IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

DAGOBERTO BARRIO MENDEZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. CIV-25-1241-PRW**
	)	
PAMELA BONDI,	)	
Attorney General, et al.,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

Petitioner Dagoberto Barrio Mendez, a Cuban citizen proceeding *pro se*,[1] filed a Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 ("Petition") challenging his detention by the U.S. Immigration and Customs Enforcement ("ICE").[2] (Doc. 1).[3] United

[1] A *pro se* litigant's pleadings are liberally construed "and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991); *see Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). But the court cannot serve as Petitioner's advocate, creating arguments on his behalf. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

[2] Petitioner was housed at Cimarron Correctional Facility in Cushing, Oklahoma, when he filed the Petition. (Doc. 1, at 1). ICE states Petitioner is currently detained at the Prairieland Detention Center in Alvarado, Texas. (Doc. 11, at Ex. 1, at 2); *see also* Online Detainee Locator System for Dagoberto Barrio-Mendez, ICE, https://locator.ice.gov/odls/#/search (enter Petitioner's A-Number and nationality; then click "Search by A-Number") (last visited Dec. 30, 2025) (stating Petitioner still located at Prairieland Detention Center). It is unclear whether this is accurate, because several documents have been returned as undeliverable to the Prairieland Detention Center. (Doc. 15). Such transfer does not destroy this Court's jurisdiction over Petitioner's claims. *See Hernandez v. Bondi*, No. 25-cv-1099-JB-LF, 2025 WL 3674627, at *1 n.2 (D.N.M. Dec. 16, 2025).

[3] Citations to the parties' filings and attached exhibits will refer to this Court's CM/ECF pagination.

States District Judge Patrick R. Wyrick referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B)-(C). (Docs. 3, 4). In accordance with the briefing schedule, (Doc. 9), Respondents timely filed a Response in Opposition to Petitioner's Petition for Writ of Habeas Corpus. (Doc. 11). Petitioner did not file a reply. For the reasons set forth below, the undersigned recommends that Petitioner be **GRANTED** habeas relief and released from custody immediately.

I. Factual Background and Procedural History

Petitioner is a native and citizen of Cuba who unlawfully entered the United States no later than 1989. (Doc. 1, at 1; Doc. 11, at 8). In 1989, Petitioner was convicted of one count of grand theft auto, one count of felony possession of cocaine, two counts of misdemeanor domestic battery, and two counts of engaging in sex with a victim under twelve years of age. (Doc. 11, at 8; *id.* at Ex. 1, at 2-3). On January 26, 1998, Petitioner was ordered removed from the United States by an immigration judge, and his removal order became administratively final soon after.[4] (Doc. 11, at 8; *id.* at Ex. 1, at 1). On April 14, 1998,[5] Petitioner was taken into custody by the organization that would eventually

---

[4] A removal order becomes administratively final upon the earlier of "(i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals." 8 U.S.C. § 1101(a)(47)(B). Petitioner did not appeal his January 26, 1998, removal order to the Board of Immigration Appeals, (Doc. 1, at 4), so his removal order became administratively final thirty days after he was ordered removed by an immigration judge, on February 25, 1998. 8 C.F.R. § 1003.38(b).

[5] Various dates in Petitioner's and Respondents' briefs conflict. For example, Petitioner states that he was taken into custody by immigration authorities in 1989 and then for a second time in 1996, (Doc. 1, at 1-2), but Respondents state his respective custodies began in 1998 and 2013. (Doc. 11, at 8). Of the parties, it appears more likely that Petitioner is

become ICE. (Doc. 11, at 8; *id.* at Ex. 1, at 1). On October 19, 2001, Petitioner was released from ICE custody on an Order of Supervision ("OOS"). (Doc. 11, at 8; *id.* at Ex. 1, at 1). In 2007, Petitioner was convicted of one count of possession of marijuana less than two ounces, and from 2010 to 2011, Petitioner was convicted of a variety of crimes related to his failure to comply with sex offender requirements. (Doc. 11, at 8; *id.* at Ex. 1, at 3-4). On November 25, 2013, ICE took custody of Petitioner for a second time and released him the same day on another OOS. (Doc. 11, at 8; *id.* at Ex. 1, at 1-2). In 2018, Petitioner received one more conviction for possession of marijuana less than two ounces. (Doc. 11, at 8; *id.* at Ex. 1, at 4).

