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

Bin Chan,

Petitioner

v.

Pamela Bondi, Attorney General; Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of U.S. Immigration & Customs Enforcement; Marcos Charles, Acting Executive Associate Director for Enforcement and Removal Operations; Mark Siegel, Field Office Director for Enforcement and Removal Operations; U.S. Immigration & Customs Enforcement; U.S. Department of Homeland Security; Scarlet Grant, Warden of Cimarron Correctional Facility.

Respondents.

Case No.: 25-CV-01412-JD

PETITIONER'S SUR-REPLY TO ECF NO. 15

INTRODUCTION

Petitioner, Bin Chan, filed a petition for a writ of habeas corpus on November 25, 2025 alleging that he is being detained in violation of law. ECF No. 1. On December 1, 2025, Magistrate Maxfield ordered Respondents to respond to the petition by December 15, 2025. ECF No. 8. On December 4, 2025, Respondents filed a Notice that claims Petitioner will be removed to China on December 15, 2025. ECF No. 10. The Notice was not accompanied by any deportation officer affidavit or other evidence indicating that Respondents have a valid travel document for Petitioner. *See id.* Respondents have yet to

file a response to the merits of the habeas petition. On December 4, 2025, Petitioner filed a response to the government's Notice, identifying a number of concerns. ECF No. 12. On December 5, 2025, Magistrate Maxfield issued an Order compelling Respondents to reply to Petitioner's Notice Response (ECF No. 12) "not later than December 6, 2025, at 5:00 p.m." ECF No. 14. The Court stated that "Petitioner may file a Sur-Reply to address facts or arguments raised in Respondents' Reply not later than December 7, 2025, at 5:00 p.m." *Id.* On December 5, 2025, at 4:48 p.m., Respondents filed their reply. ECF No. 15. Respondents concurrently filed the declaration of Deportation Officer ("DO") Michael Thompson. ECF No. 15-1.

SUR-REPLY

Respondents make a variety of material misrepresentations in their reply, which the undersigned assumes are unintentional. For example, Respondents err in submitting that, "[i]n this *Zadvydas* case, … the *sole issue* is whether the length of [Petitioner's] detention is that which is sufficient to bring about Petitioner's removal." ECF No. 15 at 1-2 (alteration as original). It is unclear why Respondents believe length of detention is the sole issue, or even a major issue in this case. The habeas petition states:

> Chan does not recall if he was detained for any length of time prior to September 20, 2025 after having received an administratively final order of removal. He is therefor unable to plead that he has previously served more than six months in post-order civil detention. **However, it is not necessary for Chan to wait six months to file this petition because the government redetained Chan in violation of the laws and constitution of the United States stemming from the absence of changed circumstances demonstrating a significant likelihood of removal in the reasonably foreseeable future.**" 8 C.F.R. § 241.13(i)(2)-(3).

ECF No. 1, ¶ 5 (emphasis added). Petitioner also alleged in his habeas petition that:

> Detention periods of less than six months can be unconstitutional if the presumption of reasonableness is rebutted. **Chan has rebutted any presumption of reasonableness that might apply to the facts of his case and the length of his present detention by demonstrating** there is no reasonable likelihood of his removal in the reasonably foreseeable future and/or by demonstrating **that the Respondents have violated binding federal regulations by detaining him in the absence of changed circumstances showing a significant likelihood of removal in the reasonably foreseeable future.**

ECF No. 1, ¶¶ 79-80. Petitioner specifically identified the regulations that Respondents have not complied with. *Accord id.*, ¶ 21(a)-(e).

Numerous courts, including many within this district, have held (recently) that the types of regulatory violations Petitioner complains of are *independent due process violations* separate and apart from *Zadvydas* length of confinement claims. *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, 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)"); *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) (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.").

Because Petitioner was previously released on an OOS pursuant to 8 C.F.R. § 241.13, Respondents are not permitted to redetain Petitioner for any reason unless and until they comply with the *pre*-deprivation procedures at 8 C.F.R. § 241.13(g), (i)(2)-(3). This is true regardless of length of detention.

By focusing solely on length of detention issues, Respondents miss the entirety of Petitioner's well-pleaded claim to relief. For the reasons that follow, the rest of Respondents' arguments must be rejected.

