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

Khanh Nguyen, Petitioner v. Pamela Bondi, Attorney General; et al., Respondents.	Case No.: 25-CV-1402-D **PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS** **EXPEDITED HANDLING REQUESTED**

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Petitioner incorporates by reference the facts alleged in his verified habeas corpus petition. *See* ECF No. 1. Respondents have provided two declarations from Deportation Officers ("DO" or "DOs"). ECF Nos. 15-1, 15-6. The first declaration is from DO George McGettrick. ECF No. 15-1. DO McGettrick confirms that the government has been unable to deport Petitioner since he was ordered removed on July 26, 1999. *See id.*, ¶¶ 6-7. McGettrick's declaration confirms Petitioner was redetained under 8 C.F.R. § 241.13(i). ECF No. 15-1, ¶ 7. McGettrick does not claim and thereby concedes that Petitioner was not informed in writing of the reason for his redetention on September 11, 2025. *See* ECF No. 15-1; ECF No. 1, ¶¶ 56-64; Fed. R. Civ. P. 8(b)(6). McGettrick concedes no interview was provided. ECF No. 15-1, ¶ 13. The only statement McGettrick makes regarding the basis for redetention is: "He was subsequently taken into custody to await his removal from the United States." *See* ECF No. 15-1, ¶ 11.

On November 1, 2025 (nearly 60 days after Petitioner was illegally detained), McGettrick submitted Petitioner's "Travel Document Request to ERO Headquarters, who are actively working with the U.S. State Department to remove Nguyen to Vietnam." *Id.*, ¶ 12. McGettrick also claims that on the same date he submitted the TDR to ERO HQ, he also submitted it directly to the government of Vietnam. *Id.*, ¶ 14. McGettrick does not explain his authority to submit a travel document request directly to Vietnam on the same date he submitted it to ERO HQ for review. *See* ECF No. 15-1. McGettrick states that the TDR request to Vietnam "is still pending." McGettrick does not claim that ERO HQ has submitted a TDR to Vietnam. *See id.*

McGettrick believes Petitioner's removal to Vietnam "is significantly likely in the reasonably foreseeable future" due to "Vietnam's [alleged] willingness to accept its citizens, and the number of successful removals ERO has made to Vietnam this Fiscal Year." *Id.*, ¶¶ 18-19 (referring to 569 removals of Vietnam citizens in Fiscal Year 2025, up from 58 in FY 2024).

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).

DO McGettrick claims, somewhat incredibly, that "ICE is currently not recognizing MOUs, and the Government of Vietnam has issued travel documents for **every** travel document request ERO has submitted since February 2025," further claiming that "[t]he majority of these cases were citizens of Vietnam who entered the United States prior to 1995." ECF No. 15-1, ¶ 18 (emphasis added).

The claim that Vietnam has issued travel documents for "every" request ERO has submitted since February 2025 is demonstrably false. Vietnam has not issued a travel document for Petitioner, nor has ERO issued a travel document for Tung Tran. *See Tran v.*

Bondi, No. 25-CV-1357-G (W.D. Okla.) (ECF No. 15-1 at ¶ 12, Declaration of DO George McGettrick) ("On November 22, 2025, ERO submitted a travel document request to the government of Vietnam, **which is still pending**") (emphasis added), meaning that DO McGettrick's categorical statement is incorrect. This casts doubt over how McGettrick is deciding what constitutes a "travel document request" – is he considering only requests that have been granted and ignoring long-ignored requests that are effectively denials? Second, the *Tran* case in the Western District of Washington, cited above, indicates that McGettrick's statement is false. *See Tran v. Scott*, No. 2:25-CV-01886-TMC-BAT, 2025 WL 2898638, at *3 (W.D. Wash. Oct. 12, 2025) (granting release after no travel document was provided for a pre-1995 Vietnam immigrant with a final order of removal despite the government's claims that "the ERO attaché in Vietnam has submitted the travel document packet to the government in Vietnam with a request to expedite its processing."); *see id.*, at *3 (referring to the 'Rodriguez Declaration' and *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025)). There is no indication whether any of the individuals deported to Vietnam in FY 2025 were similarly situated due to lacking any proof of Vietnamese citizenship or having a criminal history as significant as Petitioner's. McGettrick does not state that Petitioner has yet been interviewed by Vietnam, nor that an interview has been scheduled. *See* ECF No. 15-1, ¶ 16 ("an interview of the subject is typically conducted. Following a successful interview, the foreign authority issues the requisite travel document.")

