IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

Phong Van Do,

Petitioner

v.

Pamela Bondi, Attorney General; et al.,

Respondents.

Case No.: 4:25-CV-05643

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS & RESPONSE TO RESPONDENTS' SUMMARY JUDGMENT MOTION

EXPEDITED HANDLING REQUESTED

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Petitioner incorporates by reference the facts alleged in his verified habeas corpus petition. *See* ECF No. 1.

Additionally, Respondents have provided a declaration from Deportation Officer ("DO") Ellen Henry. ECF No. 7-1. DO Henry confirms that the government has been unable to deport Petitioner since he was ordered removed on June 5, 2000. *See id.*, ¶ 12. Henry's declaration does not contest and thereby confirms Petitioner was redetained under 8 C.F.R. § 241.13(i). ECF No. 7-1; ECF No. 1, 4; Fed. R. Civ. P. 8(b)(6). Henry does not contest and thereby concedes that Petitioner was not informed in writing of the reason for his redetention on October 9, 2025. *See* ECF No. 7-1, ¶ 16; ECF No. 1, ¶¶ 19.d, 54; Fed. R. Civ. P. 8(b)(6). The only statement Henry makes regarding notice is: "I explained his current immigration status to him and further explained that his supervision has been revoked, because ICE intend to execute his final removal order." *See* ECF No. 7-1, ¶ 16.

On November 5, 2025, "a travel document application was emailed to the Removal and International Operations desk officer in DC Headquarters (HQ). On December 4, 2025, HQ forwarded the application to the attaché in Vietnam." *Id.* Henry thus concedes that the government took 56 days after arresting Petitioner (and 11 days after Petitioner filed a petition for habeas corpus) to submit his travel documents to the Vietnam government. Henry does not state the travel document request has been approved, nor does Henry state the likelihood or timeline of approval. *See* ECF No. 7-1. Though Henry states that "Vietnam is currently accepting the return of their citizens," Henry does not state whether Vietnam is accepting the return of all of their citizens, or just some. Likewise, Henry does

not claim that Vietnam is accepting all of its citizens who are similarly situated to Petitioner.

Henry is completely silent as to the 2020 Memorandum of Understanding ("MOU") entered into between Vietnam and the United States "relating to the repatriation of pre-1995 Vietnamese immigrants. *Compare* ECF No. 7-1 *with* ECF No. 1, ¶ 2 (citing *Tran v. Scott*, No. 2:25-CV-01886-TMC-BAT, 2025 WL 2898638, at *2 (W.D. Wash. Oct. 12, 2025).

As 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); *see also Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3477023, at *5-6 (W.D. Okla. Oct. 30, 2025) (Report & Recommendation quoting and relying on *Tran* to recommend granting habeas corpus and immediate release), *adopted* 2025 WL 3243870 (W.D. Okla. Nov. 20, 2025).

Henry concedes that Petitioner is a pre-1995 Vietnamese arrival subject to the MOU. *See* ECF No. 7-1, ¶ 9; ECF No. 1, ¶ 2; Fed. R. Civ. P. 8(b)(6). Henry does not contest and thereby concedes that:

> Petitioner lacks any proof of his Vietnamese citizenship. Petitioner lacks a valid Vietnamese passport. Petitioner also lacks a Vietnamese birth certificate because his birth was attended only by a village midwife who did not complete any paperwork upon or subsequent to Petitioner's birth. To the

> best of Petitioner's knowledge, none of his eight siblings who were born in Vietnam have birth certificates.

ECF No. 1, ¶ 12; Fed. R. Civ. P. 8(b)(6).

Henry does not state that Respondents have any proof of Petitioner's Vietnamese citizenship, nor does he state that he or Respondents provided such proof to the Vietnam attaché when submitting the travel document request. ECF No. 7-1. Likewise, Henry does not state what the travel document request consisted of, nor whether it was missing any documents Vietnam requires, nor does Henry claim that Vietnam will or has scheduled an interview with Petitioner to confirm his Vietnamese citizenship.