I. The INA's jurisdiction-stripping provisions do not apply.

Respondents misstate the law in stating that "the only relevant (and jurisdictionally

allowable) question is 'whether the detention in question exceeds a period reasonably necessary to secure removal.'" ECF No. 15 at 4 (alteration removed); *supra* at 3-4 (collecting cases demonstrating otherwise). 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) (determining that "[t]his Court has subject matter jurisdiction over" unconstitutional detention in immigration-related § 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).

Respondents' reliance on 8 U.S.C. § 1252(a)(2)(B)(ii) is wholly unwarranted. That section's jurisdiction-stripping provision only applies to statutes that "specify" discretion. *Kucana v. Holder*, 558 U.S. 233, 248-49 (2010). Neither the Secretary of Homeland Security nor the Attorney General possesses statutorily specified discretion to ignore federal regulations affecting Petitioner's protected liberty interests. *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process."); *M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) ("Although ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody, they have a protected liberty

interest in remaining out of custody.") (quoting *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025)); *Santamaria Orellana v. Baker*, Civil Action No. 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025) (Both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 were intended to "provide due process protections to [noncitizens] following the removal period as they are considered for continued detention, release, and then possible revocation of release…"); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (government agencies are required to follow their own regulations); *United States v. Ramos*, 623 F.3d 672, 683 (9th Cir. 2010) ("It is a well-known maxim that agencies must comply with their own regulations.") (quoting *Ramon–Sepulveda v. INS*, 743 F.2d 1307, 1310 (9th Cir. 1984)).

Respondents attempt to invoke § 1252(a)(2)(B)(ii) by recharacterizing their intended movement of Petitioner out of the jurisdiction as the mere discretionary exercise of the Attorney General's power to transfer aliens from one locale to another, as they deem appropriate. But that ignores the fact that the detention is unlawful, *a priori*, due to noncompliance with 8 C.F.R. § 241.13, whereas the decisions Respondents rely upon assume lawful detention prior to lawful transfer. Where the Court is not satisfied that detention itself is lawful, it absolutely has the power to maintain the status quo by ordering that Petitioner remains in the jurisdiction pending an ultimate decision on the habeas petition. *Accord, e.g.*, 28 U.S.C. § 1651 (All Writs Act); *United States v. Kolade*, No. 3:22-CV-00459-KAD, 2025 WL 521095, at *1 (D. Conn. Feb. 18, 2025) ("On April 10, 2024, the Court issued a writ of *ne exeat republica* to restrain the defendants from

departing the jurisdiction of the Court, given their significant ties to Nigeria and their apparent intention to permanently live there."); *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 945-46 (D. Colo. Aug. 8, 2025) ("Ultimately, the Court finds that it has authority to enter an injunction preventing Maldonado's unlawful removal from the United States and transfer from the District of Colorado during the pendency of these habeas proceedings under at least the All Writs Act.").

Petitioner is not asking the Court to interfere with the execution of a removal order. Instead, Petitioner is asking the Court to order Petitioner's release from unconstitutional detention where the Respondents have failed to rebut the previous demonstration of no significant likelihood of removal in the reasonably foreseeable future. While the government apparently balks at the idea that it bears a burden of production to demonstrate that China is significantly likely to accept Petitioner prior to putting Petitioner on a plane, that reality is a consequence of Respondents' prior failures to comply with the pre-deprivation procedures at 8 C.F.R. § 241.13 in combination with Respondents' prior release of Petitioner on an OOS under § 241.13. It is unclear why Respondents believe that "significant likelihood of removal in the reasonably foreseeable future" does not include as a subcomponent "significant likelihood of acceptance by the recipient country." Obviously, if China will refuse to accept Petitioner, then there is no significant likelihood of removal to China. This is not hard to understand.

Respondents err in claiming that "[r]equiring the production of proof of Petitioner's impending removal... falls in this jurisdictionally barred bucket." ECF No. 15 at 8-9. Proof of impending removal is an element of re-detention under § 241.13(i), and the Court

necessarily possesses the authority and jurisdiction to require such proof when Respondents have failed to comply with pre-deprivation procedures prior to re-arresting noncitizens previously released on Orders of Supervision under § 241.13. Surely, if Respondents sought to shoot Petitioner out of a cannon into Canadian airspace, the Court could enjoin such action without running afoul of § 1252(g). While this example is intended to be extreme, it shows that the government does not have *carte blanche* to effect deportation in any manner it chooses. Whether or not the government may attempt a deportation in the absence of a travel document or other proof that the receiving country will accept the intended deportee is a question for the Court to decide, and it has jurisdiction to do so, especially in the context of this case where the government is required to rebut Petitioner's showing of good reason to believe there is no significant likelihood that Petitioner will be deported to China.

