THE HONORABLE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUY VAN TRAN, Petitioner, vs. PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary, United States Department of Homeland Security; CAMMILLA WAMSLEY, Seattle Field Office Director, United States Citizenship and Immigration Services; BRUCE SCOTT, Warden of Immigration Detention Facility; and the United States Immigration and Customs Enforcement, Respondents.	No. CV25-2335-DGE **HUY VAN TRAN'S RESPONSE TO FEDERAL RESPONDENTS' OBJECTIONS TO THE REPORT AND RECOMMENDATION** **Noted: December 31, 2025, but all briefing has been completed with this filing, so the Petition is now ripe for deciding as of December 24, 2025.**

I. SUMMARY

The Court should immediately order Mr. Tran's release, given that the Respondents do not challenge the Magistrate Judge's correct conclusion that they failed to rebut Mr. Tran's showing that "removal is not significantly likely in the reasonably foreseeable future."[1] Nor do the Respondents challenge the incontrovertible fact that Mr. Tran has already been detained far beyond the constitutionally permissible period set forth in *Zadvydas v. Davis*, 533 U.S. 678 (2001).[2] Given these deficiencies, there is

[1] Report and Recommendation at 12, lines 16-17, dkt. 12.

[2] Report and Recommendation at 12, lines 16-17, dkt. 12; *see* Federal Respondents' Objections, dkt. 15.

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no logical basis to wholly deny Mr. Trans' Petition, as the Respondents confusingly request.[3] All of the Respondents' objections relate to issues that do not undercut the conclusion that *Zadvydas* mandates Mr. Tran's immediate release. Specifically, they object only to the R&R's conclusions regarding whether (A) a predetention hearing is necessary; (B) the OSUP revocation was proper; and (3) the third-country removal issue is ripe for review and warrants further factual development. Even if they were correct on all of these points (they are not), these arguments are insufficient to frustrate Mr. Tang's release. Further, the bulk of the Respondents' arguments should be deemed to have been waived, since they failed to advance them prior to their last filing, i.e., before the filing of their Objections. Even if not deemed waived, none of the objections should be accepted since they are logically unsound. The Court should adopt the Magistrate Judge's Report and Recommendation.

II. PROCEDURAL HISTORY

Because the R&R recommended release from detention, the Court ordered the Respondents to file their objections, if any, by Tuesday, December 23, 2025.[4] They filed those objections at 6:50 p.m. on December 23. Mr. Tran submits this response about 15 hours after the Respondents' filing to render this case ready for immediate decision. In this way, Mr. Tran's federal defender team hopes that some of Mr. Tran's family's winter holidays could be saved.

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[3] Despite not challenging the factual findings and legal conclusions that mandate his release under *Zadvydas*, the Respondents repeatedly claim that Mr. Tran's petition should be denied. *See* Objections at 1, line 23, dkt. 15 ("Accordingly, this Court should not adopt the R&R and deny the Petition."); *id.* at 6, lines 13-14 ("For the foregoing reasons, the Court should decline to adopt the Report and Recommendation and should deny the Petition.").

[4] Order Directing Response at 2, dkt. 14.

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III. ARGUMENT

A. The Respondents do not object to the R&R's conclusion that Mr. Tran's removal to Vietnam is not reasonably foreseeable. This failure is fatal to their argument that Mr. Tran's Petition should be denied.

The R&R concluded that Mr. Tran showed that his removal to Vietnam is not reasonably foreseeable,[5] that Respondents failed to rebut that showing,[6] and that Mr. Tran's release is mandated because his continued detention violates *Zadvydas*.[7] Respondents' objections challenge none of this. Consequently, they have made no argument on which to premise a denial of his immediate release, thereby waiving the issue. The Court should order Mr. Tran's immediate release.

Even if that argument were not waived, the R&R was correct. As recounted in the R&R at 11, Mr. Tran presented detailed evidence suggesting that his removal to Vietnam was not likely in the reasonably foreseeable future. The Respondents' Return set forth only the sort of conclusory assertions, such as references to "increased cooperation,"[8] that have led multiple courts in this district to find that Respondents had not met their burden of showing that removal to Vietnam is likely in the reasonably foreseeable future. *See, e.g.*, *Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *4 (W.D. Wash. Dec. 5, 2025) ("Courts in this circuit have regularly refused to find Respondents' burden met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur.") (quoting *Nguyen v. Scott*, 796 F. Supp. 3d 703, 725 (W.D. Wash. 2025)).