Instead, Henry simply states in a wholly conclusory fashion that "Given Vietnam's acceptance of repatriation, there is a significant likelihood in the reasonably foreseeable future that DO will be removed to Vietnam." *Id.*, ¶ 17. Henry does not explain how many individuals have been deported to Vietnam, or when, or whether they are similarly situated from a proof of citizenship perspective and/or a criminal history perspective and/or from the perspective of being a pre-1995 arrival subject to the MOU.

Henry does not claim that third-country deportation is being attempted. Henry does not state when Petitioner's travel document request is expected to be approved or processed by Vietnam. Henry does not state when such a travel document is expected if one is issued. Henry does not state any facts that support the government's conclusion that changed circumstances make deportation more likely to occur now than has been true for the last 25 years.

Regarding the alleged "interview" that occurred on October 21, 2025, Henry does

not claim that she asked Petitioner for any reason why his supervision should not be revoked or whether he should not be detained pending removal to Vietnam. ECF No. 7-1, ¶ 16.

Henry claims that he is authorized to make redetention and continued custody decisions. *See* ECF No. 7-1, ¶¶ 3-5. However, Henry does not claim to be part of the Service's Headquarters Post-order Detention Unit ("HQPDU"), meaning that Henry is not qualified to make such decisions under the relevant regulations at 8 C.F.R. § 241.13. *Compare* ECF No. 7-1 *with* 8 C.F.R. § 241.13(b)(2), (c), (d), (e), (f), (g), (h)(1), (h)(4)(i), (j) (all restricting ability to perform certain functions relevant to this petition to the HQPDU); ECF No. 1, ¶ 19.a.

Perhaps most importantly of all, Henry does not contest and thereby concedes that "Petitioner has been redetained in the absence of changed circumstances rebutting his prior showing of no significant likelihood of removal in the reasonably foreseeable future." *Compare* ECF No. 7-1 *with* ECF No. 1, ¶ 19.c *and* 8 C.F.R. § 241.13(i)(2).

In short, Henry's declaration does not support concluding there is a significant likelihood of Petitioner being removed to Vietnam in the reasonably foreseeable future. The declaration does not support concluding changed circumstances exist which justified revoking Petitioner's OOS. If anything, the declaration confirms that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future and that his detention occurred unlawfully and in violation of his regulatory *pre*-deprivation due process rights.

ARGUMENT

I. Regulatory challenges

Respondents claim that Petitioner "does not articulate how the agency ran afoul of the regulatory text" of § 241.13(i)." ECF No. 7 at 10. This is clearly rebutted by the petition. For example, Petitioner pleaded that he "has been redetained in the absence of changed circumstances capable of rebutting his prior showing of no significant likelihood of removal in the reasonably foreseeable future." ECF No. 1, ¶ 19.c. Petitioner also pleaded that he "was never served with a Notice of Revocation of Release ('Notice') purporting to revoke his [Order of Supervision ('OOS')], nor does he recall having been given any sort of informal interview to challenge the Notice." *Id.*, ¶ 54.

Section 241.13(i)(2) provides, in pertinent part:

> **Revocation for removal.** 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.**

8 C.F.R. § 241.13(i)(2) (emphasis added). Additionally, § 241.13(i)(3) provides:

> **Revocation procedures. Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.**

8 C.F.R. § 241.13(i)(3) (emphasis added). The "determination" must be a "written

decision based on the administrative record, including any documentation provided by the alien, regarding the likelihood of removal and whether there is a significant likelihood that the alien will be removed in the reasonably foreseeable future" and must be "provide[d]... to the alien with a copy to counsel of record." 8 C.F.R. § 241.13(g).

Respondents utterly ignore the requirements for a written decision, claiming instead that DO Henry's oral notification was sufficient. This argument has been repeatedly rejected by other district courts. *Accord, e.g.*, *Yee S. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2879479, at *6 (D. Minn. Oct. 9, 2025) (ordering release because Petitioner has shown that ICE's re-detention of him . . . violated the law because ICE did not comply with its own regulations under section 241.13(i)(2)"); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("The[] regulations clearly indicate, upon revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed."); *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) ("ICE's decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (finding petitioner was likely to succeed on unlawful redetention claim because "there is no indication that an informal interview was provided"); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (holding that ICE's failures to follow regulatory revocation procedures rendered detention unlawful); *Ceesay v. Kurzdorfer*, 781 F. Supp.

