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

THANH TRI TA,	)	
	)	
PETITIONER,	)	
	)	
v.	)	Case. No. CIV-25-1256-PRW
	)	
US IMMIGRATION AND CUSTOMS ENFORCEMENT, et al.,	)	
	)	
	)	
RESPONDENTS.	)	

RESPONDENTS' OBJECTION TO THE REPORT AND RECOMMENDATION

In this immigration habeas proceeding, Petitioner makes various claims and contentions regarding his current detention. The only proper claim before this Court 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.[1] 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 and his demand that the Court enjoin action for any *future* revocations of Orders of Suspension or re-detention unless specified conditions are met.[2]

On December 9, 2025, the Honorable Magistrate Judge Shon T. Erwin issued a Report and Recommendation ("R&R") solely addressing Petitioner's assertion that Respondents violated their regulations in the process of Petitioner's re-detention and

[1] 533 U.S. 678, 699 (2001).

recommending immediate release as an appropriate remedy.[3] 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 Petition for Writ of Habeas Corpus (Doc. 13) 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.[4] 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 courts of appeal.[5] But then the R&R concluded that "the Court should find subject matter jurisdiction," citing a recent case from the District of New Mexico.[6]

The R&R cites *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018), for the

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[2] *See* Doc. 5, Pet. for Writ of Habeas Corpus at ¶¶ 13 (Ground Three) and 15.

[3] R&R at 5 (Doc. 15) ("Based on the foregoing, the Court should find subject matter jurisdiction over Petitioner's challenge to his re-detention as violative of ICE regulations."); *id.* at 8 (finding "Habeas Relief is Warranted Due to ICE's Failure to Comply with its Regulations"); *id.* at 12-13 ("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 unlawful."); *id.* at 13 (recommending immediate release from custody).

[4] *See* Doc. 13, Resp. to Pet. at 12-15.

[5] R&R at 3-4 (citing *Thoung v. United States*, 913 F.3d 999, 1001-02 (10th Cir. 2019)).

[6] *Id.* at 5 (citing *Ochoa v. Noem, et al.*, 2025 WL 3125846, at *4 (D.N.M. Nov. 7, 2025).

general proposition that district courts have "jurisdiction to consider habeas petitions that challenge determinations by an immigration judge other than orders of removal."[7] 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.[8] As such, the 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.[9] There Mr. Ochieng "challenge[d] his mandatory detention under 8 U.S.C. § 1226(c)," rather than the basis for his re-detention.[10] 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

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[7] R&R at 4.

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

[9] 520 F.3d 1110, 1112-13 (10th Cir. 2008).

[10] *Id.* at 1115.

the Supreme Court's *Demore v. Kim* case.[11] And *Demore* also involved review over an alien's detention under § 1226(c), and a challenge to that statute's constitutionality.[12] 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."[13] Thus, the issue in *Demore* was whether a statutory bar (specifically, Section 1226(e)), precluded habeas review of the alien's "constitutional challenge to the legislation authorizing his detention without bail."[14] 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)."[15] This is distinct from Petitioner's challenge here.[16] Unlike *Demore* and other petitions challenging mandatory detention while removal proceedings

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[11] *Id.* (citing *Demore v. Kim*, 538 U.S. 510, 517 (2003)).

[12] *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.").

[13] *Id.* at 516-17.

[14] *Id.* at 517 (finding that it does not).

[15] *Id.*

[16] 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

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

Habeas corpus relief is limited to violations of the Constitution, law, or treaties of the United States.[17] And in the immigration context, habeas is limited to "statutory and constitutional challenges" to detention.[18] Here, however, the R&R relies on purported regulatory violations for recommending the grant of habeas relief. But even if established, those violations do not constitute statutory or constitutional challenges. Indeed, when courts note that regulations can have the force and effect of law,[19] they engage in that legal fiction precisely because they are *not* literally the "laws" of the United States. Instead, they have the *effect* of law. And regulations are certainly not statutes. Accordingly, they do not provide a basis for habeas.[20]

As to this case, assuming either Section 241.13(i) or Section 241.4(*l*)(1) applies and taking at face value Petitioner's assertion that he "was not giving (sic) any notice or

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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).