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[5] R&R, at 10, lines 12-13, dkt. 12.

[6] *Id.* at 11, lines 5-6.

[7] *Id.* at 12, lines 18-20.

[8] *See, e.g.*, Return at 8, dkt. 8.

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That includes this Court. *Vo v. Bondi*, No. 2:25-CV-02244-DGE-GJL, 2025 WL 3653722, at *5 (W.D. Wash. Dec. 17, 2025). *See also*, *e.g.*, *Bui v. Scott*, No. 2:25-CV-02268-TMC, 2025 WL 3706796 (W.D. Wash. Dec. 22, 2025); *Wana v. Bondi*, No. 2:25-CV-02321-RSL, 2025 WL 3628634 (W.D. Wash. Dec. 15, 2025); *Tang v. Bondi*, 2025 WL 3551381 (W.D. Wash. Dec. 11, 2025). In fact, looking only to cases litigated by the Federal Public Defender, counsel is aware of ten decisions in which courts in this district have found a *Zadvydas* violation as to Vietnamese in the past few months, with no decisions finding compliance with *Zadvydas*. The R&R's conclusion is properly aligned with this authority and Respondents make no attempt to show otherwise.

B. Mr. Tran's due process rights were violated when he was re-detained without a hearing.

The Respondents' first objection is that the R&R incorrectly concluded that Mr. Tran's due process rights were violated when he was re-detained. The R&R found that the Respondents failed to establish that Mr. Tran's re-detention was not arbitrary,[9] given that it was undisputed that he violated no condition of his release[10] and that Respondents re-detained him before making any efforts to secure the requisite travel documents.[11]

Respondents begin this objection by ignoring the constitutional dimension of the due process claim and focusing on the textual language of two regulations to contend

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[9] R&R at 12, line 11, dkt. 12.

[10] R&R at 11, lines 21-22, dkt. 12 ("It is undisputed that Mr. Tran did not violate the conditions of his release.").

[11] R&R at 12, lines 11-15, dkt. 12 ("[A]lthough respondents assert in their response and the notice of revocation that they re-detained him because removal to Vietnam is likely to occur in the imminent future, petitioner's travel document request package was only just sent to RIO for review on December 5, 2025, and it has not been forwarded to the government of Vietnam yet.").

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that no due process violation could have occurred because its reading of 8 C.F.R. § 241.4(1) and §241.13 suggests that no pre-arrest process is warranted.[12]

The Court should deem this argument waived. A reader of Respondents' Return Memorandum will search in vain for even a citation to § 241.13[13] despite the fact that Mr. Tran dedicated an entire section of his petition to the applicability of that regulation.[14] Instead, the Return's argument over the legality of Mr. Tran's re-detention was limited to a single conclusory clause of a single sentence, namely: "….there is no question that ICE was within its authority to arrest him as a result of increased cooperation with Vietnam…"[15] Mr. Tran's Response hotly contested that unsupported contention,[16] and the R&R explicitly rejected this only claim that Respondents made in its Return to justify the re-detention – that Vietnam's supposed increased cooperation justified the re-arrest.[17] The Magistrate Court should not now be criticized for not answering an argument that the Respondents did not properly advance. The objection should be deemed waived. "Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived." *Zuniga v. King Cnty. Sheriff's Off.*, No. C22-0048JLR, 2022 WL 897609, at *2 (W.D. Wash. Mar. 28, 2022) (cleaned up).

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[12] Objections, at 3, dkt. 15 (citing 8 C.F.R. §§ 241.4(1), 241.13).

[13] There is no reference to § 241.13 at all in Respondent's Return Memorandum, dkt. 8.

[14] Petition at 19-20 (Section IX).

[15] Return at 9, lines 2-3, dkt. 8.

[16] Response at 13, lines 6-11, dkt. 11.

[17] R&R at 11-12, dkt. 12.

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Even if it were not waived, Respondents' argument is not compelling for three fundamental reasons. First, they suggest that Mr. Tran's re-detention could be justified under the regulations if he were afforded with a notice of the reason for his re-detention and an informal interview *after* his arrest.[18] But like so much of its Objections, the Respondents never before advanced such an argument. Accordingly, Respondents provided no record evidence that any such notice or interview even occurred. Consequently, the Respondents cannot even show that even that minimal (and in the Petitioner's view, constitutionally inadequate) process was ever provided.