3d 137, 164 (W.D.N.Y. 2025) ("because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release"); *Phan v. Noem*, No. 25-CV-2422-RBM-MSB, 2025 WL 2898977, at *5 (S.D. Cal. Oct. 10, 2025) ("**The Court's research indicates that every district court, except one, to consider the issue has 'determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered.**'") (emphasis added; footnote and citations omitted); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (agencies are required to follow their own regulations); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required.").

Illustratively, in *Roble v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2443453 (D. Minn. Aug. 25, 2025), Judge Laura Provinzino held:

> Besides merely parroting the regulatory text governing re-detention, ICE's notice to Roble provides zero reasons as to *what* changed circumstances exist such that Roble's removal is now significantly likely in the reasonably foreseeable future. … Rather, the notice summarily asserts that changed circumstances render Roble's removal from the U.S. significantly likely in the reasonably foreseeable future. … That language is not individualized to Roble; in fact, it applies to *any* noncitizen detained under 8 C.F.R. § 241.13(i)(2), since the notice simply mirrors the legal standard applicable to detaining a noncitizen released on an Order of Supervision. Providing a notice that simply recites the language of the regulation does not satisfy the Government's obligation to provide the 'reasons' why Roble's Order of Supervision was revoked.

Roble, 2025 WL 2443453, at *3 (alterations as original) (citing 8 C.F.R. § 241.13(i)(3);

Sarail A. v. Bondi, No. 25-CV-2144 (ECT/JFD), ECF No. 9 at 5 (R&R) (D. Minn. June 17, 2025) (recommending habeas relief when ICE similarly provided a notice that only parroted the regulatory text), *adopted* --- F. Supp. 3d ---, 2025 WL 2533673 (D. Minn. Sept. 3, 2025)).

The Western District of Oklahoma has also recently issued a number of favorable decisions granting habeas relief on the basis of violations of the pre-deprivation procedures at 8 C.F.R. § 241.13(i)(2)-(3). *Momennia v. Bondi*, No. 25-CV-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025), *adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025) (regulatory violation constitutes due process violation requiring immediate release); *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3243870, at *1 (W.D. Okla. Nov. 20, 2025) ("A majority of district courts have found such regulatory defects amount to due process violations that entitle a petitioner to habeas relief. … The Court finds the majority view persuasive and consistent with the facts and circumstances of this case."); *Hamidi v. Bondi*, No. 25-CV-1205-G, 2025 WL 3452454, at *2 (W.D. Okla. Dec. 1, 2025) ("The Magistrate Judge found that ICE failed to comply with 8 C.F.R. § 241.13(i)(3) in re-detaining Petitioner. The Court agrees with and adopts the Magistrate Judge's findings in this regard."); *Sukhyani v. Bondi*, No. 25-CV-1243-J (W.D. Okla. Nov. 25, 2025).

This Court has also recently issued a favorable decision under § 241.13(i)(2)-(3). *See Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *8-10 (S.D. Tex. Oct. 16, 2025).

Conversely, Respondents cite no cases in support of their questionable claim that Henry's actions complied with 8 C.F.R. § 241.13(i). Instead, Respondents claim

somewhat incredibly that Petitioner cannot meet his burden of establishing a violation of § 241.13(i) because while "[i]t is true that Petitioner pled to the contrary in his petition… pleadings are not summary judgment evidence," and "[a]bsent actual evidence expressly contradicting Officer Henry's account, [Petitioner's regulatory] claim must fail." ECF No. 7 at 7.