McGettrick does not claim that third-country deportation is being attempted. McGettrick does not state when Petitioner's travel document request is expected to be

approved by ERO HQ or processed by Vietnam. McGettrick does not state when such a travel document is expected if one is issued. McGettrick 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.

Respondents also provide a declaration from DO Julio Guzman. ECF No. 15-6. Guzman claims that he informed Petitioner of the reason for his apprehension, which Guzman states was "his administratively final order of removal and criminal history." *Id.*, ¶ 4. Guzman does not claim that he that he asked Petitioner for any reason why his supervision should not be revoked or whether he should not be detained pending removal to Vietnam. Guzman does not claim that he provided Petitioner with any written decision, nor does he claim that he is authorized to make redetention decisions under regulation.

In short, the DO declarations do not support concluding there is a significant likelihood of Petitioner being removed to Vietnam in the reasonably foreseeable future. The declarations do not support concluding changed circumstances exist which justified revoking Petitioner's OOS. If anything, the declarations confirm 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 due process rights.

Prior to being illegally re-arrested on September 11, 2025, Petitioner served at least 452 days (nearly 16 months) in post-final-order immigration custody before being released on an OOS. ECF No. 1, ¶ 9. As of December 10, 2025, Petitioner's present period of confinement is 90 days, for an aggregate post-order detention period of 542 days (nearly 1.5 years).

ARGUMENT

I. Respondents have failed to demonstrate changed circumstances justifying re-detention. To the extent Petitioner bears any burden, he has met it. Petitioner's detention time must be aggregated.

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*.[1] Nothing in Respondents' responses or supporting declarations rebuts the prior

[1] *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

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 to Petitioner.[2]

On October 15, 2025, Magistrate Maxfield issued a Report and Recommendation ("R&R") in *Momennia*, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025) recommending the release of a similarly situated noncitizen. Magistrate Maxfield noted that 8 C.F.R. § 241.4 "specifically requires ICE to cross-reference § 241.13, the regulation codifying *Zadvydas*, in certain cases." *Momennia*, 2025 WL 3011896, at *5. The regulation Magistrate Maxfield relies upon states:

> No significant likelihood of removal. **During the custody review process** as provided in this paragraph (i), or at the conclusion of that review, **if the alien submits, or the record contains, information providing a**

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).

[2] *Supra* at n.1; *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)).

> **substantial reason to believe that the removal of a detained alien is not significantly likely in the reasonably foreseeable future, the [Headquarters Post-Order Detention Unit] shall treat that as a request for review and initiate the review procedures under § 241.13.** ...

Id. (quoting 8 C.F.R. § 241.4(i)(7) (emphasis added by Magistrate Maxfield)). As was true in *Momennia*, here, "it is clear that [Petitioner's] '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.*, at *6.

Magistrate Maxfield thoroughly analyzed 8 C.F.R. § 241.13(e)-(g) and noted, *inter alia*, that "the prospects for the timeliness of removal must be reasonable under the circumstances," and that "ICE is required to issue a written decision." *See id.*, at *6 (quoting 8 C.F.R. § 241.13(f) and citing 8 C.F.R. § 241.13(g)). As was true in *Momennia*:

> Respondents, through their opposition to [Petitioner]'s habeas petition, have had the opportunity to apprise the Court as to all facts ICE has available for administratively evaluating his case. On this record, ICE cannot, under its own regulations, find that there is a significant likelihood that [Petitioner] will be removed in the reasonably foreseeable future. Indeed, all of the § 241.13(f) factors weigh in favor of [Petitioner]'s release, due to the facts that have been alleged and either corroborated or not controverted by the parties.

Momennia, 2025 WL 3011896, at *7. Judge Maxfield's opinion was affirmed by Judge Bernard Jones on October 27, 2025. 2025 WL 3006045.

A pending travel document request is an insufficient "changed circumstance" to justify further detention of an individual who has suffered through an aggregate post-order detention period of nearly 1.5 years months (3 times the presumptively reasonable detention period, and 6 times the 90-day removal period). *See, e.g.*, *Tadros v. Noem*, No. 25cv4108, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (finding petitioner

"demonstrated there is no significant likelihood of his removal in the reasonably foreseeable future because fifteen years have gone by without the Government securing a third country for his removal"). In light of Petitioner's extraordinarily long civil detention, the meaning of "the reasonably foreseeable future" here is days, not weeks or months. *Zadvydas*, 533 U.S. at 701 ("for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink.").

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,[3] as does common sense. If Respondents'

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[3] *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*, No. Civ. 02-CV-4725-DSD-RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29,

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.[4]

Additionally, if there is any question about whether to aggregate detention periods, the choice not to aggregate only makes sense if re-detention occurred in accordance with

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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.").