II. Travel documents are necessary to demonstrate a significant likelihood that China will accept Petitioner. If travel documents are unavailable, other reliable proof of China's acceptance of Petitioner is necessary.

Respondents take umbrage at the idea of being compelled to present proof of a travel document. Illustratively, Respondents argue:

> Petitioner's demand for proof of a "travel document," if genuine, is revealing as not every country (and even not every country *consistently*) requires such a document prior to acceptance. Rather, each country-to-country communication regarding the exchange of individuals is a fluid, constantly changing process. Petitioner's suggestion, therefore, that there is some uniform process for removal or that "travel documents" are issued from all countries and in advance in all cases, is without merit and merely serves to further undermine his credibility as to this challenge.

ECF No. 15 at 2 (alteration as original). This argument boils down to, "it's complicated

and I don't have the time to explain it to you, so you're just going to have to trust me." DO Thompson tentatively agrees with his counsel, claiming that "**[a]t times**, certain countries, such as China, do not conduct interviews or issue traditional travel documents. Instead, the country will only require proof of citizenship, which ERO provides in the form of identity documentation." ECF No. 15-1, ¶ 13 (emphasis added).

Respondents' claims, as well as DO Thompson's claims, appear to be demonstrably false. The undersigned did a quick Westlaw Boolean search ("China" /p "travel document") and received 235 responsive cases. Of those cases, every case the undersigned clicked on referred to presenting travel document packets to the Chinese embassy, with many of these cases being very recent.[1] While the undersigned is tempted to cite and quote

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[1] *Chan v. Mayorkas*, No. 24-CV-1315-JLS-MSB, 2024 WL 5159900, at *1-2 (S.D. Cal. **Dec. 18, 2024**) ("San Diego field office submitted a travel document packet to the Consulate General of the People's Republic of China in Los Angeles. Return at 3. That same day, ERO's Removal and International Operations ("RIO") division presented this **travel document packet to the ERO Assistant Attaché for Removals in Beijing, China for presentation of the travel document packet to the Hong Kong Immigration Department.**") (emphasis added); *Yan-Ling X. v. Lyons*, No. 25-CV-01412-KES-CDB, 2025 WL 3123793, at *2 (E.D. Cal. **Nov. 7, 2025**) ("on October 14, 2025, ICE revoked her order of supervision and arrested her. … ICE provided her with a notice of revocation of release, which states that her order of supervision was revoked because her '**case is currently under review by the Government of China for the issuance of a travel document** and [her] removal is now imminent.' The notice was signed by Sergio Albarran, the Field Office Director of the San Francisco Field Office of ICE.") (emphasis added; record citations omitted); *Qui v. Carter*, No. 25-CV-3131-JWL, 2025 WL 2770502, at *3-4 (D. Kan. **Sept. 26, 2025**) (*inter alia*, "that declaration, after stating that **China requires a travel document for removal without a valid passport**…") (emphasis added); *Liu v. Carter*, No. 25-CV-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. **June 17, 2025**) ("respondents have not yet provided evidence that officials had had more success recently obtaining travel documents. Petitioner notes also that although respondents state in their supplemental brief that on May 2 **a travel document packet was submitted to an ICE office in an effort to obtain the necessary travel document**, respondents' prior declaration (Doc. # 7-1) states that a **travel document request was sent to the Chinese**

every single one of those cases, the footnote citation would stretch across multiple pages and is likely unnecessary to make the point that Respondents have not satisfactorily demonstrated their novel claims that China suddenly ceased requiring travel documents for deportations.

DO Thompson's sworn statement lacks credibility in light of footnote 1 and related uncited authorities responsive to the above-noted Boolean search. DO's Thompson's sworn statement also lacks credibility because it is internally inconsistent. First, DO Thompson says that China does not issue travel documents (but only sometimes). ECF No. 15-1, ¶ 13. Next, DO Thompson says that "[o]n November 5, 2025, a **Travel Document Request** to the People's Republic of China was submitted with identity documentation." *Id.*, ¶ 15 (emphasis added).

The undersigned also notes that it is unclear at times whether Respondents are even referring to the case presently before the Court. For example, Respondents cited to "Resp. to Not. at 2 (Doc. 23)." ECF No. 15-1 at 10. The docket in this matter only has 15 document numbers, so Doc. 23 must refer to a different case.

