

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

DAGOBERTO BARRIO MENDEZ,)
)
 Petitioner,)
)
 v.)
) Case No. CIV-25-1241-PRW
PAMELA BOND, ATTORNEY)
GENERAL, et al.,)
)
 Respondents.)

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

In this immigration habeas proceeding, Petitioner makes three claims regarding his detention. The only proper claim before this Court, to the extent he makes it, 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. 533 U.S. 678, 699 (2001). His remaining claims are improper in a habeas proceeding such as this; specifically, his challenge to the basis for his re-detention, and his claim that his detention is punitive.

On December 31, 2025, the Honorable United States Magistrate Judge Amanda L. Maxfield issued a Report and Recommendation (“R&R”) finding that ICE failed to provide notice when it revoked Petitioner’s Order of Supervision (OOS). R&R at 11–17 (Doc. 17). The R&R declined to address Petitioner’s claims of unlawful detention under *Zadvydas* or that his detention is punitive and therefore unlawful. *Id.* at 17. The R&R

ultimately recommended “to release Petitioner from custody immediately” due to alleged regulatory violations upon the revocation of Petitioner’s OOS. *Id.*

Respondents respectfully object to the R&R’s findings and conclusions related to Petitioner’s re-detention. Specifically, Respondents object to the R&R’s conclusion that the Court has jurisdiction to review the Petitioner’s re-detention for purposes of executing a valid removal order, that ICE violated its regulations, and that Petitioner’s release is an appropriate remedy as a result. 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 does not have 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. *See* Resp. to Pet. at 17–18 (CM-ECF pagination). The Tenth Circuit recognizes the “substantial limitations” placed “on judicial review, including habeas review, of final orders of removal,” noting that habeas petitions challenging an order of removal must be filed in the court of appeals. *Thoung v. United States*, 913 F.3d 999, 1001-02 (10th Cir. 2019). And even then, challenges to final orders of removal are severely limited to certain enumerated grounds. *Vaupel v. Ortiz*, 244 F. App’x 892, 894–96 (10th Cir. 2007). Here, Petitioner has been re-detained in order to execute his removal. And given his significant criminal history, *see* R&R at 2–3 (setting out Petitioner’s criminal history), it is

reasonable to do so to ensure he is available for transport.

The R&R states that the Supreme Court has found that “[8 U.S.C.] § 1252(g)’s jurisdictional bar applies to only ‘three discrete actions’ – the commencement of removal proceedings, adjudication of removal proceedings, and execution of removal orders.” R&R at 8 (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). Section 1252(g) does not “sweep in any claim that can technically be said to ‘arise from’ the three listed actions.” *Id.* at 9 (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018)). As such, the issue here is whether a decision to re-detain an individual for purposes of removal is a decision to execute the order of removal. The R&R concludes that it is not. *Id.* at 9 (“The undersigned is not persuaded that § 1252(g) forecloses review of Petitioner’s claim.”).

In support, the R&R cites to a Colorado district court case which states that § 1252(g) did not apply to the petitioner because he wasn’t asking the court to “review the underlying merits of the removal decision” or “for a blanket stay of removal,” but that he asked to “not be *unlawfully* removed without adequate notice and due process.” R&R at 9 (quoting *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 946–947 (D. Colo. 2025)). However, the court in *Maldonado* used that statement in support of the petitioner seeking “an injunction requiring Respondents to adhere to their *non-discretionary* obligation to provide Maldonado with notice and an opportunity to seek withholding of removal before he is deported to any third country.” 794 F. Supp. 3d at 947. In the instant case, Petitioner, a Cuban citizen, is not requesting that he not be removed to a third country.

The R&R then states that *Tazu v. Att'y Gen. United States*, 975 F.3d 292 (3d Cir. 2020) is factually distinguishable because it was “a brief door-to-plane detention” which was “integral to the act of ‘execut[ing] [a] removal order[.]’” R&R at 9. It appears that the R&R believes that because Petitioner’s removal is not impending, unlike *Tazu*, that the detention is not part and parcel of executing the removal order. *Id.* (quoting *Jimenez Chacon v. Lyons*, --- F. Supp. 3d ----, No. 25-cv-977-DHU-KBM, 2025 WL 3496702 at *6 (D.N.M. Dec. 4, 2025) (“Here ‘the evidence in the record does not suggest that [Petitioner’s] removal was or is impending . . . such that this his re-detention was a brief and integral part of executing his removal order.’”)). However, unlike the petitioner in *Jimenez Chacon*, who had a Convention Against Torture deferral in place that barred him from being deported to his home country and where no third country had accepted him, 2025 WL 3496702 at *6, Petitioner, in the instant case, was manifested for transfer to Mexico on a date certain. R&R at 3 (“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.’”). However, a few days before Petitioner was deported, it was found that he ultimately could not be deported in that manner solely because of his age, not because of any other reason. *Id.* (“Petitioner was too old for removal through IWA.”) Since then, ICE has been “assessing the availability of a different port of return [to Mexico] or an alternate third country for [Petitioner’s] removal[.]” *Id.* at 3–4. Accordingly, because Petitioner’s detention and removal is more related to the ability to remove him safely in accordance with his age, it is more “likely that Petitioner’s detention is directly linked to his removal order,” *Jimenez Chacon*, 2025

WL 3496702 at *6. Thus, pursuant to § 1252(g), the decision to re-detain Petitioner for purposes of executing a removal falls outside a district court's review. In this Court, the only jurisdictionally proper claim would be to review the length of Petitioner's re-detention under *Zadvydas*.

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 notes that he was “not issue[d] any notice of revocation.” Pet. at 3 (¶ 7). Further, Respondents respectfully submit that the R&R's conclusion that 8 C.F.R. 241.4(*I*)¹ and 8 C.F.R. 241.13(i) both require notice is wrong.