Petitioner's instant detention began on July 1, 2025, when he was arrested at the Dallas, Texas ICE Field Office. (Doc. 11, at Ex. 1, at 2). Respondents have declared that Petitioner was re-detained "due to his final order of removal and his criminal history." (*Id.*) On October 30, 2025, ICE "submitted a nomination packet for [Petitioner's] removal to Mexico to the Assistant Field Office Director in Dallas, Texas." (*Id.*) On November 11, 2025, "Petitioner was manifested for transfer on November 15, 2025, to the Mesa Gateway Airport (IWA) . . . in Mesa, Arizona, for removal to Mexico." (*Id.*) However, ICE determined on November 13, 2025, that Petitioner was too old for removal through IWA. (*Id.*) ICE is currently "assessing the availability of a different port of return or an alternate

---

mistaken. The dates in Petitioner's Petition are not internally consistent: according to him, his current ICE custody began on August 20, 2025, and he placed his Petition into the mail system on August 10, 2025. (Doc. 1, at 2, 4, 8). Ultimately, while the exact dates are not relevant for the undersigned's analysis, the undersigned will assume that Respondents' are correct.

third country for [Petitioner's] removal," and states that "new directives between the United States and Mexico," as well as Petitioner's criminal history, make it significantly likely that Petitioner will be removed to Mexico in the reasonably foreseeable future. (Doc. 11, at 9).

Petitioner alleges that both of his prior releases on orders of supervision resulted from ICE's inability to remove him to Cuba. (Doc. 1, at 1-2). Petitioner also alleges he "was detained without first obtaining his travel document" and that "no notice of revocation was issued [explaining] the Government's reason or decision to revoke Petitioner's Order of Supervision." (*Id.* at 6).

II. Petitioner's Claims

In Count One, Petitioner claims a violation of Due Process. (*Id.*) Petitioner specifically alleges that his detention without a travel document will "cause Petitioner a lengthy detention period beyond that which would be necessary [to] effect[ive]ly remove[] him." (*Id.*)

In Count Two, Petitioner alleges that his detention constitutes arbitrary and capricious action under the Administrative Procedure Act, stating that the government's failure to provide a notice of revocation of his supervised release "violated their own regulations." (*Id.*)

In Count Three, Petitioner states that "[t]he Government's detention of Petitioner is considered punitive." (*Id.*) He states he is "detained at a facility designed to house and punish suspected criminals" and "[h]is condition of confinement given his age and medical

issues are distinguishable from those of convicted criminal[s] – further demonstrat[ing] that Petitioner's detention is punitive." (*Id.*)

Petitioner seeks a writ of habeas corpus ordering his immediate release from custody and reinstatement of his previous OOS. (*Id.* at 7). He requests that, upon release, the government notify the court of its compliance. (*Id.*) He also requests any other relief "deem[ed] just by this Court." (*Id.*)

III. Standard of Review

To obtain habeas corpus relief, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). "[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear . . . challenges to the lawfulness of immigration-related detention." *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *see also Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) ("Challenges to immigration detention are properly brought directly through habeas."); *Head v. Keisler*, No. 07-CIV-402-F, 2007 WL 4208709, at *2 (W.D. Okla. Nov. 26, 2007) (determining that "[t]his Court has subject matter jurisdiction over" unconstitutional detention in immigration-related § 2241 habeas petition).

IV. Legal Framework for the Detention or Release of Aliens Subject to a Final Order of Removal

Title 8, Section 1231(a)(2)(A) of the United States Code mandates that "the Attorney General shall detain" an alien who is ordered to be removed from the country. However, the length of detention cannot be indefinite: in general, "when an alien is ordered

removed, the Attorney General shall remove the alien from the United States within a period of 90 days." § 1231(a)(1)(A). This is known as the "removal period," and begins at the latest of (1) "[t]he date the order of removal becomes administratively final," (2) "the date of the court's final order" when a removal order is judicially reviewed, or (3) " the date the alien is released from detention or confinement" if the alien is detained according to a non-immigration process (e.g., imprisonment for a crime). *Id.*; *see Zadvydas*, 533 U.S. at 682 ("When an alien has been found to be unlawfully present in the United States and a final order of removal has been entered, the Government ordinarily secures the alien's removal during a subsequent 90–day statutory 'removal period,' during which time the alien normally is held in custody.").

