THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

THANH TRI TA,	)	
	)	
Petitioner	)	
	)	
v.	)	**Case No. CIV-25-1256-PRW**
	)	
U.S. IMMIGRATION CUSTOMS AND ENFORCEMENT et al.,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

Thanh Tri Ta, proceeding *pro se*, seeks habeas corpus relief under 28 U.S.C. § 2241. (ECF Nos. 5 & 9). Respondent has responded and Petitioner has replied. (ECF Nos. 13 & 14). United 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). For the reasons set forth below, the undersigned recommends that the Court **GRANT** habeas relief to Petitioner and release him from custody immediately.

I. FACTUAL BACKGROUND

Petitioner is a citizen of Vietnam who was admitted to the United States on March 5, 1985, and on March 12, 1986, his status was adjusted to that of a Lawful Permanent Resident. (ECF No. 13-1:2). Mr. Ta was convicted of sexual assault on November 2, 1992, and sentenced to a term of five years imprisonment. (ECF No. 13-1:2). On January 31, 1997, Mr. Ta was ordered removed. (ECF No. 13-1:2). Three years passed while ICE was attempting to obtain Mr. Ta travel documents to Vietnam, but those efforts were unsuccessful. (ECF No. 5:6). In March 2000, ICE released Petitioner upon his posting of

a $5,000.00 bond. (ECF No. 13-4).[1] However, Respondents submit additional evidence that on January 22, 2007, Petitioner was issued an Order of Supervision (OOS) and Mr. Ta's bond was cancelled on July 14, 2011. (ECF No. 13-5, 13-1:2).[2] On September 19, 2025, Enforcement and Removal Operations Officers arrested and detained Mr. Ta based on his final order of removal and criminal history. (ECF No. 13-1:2).

II. PETITIONER'S CLAIMS

Mr. Ta alleges:

- He has been detained for longer than six months following his order of removal, in violation of 8 U.S.C. §1231(a)(6) and *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) and
- That ICE failed to follow its own regulations, namely 8 C.F.R. § 241.13, prior to revoking his release.

(ECF Nos. 5 & 9).

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. § 224l(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*, 533 U.S. at 687; *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

[1] Release of an alien by means of requiring a traditional bond is governed by 8 C.F.R. § 241.4.

[2] Release of an alien by means of issuing an Order of Supervision is governed by 8 C.F.R. § 241.13.

(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. JURISDICTION

Respondents argue "[p]ursuant to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act and the 2005 REAL ID Act, this Court is deprived of jurisdiction over [Petitioner's challenge to his re-detention] under [8 U.S.C.] § 1252(g)" "which 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.' " (ECF No. 13:12-13). The Court should reject this argument.

Federal courts possess jurisdiction over a matter only as authorized by the U.S. Constitution and statute. *Gunn v. Minton*, 568 U.S. 251, 256 (2013). Section 2241 of title 28, United States Code, grants district courts the authority to grant writs of habeas corpus, and district courts may entertain petitions pursuant to § 2241 in relation to immigration cases. *Ochieng v. Mukasey*, 520 F.3d 1110, 1115 (10th Cir. 2008) (noting that district courts are the appropriate forum for a noncitizen to bring § 2241 challenges to mandatory detention in the first instance). However, the Tenth Circuit has clarified that district courts' habeas jurisdiction is limited regarding orders of removal. *See Thoung v. United States*, 913 F.3d 999, 1001–02 (10th Cir. 2019) ("[T]he REAL ID Act imposes substantial limitations on judicial review, including habeas review, of final orders of removal."). Habeas petitions challenging an order of removal must be filed in a circuit court of appeals, *id.*, and even then, any challenge is limited to certain grounds

enumerated by statute, *see Vaupel v. Ortiz*, 244 F. App'x 892, 894–96 (10th Cir. 2007).

Nonetheless, the Supreme Court has recognized that district courts retain jurisdiction to consider habeas petitions that challenge determinations by an immigration judge other than orders of removal. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (reviewing a habeas petition after clarifying that "respondents are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined").

Accordingly, the Tenth Circuit has found that district courts have jurisdiction to hear a noncitizen's challenge to mandatory detention because that determination is distinct from an order of removal. *Ochieng*, 520 F.3d at 1115 ("It appears that subsequently-enacted provisions of the REAL ID Act limiting habeas relief ... do not apply in these circumstances, as [the petitioner] would not be seeking review of an order of removal, but review of his detention."); *see also* 8 C.F.R. § 1003.19(d) (2025) ("Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond ... shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.").