Respondents' claim that Petitioner's pleadings are not summary judgment evidence is incorrect. Petitioner provided a Verification under 28 U.S.C. § 2242, which verifies that "the statements made in the attached Petition for Writ of Habeas Corpus… are true and correct… under penalty of perjury pursuant to 28 U.S.C. § 1746." ECF No. 1 at 32. The verification in combination with the swearing under penalty of perjury means that the petition doubles as an affidavit in support of itself. Respondents citations to the contrary are inapposite. *In re Grand Jury Subpoena*, 419 F.3d 329, 336 (5th Cir. 2005) related to a criminal matter in which the district court found that the "crime-fraud exception" to attorney-client privilege applied. *Id.* at 336-37. In the context of that case, the Fifth Circuit held that "[a]llegations in pleadings are not evidence and are not sufficient to make a *prima facie* showing that the crime-fraud exception applies." *Id.* at 336. The Fifth Circuit did not, however, hold that verified pleadings in a civil habeas corpus matter, sworn under penalty of perjury, are not "evidence." Indeed, such a holding would run counter to 28 U.S.C. § 2242, which sets forth no evidentiary requirements. *See U.S. ex rel. Bonner v. Warden, Stateville Correctional Center*, 422 F. Supp. 11, 14 (N.D. Ill. 1976) ("A petition for habeas corpus in federal court, whether filed before or after the proposed new Rules Governing Section 2254 Cases become effective, should allege facts supporting the

grounds for relief. **It need not contain evidentiary material**.") (emphasis added); Rules Governing Section 2254 Cases and Section 2255 Proceedings ("2254 Rules") R.2(c) (requiring the petition to be signed under penalty of perjury without requiring separate forms of evidence).

Importantly, § 241.13 is the Secretary of Homeland Security's codified interpretation of the Supreme Court's *Zadvydas* decision. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Momennia*, 2025 WL 3011896, at *3 n.7 [1] and accompanying text (W.D. Okla. Oct. 15, 2025). Respondents now seek to abandon their prior interpretation of *Zadvydas*. As recognized by § 241.13, *Zadvydas* requires changed circumstances to justify redetention after release on an OOS. Here, there is no factual basis supporting ICE's half-hearted expression of expectation to receive a travel document. ICE relies solely on unsupported conjecture and speculation. Under these facts, there are no changed circumstances that justified redetaining Petitioner; redetention occurred in violation of *Zadvydas* and regulation. *E.g.*, *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

[1] *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 order 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.").

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*, --- F. Supp. 3d. ---, 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 Petitioner was previously released on an OOS, the government, under *Zadvydas* and regulation, has the burden of rebutting Petitioner's prior showing of non-deportability that was previously sufficient to obtain release. That did not happen. Petitioner's due process rights were violated by Respondents' noncompliance with the pre-deprivation procedures of § 241.13, and the Court must consequently order Petitioner's immediate release.

II. Respondents have failed to demonstrate changed circumstances justifying re-detention. To the extent Petitioner bears any burden, he has met it.

Respondents' primary error lies in failing to recognize that because Petitioner has already been released on an Order of Supervision ("OOS") pursuant to 8 C.F.R. § 241.13, *after having previously established no significant likelihood of removal in the reasonably*

foreseeable future ("NSLRRFF"), it is Respondents who bear the initial burden of establishing "changed circumstances" to redetain under both federal regulation and *Zadvydas*.[2] Nothing in Respondents' responses or supporting declarations rebuts the prior finding of NSLRRFF or otherwise demonstrates changed circumstances regarding NSLRRFF. Therefore, Petitioner's detention is unlawful, in excess of statutory and regulatory authority, and is unconstitutional. Numerous courts around the country have recently granted habeas petitions to persons that are identically (or less favorably) situated