[4] 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, ¶ 79. 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.

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.[5] 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 periods assuming *arguendo* there are ever circumstances where detention periods cannot

[5] *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.").

or should not be aggregated.

II. There is no credible or probative evidence indicating that *this* Petitioner is set to be removed in the reasonably foreseeable future.

ERO's prior inability to remove Petitioner, his release in 2000, and attempts by both parties since 2000 to obtain a Vietnam travel document "are directly relevant to the likelihood now that Petitioner will be removed... in the reasonably foreseeable future." *Sukhyani v. Bondi*, No. 25-CV-1243-J (W.D. Okla. Nov. 18, 2025) (R&R at 12), *adopted*, 2025 WL 3283274 (W.D. Okla. Nov. 25, 2025). "Courts have found that... increase in frequency of removals alone does not demonstrate significant likelihood of removal in the reasonably foreseeable future." *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3243870, at *2 (W.D. Okla. Nov. 20, 2025) (referring to the same claim of increased removals to Vietnam made in this case); *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) Petitioner's aggregate detention period is 3 times longer than the presumptively reasonable detention period and 6 times longer than the 90-day removal period; (5) Respondents did not bother to submit a travel document for months; (6) Respondents have provided no proof of Petitioner's Vietnamese citizenship; (7) Respondents detained Petitioner in violation of federal regulations; and (8) 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 8, 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.

In addition to *Momennia*, Magistrate Mitchell recently issued a Report and Recommendation for someone almost identically situated to this Petitioner in *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3477023 (W.D. Okla. Oct. 30, 2025), *adopted* 2025 WL 3243870 (Nov. 20, 2025). The Petitioner, as in *Pham*, is a Vietnamese citizen who entered the United States prior to 1995 and is thus subject to the MOU noted previously. In *Pham*, Magistrate Mitchell recommended granting Pham's habeas corpus petition and ordering his immediate release due to the exact same regulatory violations Petitioner relies upon. *Compare* ECF No. 1 *with Pham*, 2025 WL 3477023, at *3-6.

This Court should follow *Pham* and hold:

> While the McGettrick Declaration states 569 Vietnamese citizens were removed from the United States in 2025, it vaguely notes that this figure "included removals of Vietnam citizens who entered the United States before 1995." The data does not adequately address the likelihood of removal of pre-1995 Vietnamese citizens such as Petitioner. While stating "ERO is *currently* working on obtaining travel documents" for Petitioner, Respondents provided no evidence of progress they made towards removal of Petitioner himself before re-detention. Even if the Court were to consider the facts from the McGettrick Declaration, … Respondents failed to demonstrate changed circumstances justifying re-detention. As such, Petitioner is entitled to habeas relief.

Pham, 2025 WL 3243870, at *2 (record citations omitted).

III. Immediate release is the only appropriate remedy.

Based on ICE's violations of its own regulations, the Court must conclude that Petitioner's detention is unlawful and that his release is appropriate under 28 U.S.C. § 2241(c)(3). *See Pham*, 2025 WL 3243870, at *1 ("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."); *Yee S.*, 2025 WL 2879479, at *6 (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)"); *Roble v. Bondi*, 2025 WL 2443453, at *5 (D. Minn. Aug. 25, 2025) (holding that "[i]t goes without saying that ICE, like all government agencies, must follow its own regulations" and ordering release based on violation of 8 C.F.R. § 241.13(i)); *Sarail A. v. Bondi*, 2025 WL 2533673 (D. Minn. Sept. 3, 2025) (ordering release based on violation of 8 C.F.R. § 241.13(i)).

As Judge Palk recognized in *Pham*, a clear majority of courts have held that the violations alleged and proven by Petitioner justify immediate release through the writ of

habeas corpus. *See Pham*, 2025 WL 3243870, at *1. Reliance on *Bahadorani* is improper because, aside from being wrongly decided on presently on appeal, *Bahadorani* is factually distinguishable because "the petitioner underwent a particularized interview process regarding their removal after being detained," whereas here, "similar to the facts of *Roble*, Respondents only provided a perfunctory and generalized statement to Petitioner regarding the reason for revocation of his release." 2025 WL 3243870, at *1 n.2; *see also Hamidi*, No. 25-CV-1205-G, 2025 WL 3452454, at *3 (W.D. Okla. Dec. 1, 2025) (distinguishing *Bahadorani* for the same reasons as *Pham*).

