THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TUNG TRAN,	)	
	)	
Petitioner	)	
	)	
v.	)	**Case No. CIV-25-1357-G**
	)	
PAMELA BONDI et al.,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

Tung Tran seeks habeas corpus relief under 28 U.S.C. § 2241. (ECF No. 1). Respondent has responded and Petitioner has replied. (ECF Nos. 11 & 14). United States District Judge Charles B. Goodwin 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 entered the United States in or around 1991 and was ordered removed on December 9, 1997. (ECF No. 1:1; 11-1:2). On October 4, 2000, Mr. Tran was taken into ICE custody and subsequently released under an Order of Supervision (OOS) on March 1, 2002. (ECF No. 11-1:2). Petitioner complied with the OOS's requirements to appear for routine check ins with Immigration and Customs Enforcement (ICE) and updated his address, as required, whenever he relocated. (ECF No. 1:2). On August 27, 2025, Enforcement and Removal Operations (ERO) Officers

arrested and detained Mr. Tran based on his final order of removal and criminal history. (ECF No. 11-1:2-3). Petitioner is now being held at the Cimarron Correctional Facility in Cushing, Payne County, Oklahoma, within the Western District of Oklahoma. (ECF No. 1:3, 11-1:3).

Petitioner alleges that he was never served with a proper Notice of Revocation of Release ("Notice") providing an explanation of why his OOS was being revoked, nor was he afforded any opportunity to challenge any Notice. (ECF No. 1:12). Petitioner contends that his detention is "designed to send a message to other individuals with final orders of removal that they need to leave the United States or they will be jailed indefinitely and without any process." (ECF No. 1:3). Petitioner alleges he cannot return to Vietnam because he does not have the requisite travel documents. (ECF No. 1:3). He states that Vietnam will not issue him a travel document, as Vietnam has no record of his citizenship and he does not have a Vietnamese birth certificate. (ECF No. 1:3). Petitioner alleges that "to the best of [his] knowledge" no attempts at removal to a third country have been attempted since he was detained. (ECF No. 1:3). Mr. Tran states that he has not been asked to apply for a travel document for any country since being detained. (ECF No. 1:2).[1]

Petitioner contends that removal is unlikely to occur any time in the reasonably foreseeable future and his "aggregate period of civil immigration confinement exceeds six months and continues to grow." (ECF No. 1:3, 7).

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[1] Respondents submit an affidavit from George McGettrick, ICE deportation officer, which states that "On November 22, 2025, ERO submitted a travel document request to the government of Vietnam, which is still pending." (ECF No. 11-1:3).

II. PETITIONER'S CLAIMS

Petitioner alleges that "ICE has denied [him] release because: (A) it incorrectly believes [he] is responsible for reestablishing that removal is not substantially likely to occur in the reasonably foreseeable future; (B) ICE seeks to punish [him] for remaining in the United States after previously having been ordered removed; and (C) ICE seeks to punish [him] to send a message to similarly situated persons who have not yet been detained as a way to encourage those similarly situated people to immediately leave the United States to avoid [his] fate." (ECF No. 1:11-12).

In Count One, Petitioner requests "declaratory judgment pursuant to 28 U.S.C. § 2201 that [he] is detained pursuant to 8 U.S.C. § 1231(a)(1)," "that [he] has previously demonstrated to ICE's satisfaction that there is no significant likelihood of his removal in the reasonably foreseeable future ("NSLRRFF")," "that ICE did not rebut [his] prior NSLRRFF showing prior to redetaining him," and "that until ICE rebuts [his] prior NSLRRFF showing, [he] may not be redetained." (ECF No. 1:20).

In Count Two, Petitioner contends that his detention by Respondents violates the Immigration and Nationality Act and applicable ICE regulations. (ECF No. 1:20-21).

In Count Three, Petitioner raises two due process claims. He states that his continued detention in excess of six months violates his "Fifth Amendment guarantee of due process" established in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) as Respondents have not rebutted his prior showing of no substantial likelihood of removal in the foreseeable future. (ECF No. 1:21-22). And he states a separate due process claim based on his allegations that he has been detained "to punish him and to otherwise send a

message to similarly situated individuals that they must leave the United States to avoid a similar fate." (ECF No. 1:22).

In Count Four, Petitioner alleges that Respondents have violated the Administrative Procedures Act [APA] as "[their] decisions, which represent changes in the agencies' policies and positions, have considered factors that Congress did not intend to be considered, have entirely failed to consider important aspects of the case, and have offered explanations for their decisions that run counter to the evidence before the agencies." (ECF No. 1:23). Respondents are sued in their official capacities. (ECF No. 1:8-9).

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 (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. ANALYSIS

Petitioner argues that "ICE has no information that could reasonably lead it to believe changed circumstances exist that justify redetention under 8 C.F.R. §

241.13(i)(2)-(3)." (ECF No. 1:13). He further argues that Respondents have failed to comply with these provisions prior to detaining Petitioner after his release on an OOS and that no independent alternative basis supports Respondents' decision to renew his detention. (ECF No. 1:20-21).

A. Statutory and Regulatory Framework

Petitioner contends that his prolonged detention following his renewed detention after the final order for his removal violates 8 U.S.C. § 1231(a). (ECF No. 1:1, 15, 20-21). This statute dictates that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." 8 U.S.C. § 1231(a)(1)(A). "During the removal period, the Attorney General shall detain the alien." *Id.* § 1231(a)(2). The removal period begins on the latest of the following dates:

> (i) The date the order of removal becomes administratively final;
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order; or
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Id. § 1231(a)(1)(B).

The removal period may be extended "and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents . . . or conspires or acts to prevent the alien's removal." *Id.* § 1231(a)(1)(C).