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[2] *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001) ("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**") (emphasis added); 8 C.F.R. § 241.13(i)(2) ("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.**") (emphasis added); *see also Roble v. Bondi*, No. 25-cv-3196, --- F. Supp. 3d ---, 2025 WL 2443453 (D. Minn. Aug. 25, 2025) (granting habeas and ordering release based on less egregious regulatory violations); *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673 (D. Minn. Sept. 3, 2025) (same); *Yee S. v. Bondi*, No. 25-CV-02782-JMB-DLM, --- F. Supp. 3d ---, 2025 WL 2879479 (D. Minn. Oct. 9, 2025) (same); *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG, --- F. Supp. 3d ---, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025) (same); *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) (granting habeas and ordering release); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (finding petitioner was likely to succeed on unlawful redetention claim because "there is no indication that an informal interview was provided"); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (holding that ICE's failures to follow regulatory revocation procedures rendered detention unlawful); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025) ("because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release"); *Momennia v. Bondi*, No. 25-CV-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025) (R&R), *adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025) (granting habeas relief based on a variety of regulatory violations similar to those presented by Petitioner); *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3477023 (W.D. Okla. Oct. 30, 2025) (R&R), *adopted* 2025 WL 3243870 (W.D. Okla. Nov. 20, 2025) (same); *Hamidi v. Bondi*, No. 25-CV-1205-G, 2025 WL 3452454 (W.D. Okla. Dec. 1, 2025) (same).

to Petitioner.[3]

To the extent that Respondents submit the *Zadvydas* clock should automatically reset every time a noncitizen is released from custody on an OOS, Petitioner respectfully demurs. Numerous cases indicate otherwise,[4] as does common sense. If Respondents'

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[3] *Supra* at n.2; *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) ("ICE's decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("The[] regulations clearly indicate, upon revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed."); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 n.2 (D. Mass. June 20, 2025); *cf. Va V. v. Bondi*, No. 25-CV-2836 (LMP/JFD), *slip op.* at *6-12 (D. Minn. Aug. 11, 2025) (denying relief because a travel document was obtained, but holding that until ICE proved it had a travel document allowing for immediate deportation, it failed to demonstrate changed circumstances justifying redetention of an individual under 8 C.F.R. § 241.13(i)).

[4] *See, e.g.*, *Zadvydas*, 533 U.S. at 701; *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) ("ICE's decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("The[] regulations clearly indicate, upon revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed."); *Giorges v. Kaiser*, No. 25-cv-07683, 2025 WL 2898967, at *8 n.5 (N.D. Cal. Oct. 10, 2025) ("When calculating time spent in detention, courts aggregate nonconsecutive detention periods. The clock does not restart each time that a nonconsecutive detention begins for a noncitizen."); *Nguyen v. Scott*, --- F. Supp. 3d ---, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025) (same); *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876807, at *6 (N.D. Cal. Apr. 19, 2018) (same); *Nhean v. Brott*, No. 17-28-PAM-FLN, 2017 WL 2437268, at *2 (D. Minn. May 2, 2017) (report and recommendation) (holding that when the government detains an alien for 90 days, releases him, and then re-detains him, the second detention "was presumptively reasonable for an additional 90 days (six months in total)," not an additional six months), adopted, 2017 WL 2437246 (D. Minn. June 5, 2017); *Bailey v. Lynch*, No. 16-2600-JLL, 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (holding that the six-month *Zadvydas* period "does not restart simply because an alien who [was previously detained and then] has previously been released is taken back into custody"); *Farah v. INS*,

interpretation wins out, Respondents should simply release noncitizens at 179 days of custody for a 24-hour period before redetaining the noncitizen. This sort of gamesmanship would be rewarded and prevent *Zadvydas* claims from ever arising. It is unlikely the Supreme Court intended such a result.[5]

Additionally, if there is any question about whether to aggregate detention periods,

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No. Civ. 02-CV-4725-DSD-RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases an alien and then revokes the release based on changed circumstances, "the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*"); *Chen v. Holder*, No. 14-CV-2530, 2015 WL 13236635 (W.D. La. Nov. 20, 2015) ("Surely, under the reasoning of *Zadvydas*, a series of releases and re-detentions by the government, as was done in this case, while technically not in violation of the presumptively reasonable jurisprudential six month removal period, in essence results in an indefinite period of detention, albeit executed in successive six month intervals."); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. May 2, 2025) ("because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release"); *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3477023 (W.D. Okla. Oct. 30, 2025) (R&R), *adopted*, 2025 WL 3243870 (W.D. Okla. Nov. 20, 2025) (granting a § 1231 habeas claim roughly 3 months after Pham was re-detained in violation of regulation); *Sukhyani v. Bondi*, No. 25-CV-1243-J, 2025 WL 3283274, at *1 n.2 (W.D. Okla. Nov. 25, 2025) ("Because Petitioner was detained after he was initially ordered removed, Respondents agree that he has been 'in post order detention in excess of six months' [Doc. No. 18 at 20] despite the fact that his current detention has only lasted approximately five months.").

