference penalties under INA § 243(b). And requiring the alien be notified of the basis for his revocation and an interview when penalties are at issue makes sense.

Accordingly, whether Petitioner’s release was revoked under Section 241.13,

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<sup>34</sup> R&R at 14 (noting that Respondents’ argument that Section 241.4(l)(2) does not require an interview “amounts to nothing more than semantics”), *id.* at 15 (noting that “Respondent is technically correct that (l)(2) does not provide for an initial interview”).

<sup>35</sup> *See* 8 C.F.R. § 241.4(l)(1) (referring to “violations of conditions of release” and those who “violates the conditions of release”) and (l)(2)(ii) (referring to someone who violates “any” condition of release).

<sup>36</sup> Similar language regarding INA § 243(b) penalties exists in Section 241.13(i)(1), which states: “Any alien who has been released under an order of supervision under this section who violates any of the conditions of release may be returned to custody and is subject to the penalties described in section 243(b) of the Act.” 8 C.F.R. § 241.13(i)(1).

Section 241.4(l)(1), or (l)(2) does matter. And based on Petitioner's custody review and determination to continue to detain him, it appears the basis is Section 241.4(l)(2), because it references § 241.4, it notes that ICE is maintaining custody because "You are subject to a final order of removal issued against you by an immigration judge,"<sup>37</sup> and subsection (l)(2) allows re-detention when "[i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien."<sup>38</sup> The letter further details the basis for the determination as having a "significant likelihood of removal in the reasonable foreseeable future, immigration history, and criminal history."<sup>39</sup> And while Respondents have produced evidence to establish Petitioner's release was revoked under Section 241.4(l)(2), Petitioner has done nothing to establish otherwise.

Petitioner's mere non-recollection is insufficient to meet his habeas burden. And the R&R appeared to emphasize this point as important in its analysis, stating not just that Petitioner could not recall whether these things were done, but that "Petitioner *insists* that no notice was ever provided to him . . . prior to or at the time of his re-detention, nor was he afforded any opportunity to challenge any notice."<sup>40</sup> Moreover, Petitioner signed for the custody review document on June 3, 2025.<sup>41</sup> At a minimum, then, Petitioner knew the basis for his detention as of that date.

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<sup>37</sup> Ex. 3 at 1, Resp. (Doc. 13-3).

<sup>38</sup> 8 C.F.R. § 241.4(l)(2).

<sup>39</sup> Ex. 3 at 1, Resp. (Doc. 13-3).

<sup>40</sup> R&R at 13 (citing to Pet. at 13) (emphasis added).

<sup>41</sup> Ex. 3 at 3, Resp. (Doc. 13-3) (noting Petitioner's signature).

Respondents respectfully assert that the R&R over-emphasized Petitioner's non-recollection in this matter and erred in finding that a violation of relevant regulations occurred. The Court should decline to adopt the R&R in this regard.

**III. Immediate release is not an appropriate remedy in this context.**

Assuming either (as Petitioner asserts) Section 241.13(i) applies to Petitioner or (as the R&R asserts) Section 241.4(l)(1) applies to Petitioner, and also taking at face value Petitioner's assertion that he "does not recall" being notified of the basis for his removal and "does not recall" being interviewed upon arrival means that those things did not happen, release is inappropriate in this context.

As recently noted by the Honorable District Judge Patrick Wyrick, "[t]he harmless error standard applies in deportation and administrative cases."<sup>42</sup> As a result, it is incumbent on Petitioner "to show that the government's failure to abide by its own regulations prejudiced him."<sup>43</sup> In the case in front of Judge Wyrick, Petitioner claimed "zero compliance with 8 C.F.R. § 241.13(i)(2)–(3),"<sup>44</sup> but only "provided conclusory statements about not recalling the government's compliance with the regulations."<sup>45</sup> As discussed above, such is the case here. Moreover, since his detention Petitioner has been

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<sup>42</sup> Order at 4, *Bahadorani v. Bondi*, No. 25-1091-PRW (W.D. Okla. Oct. 31, 2025) (citing *Nazaraghaie v. I.N.S.*, 102 F.3d 460, 465 (10th Cir. 1996) and *WildEarth Guardians v. Bureau of Land Management*, 870 F.3d 1222, 1238–39 (10th Cir. 2017)).