[17] 28 U.S.C. § 2241(c)(3); *Estelle v. McGuire*, 502 U.S. 62, 68 (1991).

[18] *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

[19] *See, e.g., Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 65 (2004) ("agency regulations that have the force of law").

[20] *See Wright v. Lansing*, 75 F. App'x 710, 712 (10th Cir. 2003) ("To the extent that he is complaining that as a result of the alleged violation of the prison regulations he 'is in custody in violation of the ... laws ... of the United States,' 28 U.S.C. § 2241(c)(3), he has not established a violation cognizable under the habeas corpus statutes, even assuming that the regulations of a federal prison could be deemed federal law.").

any informal interview as to the reason of [his] arrest/release revocation",[21] immediate release is inappropriate. As recently noted by the Honorable District Judge Patrick Wyrick, "[t]he harmless error standard applies in deportation and administrative cases."[22] As a result, it is incumbent on Petitioner "to show that the government's failure to abide by its own regulations prejudiced him."[23] In *Bahadorani*, Petitioner claimed "zero compliance with 8 C.F.R. § 241.13(i)(2)–(3)"[24] but only "provided conclusory statements about not recalling the government's compliance with the regulations."[25] Here, Petitioner asserts that while he was not provided notice or an informal interview, the arresting agent informed him that he was arrested due to his final order of removal.[26] Further, any failure to comply with relevant regulations has been mitigated through this litigation, which has provided an opportunity for Petitioner to present evidence and respond to the government's arguments.[27] "This process has effectively cured any administrative deficiencies stemming from the government's failures to comply with [relevant

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[21] Doc. 5 at ¶ 13 (Ground Three).

[22] *Bahadorani v. Bondi*, No. CIV-25-1091-PRW, 2025 WL 3048932, at *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)).

[23] *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)).

[24] *Id.*

[25] *Id.*

[26] Doc. 5 at ¶ 13 (Ground Three).

[27] *See Bahadorani* at *2-3.

regulations]."[28]

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 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 Respondents' Response, habeas is not a mechanism for courts to order the fulfillment of administrative requirements or to direct release on that basis.[29]

"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."[30] The writ provides recourse against arbitrary arrest and detention by providing a detainee the right to immediate release from illegal custody.[31] And the prerequisite of a habeas corpus case is an allegation that the petitioner cannot be legally confined under any circumstances.[32] Petitioner has not shown that he cannot be legally confined under any circumstances,

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[28] *Id.* at *3.

[29] Resp. at 12-15.

[30] *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.").

[31] *Id.*

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 was meant to be told the reasons for his revocation prior to his renewed detention and concluded that because Petitioner did not receive such initial information, 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 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.[33]

Neither Petitioner nor the R&R makes the case that the appropriate remedy for ICE's regulatory violations is a writ of habeas corpus. Mr. Tri Ta, like the petitioner in *Bahadorani*, "has now been adequately provided notice as to the reason for his revocation and detention, he has been provided a forum to rebut the reasons for his detention, and it

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[32] *Id.* at 1071; *see also Wooten v. Bomar*, 267 F.2d 900, 901 (6th Cir. 1959) (The writ of habeas corpus "is available to correct the denial of fundamental constitutional rights, but it may not be used to correct mere irregularities or errors of law.").

[33] 8 C.F.R. § 241.13(i)(3).

is still the case that Petitioner is statutorily removable."[34]

Conclusion

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2025, I filed the attached document with the Clerk of Court via Electronic Case Filing System ("ECF") and served the attached document by U.S. Mail to the following who are not registered participants of the ECF System:

Thanh Tri Ta, [redacted]
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3200 Kings Highway
Cushing, OK 74023-5337

s/ Emily B. Fagan
Assistant U.S. Attorney

[34] 2025 WL 3048932, at *4.