"If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall [ordinarily] be subject to supervision." 8 U.S.C. § 1231(a)(3). However, an exception exists for certain aliens, including aliens who have violated criminal law, who "may be detained beyond the removal period." § 1231(a)(6); *see Zadvydas*, 553 U.S. at 682 ("A special statute authorizes further detention if the Government fails to remove the alien during those 90 days.") (citing § 1231(a)(6)); *Head*, 2007 WL 4208709, at *2 ("If an alien is not deported during the 90-day removal period, certain classes of aliens, including inadmissable aliens and criminal aliens, may continue to be subject to detention if they have not yet been removed."). "Related [ICE] regulations add that [ICE] will initially review the alien's records to decide whether further detention or release under supervision is warranted after the 90–day removal period expires." *Zadvydas*, 553 U.S. at 683 (explaining various provisions of 8 C.F.R. § 241.4).

Section 1231(a)(6) does not specify how long criminal aliens may be detained beyond the removal period. However, the Supreme Court in *Zadvydas v. Davis* held that § 1231(a)(6), "read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention." 533 U.S. at 689. The Court further specified that detention is presumptively reasonable for only six months beyond the original 90-day removal period. *Id.* at 701. "After this 6–month period, 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." *Id.*

Following the Supreme Court's holding, the *Zadvydas* challenge to continued detention was codified into the immigration regulations governing the detention review process with amendments to 8 C.F.R. § 241.4 and the addition of 8 C.F.R. § 241.13.[6] The new regulations were in place at the time of Petitioner's second ICE detention and release on November 25, 2013, and his most recent detention on July 1, 2025.

[6] *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 orders 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.").

V. Analysis

A. The Court Has Jurisdiction to Consider the Petition.

Based on 8 U.S.C. § 1252, Respondents argue this Court lacks jurisdiction to consider Petitioner's claims. (Doc. 11, at 17-19). As explained below, the undersigned concludes that jurisdiction exists to consider arguments challenging detention in circumstances similar to Petitioner's.

1. Section 1252(g)

Respondents argue that "8 U.S.C. § 1252(g) strips district courts of jurisdiction over 'any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.'" (Doc. 11, at 17). Respondents assert that "[w]hile Petitioner does not challenge 'the Attorney General's *decision* to execute his removal order, it does attack the *action* taken to execute that order.'" (*Id.*) (quoting *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 298 (3d Cir. 2020)).

In *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999), the Supreme Court explained that § 1252(g)'s jurisdictional bar applies only to "three discrete actions" – the commencement of removal proceedings, adjudication of removal proceedings, and execution of removal orders. The Supreme Court found it "implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id.* More recently, in *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) the Court reaffirmed this narrow reading, explaining that *Reno* "did not interpret [§ 1252(g)] to sweep in any claim that can

technically be said to 'arise from' the three listed actions of the Attorney General." Instead, the statutory language refers "to just those three specific actions themselves." *Id.*

The undersigned is not persuaded that § 1252(g) forecloses review of Petitioner's claims. Here, Petitioner "does not ask the Court to review the underlying merits of the removal decision. Nor does he ask the Court for a blanket stay of removal. Rather, he asks that he not be *unlawfully* removed without adequate notice and due process." *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 946-47 (D. Colo. 2025). Respondents allege that "the same principle applies" as was stated in *Tazu v. Att'y Gen. United States*, 975 F.3d 292 (3d Cir. 2020), but that case is factually distinguishable from Petitioner's. (Doc. 11, at 18). In *Tazu*, the Third Circuit held that it was foreclosed from reviewing "a brief door-to-plane detention" by ICE because such detention "is integral to the act of "execut[ing] [a] removal order[ ]." 975 F.3d at 298. Here, "the evidence in the record does not suggest that [Petitioner's] removal was or is impending . . . such that his re-detention was a brief and integral part of executing his removal order." *Jimenez Chacon v. Lyons*, --- F. Supp. 3d. ----, No. 25-cv-977-DHU-KBM, 2025 WL 3496702, at *6 (D.N.M. Dec. 4, 2025); *see also Dadfar v. Arnott*, No. 25-cv-3329-MDH, 2025 WL 3452372, at *2 (W.D. Mo. Dec. 1, 2025) ("[I]n *Tazu*, the plaintiff brought a petition for habeas relief directly challenging the timing of the execution of a removal order. . . . Moreover, Mr. Tazu was re-detained because his removal was imminent and he sought a stay of that removal from the court to complete his immigration process. . . . The Court agrees with Petitioner that *Tazu* is unpersuasive under the facts of this case.").