Second, the Respondents never directly address the R&R finding that the re-detention was arbitrary for violating 8 C.F.R. §241.13(f),[19] another argument advanced by Petitioner[20] that the Respondents ignored in their Return.[21] As recognized by Petitioner's briefing and the R&R, arbitrary governmental action is a hallmark of a due process violation. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 127 n.10 (1992) ("[T]he Due Process Clause . . . was intended to secure the individual from the arbitrary exercise of the powers of government.") (cleaned up). In this case, Mr. Tran's re-detention was indeed arbitrary, given the unchallenged findings that Mr. Tran violated no condition of release, that the Respondents detained him when he voluntarily

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[18] Objections at 4, lines 5-7 ("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).").

[19] R&R at 12, lines 9-15, dkt. 12. As noted *infra*, the Respondents make a different claim – that § 241.13(f) should not be considered when making a decision of whether to revoke someone's conditions of release. As will be explained shortly, that argument too should be deemed waived, and is not persuasive in any event. *See* Section III.B.

[20] Petition at 19-20, dkt. 2.

[21] Return, dkt. 8 (*passim*).

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reported in harmony with his Order of Supervision, and that his re-detention was made before the Respondents made any attempt to secure travel documents.[22]

Third, while the Respondents begrudgingly recognize the obvious truth that pre-deprivation due process procedures can be constitutionally mandated,[23] they suggest that this might not be necessary in cases where re-detention without advance notice and opportunity to be heard could undermine the government's interest.[24] This argument is not compelling: Respondents provide no analysis that even identifies what the governmental interest is, and the only interest apparent from the record in this case is a desire to unconstitutionally detain an individual contrary to *Zadvydas*. *Accord*, *P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988, at *3 (W.D. Wash. Nov. 26, 2025) ("In the final *Mathews* factor, the Court considers the Government's interest in arresting and detaining Petitioner without a hearing.") From here, their argument becomes circular and illogical: Respondents simply declare that their reading of the regulatory "framework satisfies due process and forecloses the R&R's conclusion that pre-arrest notice or hearing is constitutionally required."[25]

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[22] R&R at 3, lines 1-2, dkt. 12; *see id.* at 6-7; *see id.* at 11-12.

[23] Objections at 4, lines 3-4, dkt. 15.

[24] Objections at 4, lines 5-7, dkt. 15 ("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).").

[25] Objections at 4, lines 8-9, dkt. 15.

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B. Like the previous objection, the Respondents' argument that the R&R erred by finding that Mr. Tran had a due process right to having § 241.13(f) factors considered before his re-detention has been waived, since it was never advanced in its Return. In any event, the argument is unavailing.

The Respondents' second objection is that in their view the R&R erred in observing that, before Respondents can re-detain a person, 8 C.F.R. § 241.13(f) requires them to "consider the history of the noncitizen's compliance with the order of removal, the history of the government's efforts to remove noncitizens to the country in question, and the likelihood of the government's future success of effectuating removals of noncitizens to the country in question."[26] Specifically, Respondents make a convoluted argument involving three regulations – specifically 8 C.F.R. §241.13(f), §241.13(i), and § 241.4 – to contend that § 241.13(f) should be rendered inapplicable when deciding whether to revoke someone's release order.[27]

Like its previous objection, the Respondents nowhere before advanced this argument in their earlier briefing. As noted above, their Return entirely failed to respond to Petitioner's arguments over the import of § 241.13.[28] Indeed, it failed to discuss or even cite any of these three regulations in that Return.[29] Just as in the previous objection, there could hardly be a stronger argument for waiver. The

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[26] R&R at 9-10, dkt 12.

[27] Objections at 4-5, dkt. 15.

[28] *Compare* Petition at 19-20, dkt. 2 (discussing § 241.13(f)) *with* Return, dkt. 8 (wholly ignoring § 241.13(f)).

[29] To be extremely charitable, one arguable citation to § 241 appears in the Introduction Section of the Respondent's Return, but it in no way suggests the argument that the Respondents advance for the first time in their Objections. The relevant sentence provides: "He is a noncitizen subject to an administratively final order of removal, and he is lawfully detained under Section 241 of the Immigration and Nationality Act ('INA'). See 8 U.S.C. § 1231." Return at 2, lines 11-13, dkt. 8.

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Government's belated argument should not be considered by the Court. *See Zuniga*, 2022 WL 897609, at *2.