Indeed, several courts in this circuit, like district courts across the country, have found subject matter jurisdiction over petitions challenging determinations that a petitioner was statutorily ineligible for bond under § 1226(a). *See* ECF No. 11, *Perez v. Holt, et al.*, No. 25-1151-SLP (W.D. Okla. Nov. 5, 2025) (granting petitioner a writ of habeas corpus challenging petitioner's classification under § 1225 instead of § 1226(a));

Pastrana-Saigado v. Lyons, No. 2:25-cv-00950-MLG-LF, Doc. 24 at 1–2 (D.N.M. Oct. 24, 2025) (holding—"[l]ike the overwhelming majority of courts"—that § 1226(a) governed the petitioner's detention and that the petitioner was entitled to a bond hearing); *Garcia Domingo v. Castro*, No. 1:25-cv-00979-DHU-GJF, — F. Supp. 3d —, 2025 WL 2941217, at *4–5 (D.N.M. Oct. 15, 2025) (finding that the petitioner had established a substantial likelihood of success on the merits of his claim that he had been erroneously classified as an "applicant for admission" subject to § 1225); *see also, e.g.*, *Bolante v. Achim*, 457 F. Supp. 2d 898, 902 (E.D. Wis. 2006) ("Although Congress has stripped district courts of habeas jurisdiction to consider most immigration issues, district courts retain jurisdiction to review detention unrelated to a removal proceeding, and therefore not subject to circuit court review under INA § 242."); *Martinez-Elvir v. Olson*, No. 3:25-CV-589-CHB, — F. Supp. 3d —, 2025 WL 3006772, at *3 (W.D. Ky. 2025) ("[T]he Supreme Court has recognized that district courts retain jurisdiction to hear habeas petitions concerning issues that are collateral or ancillary to removal proceedings.").

Based on the foregoing, the Court should find subject matter jurisdiction over the Petitioner's challenge to his re-detention as violative of ICE regulations. *See Ochoa v. Noem*, et. al, 2025 WL 3125846, at *4 (D.N.M. Nov. 7, 2025) (finding subject matter jurisdiction over Petitioner's Section 2241 challenge to his detention, rejecting similar argument).

V. APPLICABLE LEGAL FRAMEWORK

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 v. Keisler*, No. 07 CIV-402-F, 2007 WL 4208709, at *2 (W.D. Okla. Nov. 26, 2007) ("If an alien is not deported during the 90-day removal period, certain classes of aliens, including inadmissible 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 *Zadvydas* Court 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.[3] The

[3] *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.").

new regulations were in place at the time of Mr. Ta's release in 2000 and his re-detention in March 2025.

C. Habeas Relief is Warranted Due to ICE's Failure to Comply with its Own Regulations

Petitioner alleges that Respondents re-detained him in violation of their own procedures as set forth in 8 C.F.R. § 241.13. (ECF No. 5:6). According to Petitioner, he "was not given any notice or any informal interview as to the reason of [his] arrest/release revocation." (ECF No. 5:6). Respondent does not directly address Petitioner's claim, but merely states "Revocation of release is governed by 8 C.F.R. § 241.4(l)." (ECF No. 13:7). Respondent then presents a section titled: "Regulatory framework for the release and revocation of release of noncitizens" wherein Respondent cites: (1) 8 C.F.R. § 241.4(l)(1), and states that this section requires notice and opportunity to be heard, and (2) 8 C.F.R. § 241.4(l)(2), and states that this section "has no such language requiring notice of the reason for revocation or for an informal interview upon being taken into custody." (ECF No. 13:7). Respondent then states:

> DHS has also enacted regulations for noncitizens who have "provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future." *Id.* § 241.13(a). Pursuant to that regulation, DHS will release a noncitizen who has made such a showing, subject to appropriate conditions of release. *Id.* § 241.13(g)(1). Similar to the regulations described above, § 241.13 provides for the revocation of release if ICE determines "that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." *Id.* § 241.13(i)(2).

(ECF No. 13:8). Notably, Respondents never state which regulation is applicable to Mr. Ta's revocation of release, and beyond outlining each regulation, Respondents never address Petitioner's regulatory argument, but instead state: "Petitioner appears to

conflate his *Zadvydas* request for immediate release with his challenge to ICE's basis for the revocation of his release. *See* Doc. 5 at ¶ 13 (Ground Three). In other words, he attempts to piggyback his *Zadvydas* request on his challenge to ICE's basis for his revocation of release." (ECF No. 13:8).