[5] In *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1207089, at *2 (D. Kan. Apr. 25, 2025), the district court stated, "the removal-period clock restarts when an alien subject to a removal order is again detained by ICE." However, Liu conceded this in his case and the accuracy of that claim was thus not before the court. *See Liu* at *2 ("petitioner appears to concede this point"). Conversely, Petitioner alleged in his verified habeas corpus petition that the regulation that resets the 90-day clock "is *ultra vires* to statute as an arbitrary or capricious interpretation of statute that exceeds statutory authority," distinguishing the present case from the concessions in *Liu*. ECF No. 1, ¶ 77. Moreover, even if the regulation is valid, restarting the clock pursuant to the regulation necessarily presumes lawful redetention under the regulations, which did not occur here. Consequently, Petitioner's periods of confinement must be aggregated for purposes of the *Zadvydas* claim.

the choice not to aggregate only makes sense if re-detention occurred in accordance with law. Here, there is no indication in the record that Respondents lawfully revoked Petitioner's OOS under 8 C.F.R. § 241.13(g) or (i)(2)-(3) because there is no indication that Petitioner was ever notified in writing of the changed circumstances that allegedly justified his re-detention, nor is there any credible indication in the record that Petitioner ever received an interview at which he was permitted to present evidence to demonstrate no significant likelihood of removal in the reasonably foreseeable future, nor is there any indication that the Executive Associate Commissioner, acting through the HQPDU, had any involvement in the continued custody decisions made in Petitioner's case.[6] Because Petitioner's due process rights were violated at the moment of re-detention, Respondents have unclean hands and cannot receive the windfall benefit of non-aggregated detention

[6] *See, e.g.*, *Roble v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2443453 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2533673 (D. Minn. Sept. 3, 2025); *Yee S. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2879479 (D. Minn. Oct. 9, 2025); *Constantinovici v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) (granting habeas and ordering release); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (finding petitioner was likely to succeed on unlawful redetention claim because "there is no indication that an informal interview was provided"); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (holding that ICE's failures to follow regulatory revocation procedures rendered detention unlawful); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025) ("because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release"); *Momennia v. Bondi*, No. 25-CV-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025), *adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025); *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3243870, at *1 (W.D. Okla. Nov. 20, 2025); *Hamidi v. Bondi*, No. 25-CV-1205-G, 2025 WL 3452454, at *2 (W.D. Okla. Dec. 1, 2025) ("The Magistrate Judge found that ICE failed to comply with 8 C.F.R. § 241.13(i)(3) in re-detaining Petitioner. The Court agrees with and adopts the Magistrate Judge's findings in this regard.").

periods assuming *arguendo* there are ever circumstances where detention periods cannot or should not be aggregated.

The foregoing all goes to demonstrate that Respondents err in submitting that Petitioner's "burden remains the same on re-detention." *See* ECF No. 7 at 7.[7] Respondents cite *Ali v. Dept. of Homeland Security*, 461 F. Supp. 3d at 707 (S.D. Tex. 2020) for the idea that Petitioner bears the initial burden on a re-detention case, but this Court held as recently as October 16, 2025 that *Ali* does not "inform how to properly consider and apply § 241.13(i)(2)." *Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *9 (S.D. Tex. Oct. 16, 2025). As the *Abuelhawa* court noted, "[t]he requisite showing under" 8 C.F.R. § 241.13(i)(2) "must be made, and of its terms can only be made, by the Government. This is so because the provision states that an alien may be returned 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 foreseeable future.'" *Abuelhawa*, 2025 WL 2937692, at *8 (alteration as original).