2. Section 1252(b)(9)

Respondents also state that 8 U.S.C. § 1252(b)(9) bars the undersigned's review. (Doc. 11, at 18-19). Section 1252(b)(9) channels "judicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien" into review of a final order of removal in the courts of appeals.

"[Section] 1252(b)(9) 'does not present a jurisdictional bar' where those bringing suit 'are not asking for a review of an order of removal,' 'the decision . . . to seek removal,' or 'the process by which . . . removability will be determined.'" *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (quoting *Jennings*, 583 U.S. at 294-95). Petitioner's unlawful detention claims do not challenge removal proceedings, but instead "challenge the lawfulness of . . . detention following revocation of an OSUP." *Zhang v. Genalo*, No. 25-cv-6781, 2025 WL 3733542, at *7 (E.D.N.Y. Dec. 28, 2025); *see also Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 153 (W.D.N.Y. 2025) (no bar on jurisdiction under § 1252(b)(9) where petitioner "argue[d] that his detention [wa]s unlawful because the government improperly revoked the order of supervision under which he had been released for more than a decade"). Notably, Respondents cite no recent decisions supporting their argument that § 1252(b)(9) bars the instant claim.

3. Conclusion

The undersigned concludes that neither § 1252(g) nor § 1252(b)(9) bars this Court from exercising jurisdiction to consider Petitioner's challenge to his detention.

B. ICE Failed To Abide By Its Notice Regulations When It Revoked Petitioner's OOS.

"'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).

In Count Two, Petitioner alleges that Respondents "failed to follow [their] own regulations." (Doc. 1, at 6).[7] While Petitioner does not cite the specific regulation he alleges ICE violated, he does state that the alleged violation was ICE's failure to issue a "notice of revocation" when ICE revoked Petitioner's OOS and re-detained him. (Doc. 1, at 6). Two separate provisions in the Code of Federal Regulations deal with the revocation of release with regard to a non-citizen's OOS: 8 C.F.R. § 241.4(l) and 8 C.F.R. § 241.13(i). *See also Xayakesone v. Noem*, No. 25-cv-2995-JES-BJW, 2025 WL 3229102, at *2 (S.D.

[7] Petitioner labels this claim as a violation of the Administrative Procedure Act, stating ICE's actions were arbitrary and capricious. (Doc. 1, at 6). However, he frames the claim as one alleging that the government violated its own regulations, (*id.*), which is cognizable in habeas. *See Intriago-Sedgwick v. Noem*, No. 25-cv-1065-MIS-LF, 2025 WL 3688155, at *8 n.7 (D.N.M. Dec. 19, 2025); *see also Trump v. J. G. G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring) (stating that "habeas corpus, not the APA, is the proper vehicle" for relevant claims). The undersigned liberally construes this *pro se* Petition as stating a habeas claim.

Cal. Nov. 19, 2025) ("Supervised release and any revocation of such release thereafter is governed by either 8 C.F.R. § 241.4 or 8 C.F.R. § 241.13").[8]

While Respondents acknowledge that § 241.13 requires a notice of revocation,[9] they contend that Petitioner's detention is only subject to § 241.4, which does not require such notice. (Doc. 11, at 19-20). This is an incorrect reading of that regulation.

Revocation under § 241.4 may occur under the following circumstances:

> (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. . . . **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 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.**
>
> (2) *Determination by the Service.* The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

---

[8] Petitioner only alleges a violation of the notice provision of the ICE regulations. While the undersigned liberally construes Petitioner's Ground One to invoke a *Zadvydas* due process challenge to the length and circumstances of his detention, Petitioner does not directly or indirectly assert a violation of the portion of 8 C.F.R. § 241.13 that requires ICE to make a determination that there is a significant likelihood of removal in the reasonably foreseeable future in connection with revocation of an OOS. Therefore, the undersigned does not undertake that regulatory analysis.

[9] Section 241.13(i)(3) states that, "Upon revocation [of an OOS], the alien will be notified of the reasons for revocation of his or her release."

> (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.