Even if the Court were to consider this argument, it is not availing, for the regulations can be easily harmonized by requiring the Government to consider the § 241.13(f) factors when deciding whether to revoke an alien's release for a change of circumstances under § 241.13(i). This commonsense approach is exactly what the R&R found and what due process demands.[30]

Nevertheless, the Government contends that clarification is needed, lest other Courts in this district conclude the § 241.13(f) factors be analyzed before OSUP revocations could be made.[31] This is a feature, not a bug. As noted in the Petition, several cases have recognized that individuals such as Mr. Tran – who have been released by ICE – have a heightened liberty interest in not being re-detained.[32] Requiring the Respondents to consider the § 241.13(f) factors before revoking an OSUP helps protect that heightened liberty interest. There is no error here.

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[30] R&R at 9-10, dkt. 12; *id.* at 12, lines 9-15.

[31] Objections at 5, lines 16-19, dkt. 15.

[32] Petition at 16-17, dkt. 2 (citing *Guillermo MR. v. Kaiser*, No. CV25-5436-RFL, 2025 WL 1810076, at *1 (N.D. Cal. June 30, 2025) (by alleging that he had previously been released by ICE and was about to be re-detained, "Petitioner has asserted liberty interests that differ from the liberty interests of [someone who has not been previously released]" and *Carballo v. Andrews,* No. CV25-978-KES-EPG (HC), 2025 WL 2381464, *4 (E.D. Cal. Aug. 15, 2025) (an individual who has released has had "an opportunity 'to form the [] enduring attachments of normal life'" (quoting *Morrissey v. Brewer*, 408 U.S. 471,482 (1972)), and thus has a heightened liberty interest, such as that which led the Supreme Court in *Morrisey* to impose due process requirements on parolees where the state seeks to revoke parole).

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C. The R&R correctly decided the Mr. Tran's fear of removal to a third country was ripe. Mr. Tran defers to the Court as to whether to hold a post-release hearing to expand the record on the punitive nature of a third-party removal claim.

The Respondents' final objection complains that the R&R erred by finding that Mr. Tran's fear of a third-country removal was ripe for review.[33] To support this objection, Respondents recycle the arguments that they made before in this case and other cases in this district: specifically, they claim that they are not currently considering a third-country removal and, because of this, contend that the issue is not ripe and warrants no further development.[34]

As noted by the R&R, the Respondents' position on this point has been rightly rejected in numerous cases in this district, for the reasons set forth in Mr. Tran's Petition: namely, that the current administration has shown a willingness and desire to deport people to third-countries – many of which have troubled human rights records – with insufficient notice to obtain an court order preventing that transfer.[35] The Magistrate Judge's recommendation on the ripeness issue was entirely sound and should be adopted.[36]

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[33] Objections at 5-6, dkt. 12.

[34] Objections at 5-6, dkt. 12.

[35] Petition at 21-29, dkt. 2.

[36] The Court's rationale on this issue was well-stated in the R&R:

> Nowhere in the Government's briefing or declarations do they provide a date of removal, how long RIO's review of petitioner's TDR package would take or how quickly the TDR is sent to the government of Vietnam by the ERO Attache in Vietnam after RIO has completed its review. These are circumstances courts have found sufficient to trigger review of third-country removal claims. *See Nguyen*, 2025 WL 2419288, at *13-15; *Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, at *10-*12 (W.D. Wash. Nov. 17, 2025). The harm petitioner seeks to avoid — summary transfer to a third country without notice or meaningful process — cannot be remedied once removal occurs. *Louangmility v.*

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Finally, the Government claims – with no citation to authority – that the Court lacks power to develop the record further on the punitive nature of any such removal.[37] Given that the Magistrate Court correctly decided the ripeness issue, this Court plainly has authority under Fed. R. Civ. P. 72(b)(3) to receive further evidence on this issue, as the Respondents themselves recognize in the abstract.[38] Mr. Tran defers to the Court as to whether to set such a hearing subsequent to his release.

IV. CONCLUSION

The Court should adopt the Magistrate Court's Report and Recommendation, including ordering Mr. Tran's immediate release.

DATED this 24th day of December 2025.

Respectfully submitted,

*s/ John R. Carpenter**
Assistant Federal Public Defender
Attorney for Huy Van Tran

*I certify that this pleading contains 2,060 words in compliance with LCR 72.

Noem, No. 25-CV-2502-JES-MSB, 2025 WL 2881578, at *4 (S.D. Cal. Oct. 9, 2025) (citation omitted)).

R&R at 12, lines 13-23, dkt. 12.

[37] Objections at 6, lines 4-6, dkt. 15.

[38] Objections at 3, lines 8-20, dkt. 15.

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