"Courts have found that... increase in frequency of removals alone does not demonstrate significant likelihood of removal in the reasonably foreseeable future." *Pham*

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[7] Respondents submit that this Court previously recognized that a habeas petition bears the initial burden in re-detention cases in *Ali v. Dept. of Homeland Security*, 451 F. Supp. 3d 703, 707 (S.D. Tex. Apr. 2, 2020). ECF No. 7 at 7-8. The undersigned has reviewed that case and found no such claim. Of note, however, is the statement by that court that "when a noncitizen presents good reason to believe that there is 'no significant likelihood of removal in the reasonably foreseeable future,' the Government must provide evidence sufficient to rebut that showing in order to continue detaining that noncitizen." **This six-month presumption is not a bright line, however, and *Zadvydas* did not automatically authorize all detention until it reaches constitutional limits**.) (emphasis added; citation omitted).

v. Bondi, No. 25-CV-1157-SLP, 2025 WL 3243870, at *2 (W.D. Okla. Nov. 20, 2025); *compare, e.g., Sang Nguyen* v. *Bondi*, No. EP-25-CV-323-KC, 2025 WL 3120516 at *7 (W.D. Tex. Nov. 7, 2025) (lack of details in Vietnam removal data contributed to no finding of significant likelihood of removal in the reasonably foreseeable future) *and, e.g., Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151-52 (same) *with Tran v. Baker*, No. 25-CV-1598-JRR, 2025 WL 2085020 at *4-5 (D. Md. July 24, 2025) (finding that detailed removal data for pre-1995 Vietnamese citizens, travel documents obtained prior to detainment, and scheduled meeting with Vietnamese consulate established significant likelihood of removal in the reasonably foreseeable future).

At present, the following is true: (1) Respondents do not have a travel document; (2) Vietnam has not promised that a travel document will be forthcoming; (3) there is no known timeline for when a travel document will be produced assuming *arguendo* one is eventually issued; (4) Respondents did not bother to submit a travel document for months; (5) Respondents have provided no proof of Petitioner's Vietnamese citizenship; (6) Respondents detained Petitioner in violation of federal regulations; and (7) Respondents make no claim that Petitioner has been interviewed by the embassy, nor that an interview is scheduled.

As was true in *Momennia*, as of December 9, 2025, "ICE's sole justification for [Petitioner's] continued detention appears to be that 'we're working on it' while conceding 'a lack of visible progress.'" *Momennia*, 2025 WL 3011896, at *7. "That does not suffice under either the regulations or *Zadvydas*." *Id.* (citing *Yee S. v. Bondi*, 2025 WL 2879479, at *5 (D. Minn. Oct. 9, 2025) (finding that "the record does not support a determination

that Petitioner is significantly likely to be removed in the reasonably foreseeable future" when Petitioner's home country of Burma was not an option for removal, ICE could "direct the Court to no facts in the record supporting a conclusion that any specific country where Petitioner is not a citizen would agree to accept him," and "Respondents simply repeat the vague and conclusory assertions that 'ICE is in the process of obtaining a travel document'"); *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").

> "ICE, like any agency, has the duty to follow its own federal regulations. As here, where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute . . . and [ICE] fails to adhere to it, the challenged [action] is invalid." *Nguyen v. Hyde*, 2025 WL 1725791, *5 (D. Mass. June 20, 2025) (quoting *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

Momennia, 2025 WL 3011896, at *8.

Put as simply as possible, Respondents have provided no evidence of changed circumstances. Instead, they simply argue that Petitioner has failed to meet his initial burden, which he does not bear. Respondents have failed to meaningfully argue that they have rebutted Petitioner's prior showing of no significant likelihood of removal in the reasonably foreseeable future, and Respondents have failed to demonstrate in response to the petition that there is presently a significant likelihood of removal in the reasonably foreseeable future. *E.g.*, *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) ("ICE's decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("The[] regulations clearly indicate, upon revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed.").

CONCLUSION

The Court must order Respondents to immediately release Petitioner.

DATED: December 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 14, 2025, the foregoing was filed and served on counsel for Respondents via the Court's CM/ECF service.

/s/ Nico Ratkowski
Nico Ratkowski, Esq.