In support of this assertion, the R&R cites to 8 C.F.R. § 241.4(*I*)(1) and 8 C.F.R. § 241.13(i)(3). R&R at 12. Section 241.13(i)(3) 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. In such circumstances, “the alien will be notified of the reasons for revocation of his or her release,” and “[t]he Service will conduct an initial informal interview promptly after his or her return to Service custody.” *Id.*

As it relates to notice and interview requirements under § 241.4(*I*), the R&R essentially agrees with other federal district courts, none of which are binding on this Court, who have interpreted subsection (*I*)(2) to require notice and an interview upon the

¹ Respondents italicize the lower-case “l” (as “*l*”) to distinguish it in Times New Roman font from the numerical 1.

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). R&R at 13–14 (*citing Xayakesome v. Noem*, NO. 25-cv-2995-JES-BJW, 2025 WL 3229102, at *3 (S.D. Cal. Nov. 19, 2025) and *Zhu v. Genalo*, 798 F. Supp. 3d 400, 410 (S.D.N.Y. 2025)). Such a reading, however, is inconsistent with the language’s plain text and undermines the Respondents’ authority to re-detain individuals in order to execute final orders of removal.

Section 241.4 revocations of release are found 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 highlights § 241.4(*I*)(1), R&R at 12, 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 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 (I)(2), on the other hand, allows revocation because 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.” 8 C.F.R. § 241.4(I)(2) (emphasis added). The regulation inherently recognizes the discretionary nature of these determinations, as protected by the Immigration and Nationality Act (“INA”). 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.

Id. (emphasis added).

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(I)(1) detailing revocation of release due to violations of the conditions of release—that requires an alien be notified or receive an initial informal interview “promptly” after their return to custody. 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. *See* 8 C.F.R. § 241.4(*I*)(1) (referring to “violation of conditions of release” and those who “violates the conditions of release” and (*I*)(2)(ii) referring to someone who violates “any” condition of release). This does not mean, however, that these regulations are redundant. Rather, Section 241.4(*I*)(1), which requires notification and a prompt interview, also comes with increased penalties under INA § 243(b), whereas Section 241.4(*I*)(2) does not. In other words, the United States 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(*I*)(1), in which case notification and a prompt interview must occur,² or it can determine to revoke under Section 241.4(*I*)(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, Section 241.4(*I*)(1), or (*I*)(2) does matter, and Petitioner has not established that he did not receive notice. Respondents respectfully assert that the R&R erred in finding that a violation of relevant regulations occurred. The Court should decline to adopt the R&R in this regard.

² Similar language regarding INA § 243(b) penalties exist 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).

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

Immediate release due to alleged regulatory violations is inappropriate for at least two reasons. First, because the harmless error standard applies in immigration detention cases. And second, because failure to comply with a *regulation* cannot be a basis for relief under 28 U.S.C. § 2241(c)(3), which forms the basis of Petitioner’s lawsuit and is limited to violations of the U.S. Constitution, laws, or treaties of the United States.

To start, Petitioner must show that any alleged violation prejudiced him. As recently noted by the Honorable District Judge Patrick R. Wyrick, “[t]he harmless error standard applies in deportation and administrative cases.” *Bahadorani v. Bondi*, No. 25-1091-PRW, 2025 WL 3048932 *2 (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)). As a result, it is incumbent on Petitioner “to show that the government’s failure to abide by its own regulations prejudiced him.” *Id.* at *2 (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)). In the case in front of Judge Wyrick, Petitioner claimed “zero compliance with 8 C.F.R. § 241.13(i)(2)–(3),” but only “provided conclusory statements about not recalling the government’s compliance with the regulations.” *Id.* Such is the case here. Pet. at 3 (¶ 7) (Petitioner notes that he was “not issue[d] any notice of revocation.”).

As set forth in detail in the Respondents’ Response, habeas is not a mechanism for courts to order the fulfillment of administrative requirements or to direct release on that

basis. Resp. to Pet. at 21 (CM-ECF pagination). “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); *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.). The writ provides recourse against arbitrary arrest and detention by providing a detainee the right to immediate release from illegal custody. *Id.* at 1066. And the prerequisite of a habeas corpus case is an allegation that the petitioner cannot be legally confined under any circumstances. *Id.* 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 of revocation of his OOS. Thus, even if the 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.

To the extent the Court finds a regulatory violation, the appropriate remedy for regulatory noncompliance would be to order the Respondents to comply with the regulation, such as providing Petitioner notification as to the basis for his revocation.

Finally, release from re-detention is inappropriate here because Petitioner brings

his claim under 28 U.S.C. § 2241(c)(3), which is limited to violations of the “Constitution, laws, or the treaties of the United States.” *Estelle v. McGuire*, 502 U.S. 62, 68 (1991) (“In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States.”). And in the immigration context, habeas is only “available as a forum for *statutory and constitutional challenges* to post-removal-period detention.” *Zadvydas*, 533 U.S. at 688 (emphasis added). Highlighting the differences between regulations and laws, even when courts discuss generally that regulations may have the “force and effect” of law, *See e.g., Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 65 (2004) (“agency regulations that have the force of law”), they in so doing recognize that regulations are *not* the laws of the United States but merely have the *effect* of law. And regulations certainly are not statutes.

Here, Petitioner’s claims rely on only regulatory violations for his habeas action. But even if he establishes the regulatory violations he claims, they do not constitute statutory or constitutional challenges.

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: January 9, 2026


Respectfully Submitted,

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CERTIFICATE OF SERVICE

X I hereby certify that on January 9, 2026, I served the attached document by U.S. Mail on the following, who is not a registered participant of the ECF System:

Dagoberto Barrio Mendez

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/s/ Jessica L. Cárdenas
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