8 C.F.R. § 241.4(l) (emphasis added).

Respondents contend that Petitioner's present detention was initiated pursuant to § 241.4(l)(2), which they state "allows for broad discretion in making revocation determinations" and does not require the notice of revocation and informal interview mandated by § 241.4(l)(1). (Doc. 11, at 19). However, "courts have held that the same requirements" of notice and an interview "constrain revocation of release under [§ 241.4(l)(2)] as well." *Xayakesone*, 2025 WL 3229102, at *3. In reaching the same conclusion, one court reasoned the following:

> While not a model of clarity, the text of 8 U.S.C. § 241.4(*l*) is inconsistent with the Government's argument that Petitioner was not entitled to notice or an interview. The Government concedes that ICE must follow certain procedures if it revokes a noncitizen's release pursuant to paragraph (*l*)(1) for violation of a condition of release, but argues that those same procedures do not apply to noncitizens whose release is revoked pursuant to paragraph (*l*)(2) because paragraph (*l*)(2) provides distinct, discretionary avenues for the revocation of release. But this argument is in significant tension with the fact that paragraph (*l*)(2) also covers circumstances where a violation of a condition of supervised release is the basis for revoking a noncitizen's release. *See* 8 C.F.R. § 241.4(*l*)(2)(ii). This overlap belies the Government's argument that these are two separate processes, and suggests that paragraph (*l*) sets forth a unified set of procedures for the revocation of removal.

Zhu v. Genalo, 798 F. Supp. 3d 400, 410 (S.D.N.Y. 2025) (internal citations omitted); *see also Ceesay*, 781 F. Supp. 3d at 163 ("Courts . . . have interpreted section 241.4(l) as

requiring [the procedures of § 241.4(l)(1)] upon the revocation of release regardless of the reason for the revocation."); *Constantinovici v. Bondi*, No. 25-cv-2405-RBM-AHG, --- F. Supp. 3d ----, 2025 WL 2898985, at *4 (S.D. Cal. Oct. 10, 2025) ("District courts have consistently . . . held that § 241.4(l)(1)'s procedural requirements apply equally to revocation of a noncitizen's release pursuant to § 241.4(l)(2).").

The undersigned agrees that § 241.4(l)(2) requires the government to provide the notice of revocation described in § 241.4(l)(1). In addition to the above textual reasoning, this conclusion is bolstered by the reality that "[b]oth 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 were intended to provide due process protections to [noncitizens] following the removal period as they are considered for continued detention, release, and then possible revocation of release." *Constantinovici*, 2025 WL 2898985, at *5 (internal quotation marks omitted). Respondents' interpretation would result in *more* due process protections for non-citizens who violated their OOS than for those who did not, which is an absurd result. *See id.* Respondents therefore violated § 241.4 when they failed to provide Petitioner a notice and reasons for his revocation of release. Notably, Respondents do not contend that any notice or the informal interview were provided to Petitioner. (*See* Doc. 11; *id.* at Ex. 1).

Respondents have failed to show that ICE abided by its own regulations when revoking Petitioner's OOS, making the revocation unlawful. "ICE, like any agency, has the duty to follow its own federal regulations. As here, where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute . . . and [ICE] fails to adhere to it, the challenged [action] is invalid." *Nguyen v.*

Hyde, 2025 WL 1725791, *5 (D. Mass. June 20, 2025) (quoting *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)). Based on ICE's violation 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).[10] "A majority of district courts have found such regulatory defects amount to due process violations that entitle a petitioner to habeas relief." *Pham v. Bondi*, No. CIV-25-1157-SLP, 2025 WL 3243870, at *1 (W.D. Okla. Nov. 20, 2025) ("The Court finds the majority view persuasive and consistent with the facts and circumstances of this case.") (citing *Roble v. Bondi*, 2025 WL 2443453 at *3-4 (D. Minn. Aug. 25, 2025) (finding a generalized written notice insufficient for purposes of § 241.13(i)(3)); *Zhu v. Genalo*, No. 25-CV-6523, 2025 WL 2452352, at *8 (S.D.N.Y. Aug. 26, 2025) (finding no notice of reasons for removal was insufficient for purposes of 8 C.F.R. § 241.4); *K.E.O. v. Woosley*, No. 25-CV-74-RGJ, 2025 WL 2553394 at *5-6 (W.D. Ky. Sept. 4, 2025); *Santamaria Orellana v. Baker*, No. 25-CV-1788-TDC, 2025 WL