Finally, detention of an alien subject to a final order of removal may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *Zadvydas*, 533 U.S. at 701. After that, the detainee may bring a habeas action to challenge his detention. *Id.* at 684-85, 688. To obtain habeas relief, the petitioner has the initial burden to show "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Presuming the petitioner does so, the burden shifts, requiring "the Government [to] respond with evidence sufficient to rebut that showing." *Id.*

B. ICE Failed to Abide By its Regulations When it Revoked Petitioner's OOS

In Count Two, Petitioner alleges that Respondents failed to comply with the Immigration and Nationality Act and ICE's applicable regulations "prior to redetaining [him] after [his] release on an OOS." (ECF No. 1:21).

The revocation of Petitioner's OOS is governed by 8 U.S.C. § 1231(a)(3) as Petitioner was released from ICE detention on March 1, 2002, ECF No. 11-1:2, following "an unknown period of time believed to be . . . 24 months in ICE custody." (ECF No. 1:1-2). Petitioner alleges that "[t]he OOS [was] issued pursuant to 8 C.F.R. § 241.4(e) and 8 C.F.R. § 241.13 because it was determined there was no significant likelihood of removal in the reasonably foreseeable future," and "it was necessarily determined at that time that Tran did not present an ongoing danger or a flight risk." (ECF No. 1:2). 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: (1) on November 22, 2025, ERO submitted a travel document request to the government of Vietnam for Mr. Tran which is still pending; (2) 569 citizens have been removed to Vietnam in fiscal year 2025; and (3) the Government of Vietnam has issued travel documents for every travel document request ERO has submitted since February 2025. (ECF No. 11-1). But 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 kind 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").

Because the record contains information providing a substantial reason to believe that the removal of Mr. Tran is not significantly likely in the reasonably foreseeable future, the review procedures under § 241.13 should have been initiated. *See supra*. Under this statute, ICE may revoke an OOS and "return the alien to custody" when, "on account of changed circumstances ... there [becomes] a significant likelihood [of] the alien['s] remov[a]l in the reasonably foreseeable future," or the alien violates the conditions of supervised release. 8 C.F.R. § 241.13(i)(1)-(2). Respondents do not allege that Petitioner violated any conditions of release, *see* ECF No. 11, so it appears that Respondents rely on the "changed circumstances" prong as the justification for revocation.

"'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).

As Petitioner notes, the declaration from Officer Lahita and Respondent's brief do not claim that Petitioner was informed in writing of the reason for his redetention on August 27, 2025, and thereby concedes Tran's claims that such notice was not provided." (ECF No. 14:11, 1:12-13, 11-2). Under § 241.13(i)(3), "*[u]pon revocation*, the alien will be notified of the reasons for revocation of his or her release," after which the alien will be afforded "an initial informal interview promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* (emphasis added).

There is no indication in the record that Petitioner received formal written notification of the reasons for his renewed detention when he was detained on August 27, 2025, or at any time thereafter. "[Petitioner] does not recall ever having been served with a [Notice] purporting to revoke his OOS," (ECF No. 1:12), and Respondents have not provided a written copy of said Notice to this Court.

Respondents may contend that verbally informing Petitioner of the reasons for revocation suffices for Notice under ICE regulations, but a review of other district court cases involving renewed detentions to effectuate removal shows that ICE typically will

provide the detainee with written notice at some point during detention and provide it to the Court when responding to the detainee's habeas petition. *Zhu v. Genalo*, No. 1:25-cv-06523, 2025 WL 2452352, at * 8 (S.D.N.Y. Aug. 26, 2025) (citing cases); s*ee also Yee S. v. Bondi*, No. 25-CV-02782 (JMB/DLM), 2025 WL 2879479, at *2 (D. Minn. Oct. 9, 2025) ("The next day, having already detained Petitioner, ICE served a [Notice] on him."); *see e.g., K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, at (W.D. Ky. Sept. 4, 2025) (noting that the United States provided the district court a copy of the Petitioner's Notice to correct deficiencies identified by the Petitioner and recognizing that "[he was] entitled to a Notice . . . pursuant to authority delegated by regulation") (internal quotation marks omitted); *Umanzor-Chavez v. Noem*, SAG-25-01634, 2025 WL 2467640, at *2 (D. Md. Aug. 27, 2025) (noting that when Petitioner reported to ICE check-in his OOS "was revoked, and he was served with a notice that ICE intends to remove him to Mexico.") (internal quotation marks omitted).

This requirement of written notice is bolstered by another ICE regulation, which provides:

> A copy of any decision by the district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner to release or to detain an alien shall be provided to the detained alien.

8 C.F.R. § 241.4(d) (emphasis added).

Respondent has failed to demonstrate to the Court that it made the required determination for revocation pursuant to § 241.13(i)(2). In the end, as a result of ICE's failure to provide Petitioner with the required notice before his renewed detention, lack of apparent determination of changed circumstances necessitating revocation, and

uncertainty regarding Petitioner's Vietnamese citizenship, the undersigned finds that ICE's revocation of his OOS was unlawful. *Qui*, 2025 WL 2770502, at 1-2. (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.[2]

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 affirming that Petitioner has been released from custody.

The parties are advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by **December 29, 2025**, in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2).[3] Petitioner is further advised that

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[2] The undersigned does not address Petitioner's remaining arguments as to how the revocation of his release is otherwise unlawful under the APA or under *Zadvydas*. The undersigned also declines to address Petitioner's request for declaratory judgment as to the legality and nature of his detention under ICE regulations and whether ICE's actions were arbitrary and capricious as his immediate release, if this Report and Recommendation is adopted, will moot these requests.

[3] 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").

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 22, 2025.

Shon T. Erwin

SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE