Chief District Judge David G. Estudillo
Chief Magistrate Judge Theresa L. Fricke

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUY VAN TRAN, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:25-cv-02335-DGE-TLF **FEDERAL RESPONDENTS' OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION** Noted for Consideration: December 23, 2025.

This Court should not adopt the Report and Recommendation ("R&R"). Dkt. 12. The R&R erred in finding that ICE violated procedural due process by re-detaining Petitioner. *See* R&R, pgs. 11-12. The R&R due process analysis is flawed in that it (1) erroneously states that due process does not require a pre-deprivation hearing in the post-order context (R&R, at 12); (2) erroneously states that 8 C.F.R. § 241.13(i)(3) requires notice prior to re-detention (R&R, at 12:7-9); and (3) erroneously imports § 241.13(f) factors into OSUP revocations. The R&R further errs concerning third-country removal where no such removal is being pursued, and no agency action has rendered the issue ripe for judicial review.

Accordingly, this Court should not adopt the R&R and deny the Petition.

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I. BACKGROUND[1]

Petitioner is a native and citizen of Vietnam. See Pet., pg. 7; Dkt. 9, Declaration of Wiley Brown ("Brown Decl.") ¶ 3. He entered the United States in 1991. Brown Decl. ¶ 3. On February 28, 2017, Petitioner was convicted in the United States District Court for the Western District of Washington for the offense of Conspiracy to Distribute Controlled Substances in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B) and 846. *Id.* ¶ 5. He was sentenced to 96 months incarceration and 5 years of supervised release. *Id.*

On December 22, 2020, an immigration judge denied Petitioner's application for asylum, withholding of removal under the INA and Convention Against Torture and Deferral of Removal under the Convention Against Torture, and ordered Petitioner removed to Vietnam. *Id.* ¶ 6. As a result of this criminal activity, Petitioner was placed in removal proceedings and issued a Notice to Appear ("NTA"). Dkt. 10, Declaration of Alixandria K. Morris ("Morris Decl."), Exs. 1, 2 (Notice to Appear; I-213). On July 19, 2021, the Board of Immigration Appeals summarily dismissed Petitioner's appeal to the December 22, 2020, order of removal to Vietnam. Brown Decl. ¶ 5; Morris Decl. Ex. 3 (Order of Removal).

On October 3, 2022, Petitioner was taken into DHS custody at Clinton County Correctional Facility in Pennsylvania. Brown Decl. ¶ 8. On December 30, 2022, ICE released Petitioner on an order of supervision because there was not a significant likelihood of removal at that time. Brown Decl. ¶ 9; Morris Decl. Ex. 4 (Order of Supervision).

The Government of Vietnam has agreed to increase cooperation with the United States and issue travel documents for its citizens. Brown Decl. ¶¶ 14-19. Following this agreement increasing cooperation with the government of Vietnam, Petitioner was taken into ICE custody

[1] For a more complete recitation of the facts, the Court is respectfully referred to Federal Respondents' Return. Dkt. 7, at 2-3.

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on August 20, 2025. *Id.* ¶ 10. As of December 4, 2025, ICE had completed the necessary travel documents for Petitioner's removal to Vietnam, completed translation of the documents, and submitted them for approval. *Id.* ¶ 13. Once approved, the documents will be forwarded to the necessary government contacts in Vietnam. *Id.*

II. LEGAL STANDARD

Properly lodged objections to an R&R are reviewed *de novo*. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). "The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3).

IV. ARGUMENT

A. DHS Regulations Provide Sufficient Due Process and do not Require a Pre-Detention Hearing

The R&R incorrectly concludes that DHS was required to provide written notice of OSUP revocation and an opportunity to respond before arrest. R&R, at 12. Neither the text of the regulations nor due process jurisprudence supports that conclusion.

First, the plain language of the regulations permits post-detention process. *See* 8 C.F.R. §§ 241.4(l), 241.13. The governing regulations require only that the noncitizen be notified of the reasons for revocation and afforded an informal interview promptly after he or she is returned to custody. *Id.* Nothing in either regulation requires that notice be in writing, nor do they require that notice or an opportunity to respond be provided prior to detention. *Id.*

To the contrary, the regulations expressly contemplate that the informal interview occurs after the noncitizen has returned to custody. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(h)(3). The phrase "promptly after" cannot reasonably be read to mean before arrest. *Id.* Courts must give effect to

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the ordinary meaning of regulatory language, and the R&R's interpretation misinterprets the regulation.

Second, the post-deprivation regulatory process is constitutionally adequate. Even where a protected liberty interest exists, due process does not require pre-deprivation procedures in every case. The Supreme Court has recognized that the post-deprivation process can be sufficient where the government's interest would be undermined by advance notice or delay. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Here, DHS regulations ensure notice of the reasons for revocation and an informal interview after arrest. That framework satisfies procedural due process and forecloses the R&R's conclusion that pre-arrest notice or hearing is constitutionally required.

B. The R&R Erroneously Imports § 241.13(f) Factors into OSUP Revocations

The R&R also erroneously concludes that DHS must apply the detention factors set forth in 8 C.F.R. § 241.13(f) to revocation of Petitioner's Order of Supervision ("OSUP"). *See* R&R, at 9-10. OSUP revocation is addressed in 8 C.F.R. § 241.13(i), which authorizes DHS to revoke release based on noncompliance or a change in circumstances demonstrating a significant likelihood of removal in the reasonably foreseeable future. Section 241.13(i) must be read as written. Section 241.13(i) provides:

> The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. Thereafter, if the alien is not released from custody following the informal interview provided for in paragraph (h)(3) of this section, the provisions of § 241.4 shall govern the alien's continued detention pending removal.

8 C.F.R. § 241.13(i)(2). Both "thereafter" and "if the alien is not released" must be given independent meaning. The R&R's interpretation collapses these terms and effectively requires DHS to conduct a § 241.13(f) analysis *before* the point at which the regulation says § 241.4 applies. The use of "thereafter" suggests that the custody-review framework in § 241.4 applies

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after the revocation decision and informal interview, rather than as a required component of the revocation determination itself.

Read in context, § 241.4 sets forth the procedures and standards governing post-order custody reviews, including the timing of those reviews and the factors considered when recommending continued detention or release. Section 241.4(f), in particular, describes factors relevant to whether to recommend "further detention or release" during a custody review. Neither § 241.4(f) nor § 241.13(f) expressly states that those factors must be applied at the point of OSUP revocation under § 241.13(i). Indeed, § 241.13(i)(2) states in part: "*upon revocation*, the alien will be notified of the reasons for revocation of his or her release." 8 C.F.R. § 241.13(i)(2) (emphasis added).

This understanding is consistent with § 241.4(l)(3), which contemplates that, following revocation and a decision not to release, the normal custody-review process under § 241.4 occurs thereafter. Taken together, the regulations reflect a distinction between the revocation decision under § 241.13(i) and subsequent custody reviews governed by § 241.4.

Accordingly, to the extent the R&R may be read to require application of § 241.13(f) as part of the OSUP revocation decision itself, Federal Respondents respectfully object and request clarification regarding the proper regulatory sequence. Such clarification would also avoid the risk of importing § 241.13(f) into the OSUP revocation framework, which could risk a district-wide misinterpretation of DHS regulations in future cases.

C. The R&R Errs by Addressing Third-Country Removal Issues that are Not Ripe for Review

Finally, the R&R improperly suggests that further factual development or a hearing may be warranted concerning third-country removal policy. R&R, at 12-17. That issue is not ripe for judicial review. DHS has not notified Petitioner of a third-country removal, has not initiated any

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steps toward such a removal, and has expressly stated that no third-country removal is being pursued. *See* Brown Decl. ¶ 19. Absent a concrete agency action, any discussion of third-country removal policy is advisory and premature. Federal courts lack jurisdiction to adjudicate speculative or hypothetical disputes. The R&R's invitation to further develop the record on an issue that is not before the Court exceeds the proper scope of habeas review and should be rejected.

V. CONCLUSION

The R&R imposes procedural requirements that do not appear in the regulations and are not mandated by due process. The governing regulatory framework provides constitutionally adequate post-deprivation process and does not require application of § 241.13(f) factors at the time of OSUP revocation. The circumstances here do not implicate third-country removal concerns in this case and are therefore not ripe for consideration.

For the foregoing reasons, the Court should decline to adopt the Report and Recommendation and should deny the Petition.

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Dated this 23rd day of December, 2025.

Respectfully submitted,

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I certify that this memorandum contains 1,509 words, in compliance with the Local Civil Rules.