The Court disagrees, as Petitioner has raised two independent challenges, one under *Zadvydas* related to his prolonged detention and a second argument alleging that ICE failed to comply with its own regulations prior to detaining him. *See supra*. As noted, Respondent alleges that the Court lacks jurisdiction over the latter argument, but as discussed, that position is without merit. *See supra*. And beyond debating the Court's jurisdiction, Respondent does not affirmatively respond to Mr. Ta's argument, but instead merely states: "a regulatory violation, if it occurred, does not mandate habeas relief." This Court has repeatedly disagreed. *See Ye v. Bondi, et al.*, CIV-25-1230-D, 2025 WL 3485420, at *3 (W.D. Okla. Dec. 4, 2025); *Pham v. Bondi, et. al.*, NO. CIV-25-1157-SLP, 2025 WL 3477023, at *1 (W.D. Okla. Oct. 30, 2025), *adopted*, 2025 WL 3243870, at *1 (W.D. Okla. Nov. 20, 2025); *Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3011896, at *5 (W.D. Okla. Oct. 15, 2025), *adopted* 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025).

Although it is unclear at this stage which regulation governs Petitioner's release—Section 241.4 or 241.13, the debate is immaterial, as "[e]ven if Petitioner's release and ICE's subsequent revocation of that release were subject to 8 C.F.R. § 241.4, that regulation requires ICE to 'initiate the review procedures under § 241.13' whenever 'the alien submits, or the record contains, information providing a substantial reason to believe that the removal of a detained alien is not significantly likely in the reasonably foreseeable

future.' 8 C.F.R. § 241.4(i)(7)." ECF No. 19:5, n. 3, *Hamidi v. Bondi, et al.*, No. CIV-25-1205-G (W.D. Okla. Dec. 1, 2025) (order adopting report and recommendation); *see also Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3011896, at *5 (W.D. Okla. Oct. 15, 2025), *adopted* 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025) ("Regardless, the custody review process of § 241.4 specifically requires ICE to cross-reference § 241.13, the regulation codifying *Zadvydas*, in certain cases.").

In this case, it is clear that the record "contain[ed] information providing a substantial reason to believe that the removal of a detained alien is not significantly likely in the reasonably foreseeable future." *Id.* For example, Deportation Officer George McGettrick submitted an affidavit which stated that on November 12, 2025, he submitted a travel document request to the government of Vietnam for Mr. Ta; (2) he has requested and received from Mr. Ta information regarding his family, including their location and ties to Vietnam; and (3) 569 citizens have been removed to Vietnam in fiscal year 2025, exhibiting Vietnam's "willingness to accept its citizens." *See* ECF No. 13-1. This Court, and others, have found similar declarations insufficient to prove a significant likelihood of removal in the reasonably foreseeable future. *See Pham v. Bondi, et. al.*, 2025 WL 3477023, at *1 (W.D. Okla. Oct. 30, 2025), *adopted*, 2025 WL 3243870, at *1 (W.D. Okla. Nov. 20, 2025) (noting that similar declarations were insufficient to establish that there was no significant likelihood that the alien may be removed in the reasonably foreseeable future); *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").

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 supra*, 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, the undersigned finds that ICE's revocation of his OOS was

[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).

unlawful. *Qui v. Carter*, 2025 WL 2770502, at *1-2 (D. Kan. Sept. 26, 2025) (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] *See supra; Rombot v. Souza*, 296 F. Supp. 3d 383, 387–88 (D. Mass. 2017) (ordering the petitioner released where, "[b]ased on ICE's violations of its own regulations, the Court concludes [the petitioner's] detention was unlawful"); *K.E.O. v. Woosley*, Civil Action No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *7 (W.D. Ky. Sept. 4, 2025) (noting "courts across the country have ordered the release of individuals" in ICE custody where ICE "violated their own regulations"); *Grigorian v. Bondi*, CASE NO. 25-cv-22914-RAR, 2025 WL 2604573, at *10 (S.D. Fla. Sept. 9, 2025) ("The failure to provide [the petitioner] with an informal interview promptly after his detention or to otherwise provide a meaningful opportunity to contest the reasons for revocation violates both ICE's own regulations and the Fifth Amendment Due Process Clause. This compels [the petitioner's] release.").

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 submit a declaration pursuant to 28 U.S.C. § 1746

[5] The undersigned does not address Petitioner's remaining argument as to how the revocation of his release is otherwise unlawful under *Zadvydas*.

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 **December 16, 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).

VI. STATUS OF REFERRAL

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

ENTERED on December 9, 2025.

Shon T. Erwin

SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE

[6] Adoption of this Report and Recommendation will render moot Petitioner's pending emergency motion for temporary restraining order and preliminary injunction and motion to appoint counsel. ECF Nos. 2 & 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").