IV. Miscellaneous

A. Jurisdiction and 8 U.S.C. § 1252(g)

Respondents briefly suggest the Court lacks subject-matter jurisdiction. As countless courts have previously recognized, 8 U.S.C. § 1252(g) is narrowly construed and does not implicate challenges to immigration detention brought directly via habeas. *Accord, e.g.*, *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004); *Head v. Keisler*, No. 07-CIV-402-F, 2007 WL 4208709, at *2 (W.D. Okla. Nov. 26, 2007) ("[t]his Court has subject matter jurisdiction over" § 2241 habeas petition); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1142-47 (D. Minn. Aug. 15, 2025) (thoroughly explaining why 8 U.S.C. § 1252(b)(9), (g) are inapplicable to immigration-related habeas petitions challenging civil detention, and collecting cases); *Reno v. Am.- Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).

The government's reliance on *Tazu v. Att'y Gen. United States*, 975 F.3d 298 (3d Cir. 2020) is misplaced because *Tazu* involved an attempt to prevent the execution of a

valid removal order so that Tazu could pursue collateral relief while inside the United States. *See Tazu*, 975 F.3d at 296 ("Tazu… argues that the Attorney General cannot execute his removal order now. He asks us to hold that the Attorney General must wait until later—after he finishes exhausting the provisional-waiver process and appealing the denial of his motion to reopen."). As the First Circuit noted in *Kong v. United States*, 62 F.4th 608, 618 (1st Cir. 2023), *Tazu* applies only to "'brief door-to-plane detention[s]' that are 'integral to the act of execut[ing] [a] removal order'" "where a noncitizen was detained by ICE **after his travel documents were secured and ICE was certain it would deport him to Bangladesh**." *Kong*, 62 F.4th at 618 (emphasis added). "In contrast, [Petitioner]'s detention last for [well] over fifty days and occurred before travel documents were secured, before deportation was certain, and allegedly without a valid warrant or any determination that his removal was likely in the reasonably foreseeable future." *Id.* The plainest proof of jurisdiction is the Supreme Court's *Zadvydas* decision. That decision could not have come out the way it did if the Court lacked subject-matter jurisdiction over the type of habeas petition presented by Petitioner. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). A variety of circuit and district courts have confirmed as much.[6]

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[6] *Accord, e.g.*, *Kong v. United States*, 62 F.4th 608 (1st Cir. 2023); *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025); *Bowrin v. U.S. INS*, 194 F.3d 483 (4th Cir. 1999); *Cardoso v. Reno*, 216 F.3d 512 (5th Cir. 2000); *Parra v. Perryman*, 172 F.3d 954 (7th Cir. 1999); *Ochieng v. Mukasey*, 520 F.3d 1110 (10th Cir. 2008) (noting that the REAL ID Act provisions limiting habeas relief do not apply when a petitioner seeks review of detention rather than an order of removal); *Maldonado v. Olson*, --- F. Supp. 3d ---, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (rejecting the argument "that detention is an 'action taken to remove' an alien"); *Aditya W.H. v. Trump*, 782 F. Supp. 3d 691 (D. Minn. 2025); *Medina v. Noem*, --- F. Supp. 3d ---, 2025 WL 2306274 (D. Md. Aug. 11, 2025); *Hernandez Marcelo v. Trump*, --- F. Supp. 3d ---, 2025 WL 2741230 (D. Iowa Sept. 10, 2025); *Roble*

B. APA, DJA, and AWA

While habeas corpus provides the primary vehicle for challenging detention, complementary statutory authorities may properly be invoked to provide complete relief where the habeas remedy alone would be inadequate. ICE's decision to re-detain Petitioner constitutes final agency action subject to APA review, as it conclusively determines rights and has direct legal consequences. The government's procedural objections regarding service are immaterial given its actual notice and full participation. Moreover, the Supreme Court's recent decision in *Trump v. J.G.G.*, 604 U.S. 670 (2025) did not foreclose APA claims in detention contexts, but rather recognized that certain challenges must proceed through habeas when they directly implicate the validity of confinement—which does not bar supplementary claims addressing procedural violations.

CONCLUSION

The Court must order Respondents to immediately release Petitioner.

DATED: December 10, 2025

Respectfully submitted,

RATKOWSKI LAW PLLC

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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); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025); *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 (W.D. Okla. Oct. 30, 2025), *adopted* 2025 WL 3243870 (W.D. Okla. Nov. 20, 2025); *Smith v. Barr*, 444 F. Supp. 3d 1289 (N.D. Okla. 2020); *Munoz-Saucedo v. Pittman*, 789 F.3d 387 (D.N.J. 2025) (finding jurisdiction over *Zadvydas* habeas claim in the Third Circuit notwithstanding *Tazu*).

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