Lastly, to the extent it is relevant, the undersigned notes that Respondents' claims that a specific noncitizen is scheduled for deportation on a specific date are devoid of credibility in light of Respondents' recent course of performance. Since December 1, 2025, six of the undersigned's clients with pending § 1231 habeas cases in this district have received a "Notice" of impending deportation on either December 14, 2025 or

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Consulate on January 28, 2025 – and petitioner argues that that earlier request must have already been rejected.") (emphasis added).

December 15, 2025. *See Nguyen v. Bondi*, No. 25-CV-1355-G (ECF No. 11); *Nguyen v. Bondi*, No. 25-CV-1402-D (ECF No. 11); *Nguyen v. Bondi*, No. 25-CV-1356-SLP (ECF No. 11); *Chen v. Bondi*, No. 25-CV-1453-D (ECF No. 11); *Chan v. Bondi*, No. 25-CV-1412-JD (ECF No. 10); *Jin v. Bondi*, No. 25-CV-1232-JD (ECF No. 21). As Respondents correctly note in their reply, the undersigned has filed a Response to each Notice, identifying serious concerns about the evidentiary basis for determining that there is a significant likelihood of removal in the reasonably foreseeable future. *See* ECF No. 15 at 1 n.1. Almost immediately after the undersigned filed Responses to the Notices, Respondents subsequently filed new Notices saying that deportation was not actually scheduled to occur. *See Nguyen*, No. 25-CV-1356-SLP (ECF No. 16) ("Petitioner was subsequently removed as the December 14 flight was overbooked"); *Nguyen*, No. 25-CV-1402-D (ECF No. 14) (after a status conference in which Assistant U.S. Attorney Cara Cobb stated that the three Nguyens were no longer scheduled to be on the Dec. 14, 2025 flight because it was overbooked, and after promising that Khanh Nguyen was not removed from the jurisdiction of Oklahoma, the U.S. Attorney's Office filed a new Notice stating, "[a]s of December 2, 2025, Petitioner had not been scheduled for transfer for staging in preparation for removal, but Respondents notified the undersigned that during the day on December 3, 2025, Petitioner was transferred to Alvarado, Texas for staging in preparation for removal. Respondents informed the undersigned that this was an administrative error, and as such, the Deportation Officer ('DO') attempted to stop the transfer. Nevertheless, Petitioner is being returned to the Western District of Oklahoma, with the DO communicating that transfer be completed as soon as possible. Respondents

do not contest this Court's jurisdiction as a result of the transfer.");[2] *Chen*, No. 25-CV-1453-D (ECF No. 13) ("Post filing, ICE notified the undersigned that Petitioner was no longer scheduled for transfer and removal on the aforementioned dates due to commercial flights to China being fully booked through December 25, 2025.").

From the above cases, it appears as if ICE is just telling the U.S. Attorney's Office to file Notices of impending deportation in the absence of any reason to believe that such notices are factually correct. The undersigned declines to speculate as to *why* Respondents are behaving this way; regardless of the reason, Respondents' repeated claims of impending deportation that have had to be walked back as too hastily made deprive Respondents' statements regarding impending deportation in this case of veracity.

III. 28 U.S.C. § 636

The Court is empowered to issue a Report and Recommendation regarding injunctive relief, and is further empowered to shorten the period to file objections to 1 day under 28 U.S.C. §§ 636, 1657. *See* ECF No. 3. The Court is also empowered to shorten its previous briefing schedule, and to Order Respondents to answer the habeas petition within 48 hours, and to shorten the period for any reply to 24 hours.

CONCLUSION

Petitioner requests that the Court: (1) issue an Order preventing Respondents from transferring Petitioner out of this district until Respondents have satisfied the Court that China will accept Petitioner; (2) Order Respondents to provide copies of the travel

[2] According to Khanh Nguyen's wife, he is still in Alvarado, Texas as of Dec. 6, 2025, in plain violation of an order of this Court. *See Nguyen*, No. 25-CV-1356-SLP (ECF No. 9).

document that will be used to effect Petitioner's deportation to the Court (*ex parte* for *in camera* review), along with an affidavit from one or more of Respondents' agents who have personal knowledge as to the genuineness of the document, within 24 hours, to allow the Court to examine the document and ensure it has all the hallmarks of authenticity one would reasonably expect.

DATED: December 6, 2025

Respectfully submitted,

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