<sup>43</sup> *Id.* (citing *Bar MK Ranches v. Yuetter*, 994 F.2d 735, 740 (10th Cir. 1993) for the proposition that errors in administrative proceedings do not call for reversal without plaintiffs demonstrating that such errors produced prejudice)).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 5.

provided with a custody review specifically detailing the reasons for his continued detention—because he is subject to a final order of removal, and based on the significant likelihood of removal in the reasonable foreseeable future as well as his immigration and criminal history.<sup>46</sup> Further, as in *Bahadorani*, any failure to comply with relevant regulations has been mitigated by receipt of the Custody Determination as well as through this litigation, which has provided an opportunity for Petitioner to present evidence with the benefit of counsel and respond to the government’s arguments.<sup>47</sup> “This process has effectively cured any administrative deficiencies stemming from the government’s failures to comply with [relevant regulations].”<sup>48</sup>

Here, Petitioner has done nothing to state how any failure to notify him of the reasons for his re-detention or provide an initial interview prejudiced him, especially in light of the fact that he has since been given a custody review and the reasons for his continued detention and has had the opportunity to provide arguments rebutting the government’s determination in this case.

As set forth in detail in the Respondent’s Response, habeas is not a mechanism for courts to order the fulfillment of administrative requirements or to direct release on that basis.<sup>49</sup> “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

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<sup>46</sup> Ex. 3 at 1, Resp. (Doc. 13-3).

<sup>47</sup> Order at 5-6, *Bahadorani*, No. 25-1091a.

<sup>48</sup> *Id.*

<sup>49</sup> Resp. at 28-29.

would greatly enlarge the writ and fundamentally change its purpose.”<sup>50</sup> The writ provides recourse against arbitrary arrest and detention by providing a detainee the right to immediate release from illegal custody.<sup>51</sup> And the prerequisite of a habeas corpus case is an allegation that the petitioner cannot be legally confined under any circumstances.<sup>52</sup> Petitioner has not shown that he cannot be legally confined under any circumstances, only that he is allegedly illegally confined because he did not receive notification and/or an initial interview. Thus, even if the federal Respondents have not satisfied all the procedural requirements of its regulations, the drastic remedy of immediate habeas corpus release would be inappropriate and grossly disproportional to the alleged harm.

The R&R emphasizes that petitioner (under both regulations) was meant to be told the reasons for his revocation and was allowed an “*initial* informal interview promptly following the revocation,”<sup>53</sup> concluding that because he did not receive either, release is appropriate. But to the extent the Court finds a violation, the appropriate remedy for regulatory noncompliance would be to order the federal Respondents to comply with the regulation. Here, by providing Petitioner notification as to the basis for his revocation and

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<sup>50</sup> *Basri v. Barr*, 469 F. Supp. 3d 1063, 1066 (D. Colo. 2020). *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>51</sup> *Id.*

<sup>52</sup> *Id.* at 1071.

<sup>53</sup> R&R at 14 (emphasis in original).

conducting an interview. At any interview, Petitioner should then be prepared to respond (as he has in this litigation) to the reasons for revocation stated in the notice and submit any additional evidence or information that he believes shows there is no significant likelihood that he should be removed in the reasonably foreseeable future.<sup>54</sup>

### Conclusion

The Court should decline to adopt the Report and Recommendation as to its finding that a regulatory violation occurred and its recommendation to grant Petitioner's immediate release.

Dated: December 1, 2025

Respectfully Submitted,

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<sup>54</sup> 8 C.F.R. § 241.13(i)(3).