---

[10] Respondents cite *Bahadorani v. Bondi*, No. 25-cv-1091-PRW, 2025 WL 3048932 (W.D. Okla. Oct. 31, 2025), for the proposition that "release . . . is . . . not a corresponding remedy" for regulation violations in this case. (Doc. 11, at 21). *Bahadorani* is distinguishable. In that case, defects in the petitioner's re-detention were cured, in part, because the petitioner was "represented by counsel," was eventually "provided notice for the basis of his detention," and was "heard by both this Court and the government concerning his arguments about the changed circumstances underlying his detention." *Bahadorani*, 2025 WL 3048932, at *3. Here, Petitioner is *pro se*, and the repeated return as undeliverable of his mail suggests he has limited access to the information discussed in this case, including some or all of the government's proffered reasons for his re-detention. (*See* Docs. 12, 15-16). This is especially true considering the address Respondents certify they sent their Response to is the same address as the failed forwarding address in Doc. 15. For the same reason, Petitioner may not have "been provided an opportunity to . . . respond to the government's arguments" in a reply, because he may not have ever received the documents necessary to prepare a reply. *Bahadorani*, 2025 WL 3048932, at *3.

2444087 at *7 (D. Md. Aug. 25, 2025); *Quang Vihn Duong v. Charles, et al.*, No. 25-CV-1375-SKO, 2025 3187313 at *3-4 (E.D. Cal. Nov. 14, 2025)). *See also Soryadvongsa v. Noem*, 2025 WL 3126821, at *3 (S.D. Cal. Nov. 8, 2025) ("conclud[ing] that ICE's 29-day delay here violated the requirement to 'conduct an initial informal interview promptly'" under 8 C.F.R. § 241.13(i)(3), and stating "[t]he government's authority to civilly detain anyone is strictly confined [by the INA regulations]. [Petitioner] has carried his burden of establishing that ICE exceeded those uncompromising bounds and that his custody is unlawful. Thus, he must be set free."); *Rasakhamdee v. Noem*, 2025 WL 3102037, at *5 (S.D. Cal. Nov. 6, 2025) (concluding that "ICE violated its own regulations by failing to provide sufficient notice and a prompt interview" and holding that "[g]overnment agencies are required to follow their own regulations. ICE failed to do so here. The Court's research indicates that every district court, except two, to consider the issue has 'determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered.'") (internal citation and footnote omitted). As one court stated:

> Nothing in this Opinion constitutes a judgment on the Government's policy decision to devote public resources to removing as many aliens as it can. That is a political choice that is not before the Court. And, indeed, the Government's own regulations, as discussed above with respect to Section 241.4(l)(2), grant it enormous discretion regarding when and how the previously-authorized release of removable aliens may be revoked. But that discretion is not unlimited. If the Government does choose to embark upon a campaign of mass removal, the Constitution, its guarantees of due process to all persons present in the United States, and the rule of law all demand that detention and removal be conducted lawfully. The lawful revocation of [Petitioner's] supervised release presents a low bar to the Government, and they may yet choose to clear it, but they have not done so on the present

> record and accordingly [Petitioner] must be released from custody immediately.

E.M.M. v. Almodovar, 2025 WL 3077995, at *4 (S.D.N.Y. Nov. 4, 2025) (finding that ICE violated § 241.4 because an assistant field office director is not authorized under that regulation to revoke an OOS). Because ICE failed to provide Petitioner with appropriate notice under § 241.4(l) and thus failed to follow its regulations, the habeas claim should be granted and Petitioner should be released from custody.

C. The Undersigned Declines To Address Petitioner's Remaining Claims.

Petitioner's Count One, liberally construed, appears to be making a due process claim under *Zadvydas* relating to the length and circumstances of his detention. (Doc. 1, at 6). Count Three alleges that Petitioner's detention is punitive and therefore unlawful. (*Id.*) Because the undersigned recommends granting habeas relief on Count Two, it is unnecessary to address these claims.

VI. Recommended Ruling and Notice of Right to Object

For the reasons discussed above, the undersigned recommends that the Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 1) be **GRANTED to the extent it requests habeas relief under 28 U.S.C. § 2241.** The undersigned recommends that the Court order Respondents **to release Petitioner from custody immediately**, subject to an appropriate Order of Supervision. *See Zadvydas*, 533 U.S. at 696 ("The choice, however, is not between imprisonment and the alien 'living at large.' It is between imprisonment and supervision under release conditions that may not be violated.").

The court advises the parties of their right to object to this Report and Recommendation by January 9, 2026, under 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2).[11] The Court further advises the parties that failure to make timely objection to this report and recommendation waives their right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues and terminates the referral to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 31st day of December, 2025.

AMANDA L. MAXFIELD
UNITED STATES MAGISTRATE JUDGE

[11] Given the expedited nature of these proceedings, the undersigned has reduced the typical objection time to this Report and Recommendation. *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").