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

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| Trung Huy Huu Nguyen,<br><br>Petitioner,<br><br>v.<br><br>Pamela Bondi, et al.,<br><br>Respondents. | Case No.: 25-CV-01415-JD<br><br>**PETITIONER'S OBJECTIONS TO REPORT AND RECOMMENDATION**<br><br>**EXPEDITED HANDLING REQUESTED UNDER 28 U.S.C. § 1657 WITH REFERENCE TO 28 U.S.C. CH. 153** |

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## INTRODUCTION

On October 3, 2025, Mr. Trung Huy Huu Nguyen ("Petitioner") filed a writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1. After various back and forth, the Honorable Magistrate Suzanne Mitchell issued a Report and Recommendation ("R&R") recommending that Petitioner's request for a writ of habeas corpus be denied. ECF No. 22. The R&R made two incorrect yet crucial holdings. First, the R&R determined that Petitioner's *Zadvydas* claim was premature, and fails in any event. Second, the R&R determined that Petitioner's detention does not violate the INA. For the reasons that follow, Petitioner respectfully objects to the R&R and submits that the Court must reverse, ordering Petitioner's immediate release.

## FACTUAL BACKGROUND & PROCEDURAL HISTORY

Petitioner incorporates by reference those facts alleged in his habeas corpus petition as supplemented by the facts found by the magistrate. *See* ECF Nos. 1, 22. Of these incorporated facts, the most pertinent facts are: (1) Petitioner was arrested at a scheduled ICE check-in on June 8, 2025 and has remained detained since that time; (2) Respondents do not have a travel document for Petitioner, nor did they at the time of his arrest in June 2025; (3) prior to being arrested on June 8, 2025, Petitioner was released on an Order of Supervision ("OOS") under 8 C.F.R. §§ 241.5, 241.13 that he remained in full compliance with through the moment of arrest; and (4) Petitioner was never given a written Notice of Revocation stating in writing the reasons for his redetention. *See id.*

## ARGUMENT

### I. Petitioner's detention violates the INA.

The magistrate relied almost exclusively on this Court's prior decision in *Khai Nguyen v. Bondi*, No. 25-CV-1204-JD, ECF No. 20 (Order) (W.D. Okla. Dec. 31, 2025) to deny Petitioner's regulatory claims to relief in this case. *See* R&R at 15-18. However, *Khai Nguyen* has been appealed to the U.S. Court of Appeals for the Tenth Circuit, and the appeal remains pending. *See Khai Nguyen v. Bondi*, No. 26-6004, Doc. 1-2 (Appeal Docketed Notice) (10th Cir. Jan. 5, 2026). The undersigned represents Mr. Nguyen in his pro bono appeal, and expects to be successful on the merits of that appeal. Thus, at the very least, it is presently unclear whether *Khai Nguyen* was correctly decided. Notably, even in recommending denial of the petition, Magistrate Mitchell acknowledged that this Court's prior decision in *Khai Nguyen* conflicts with Judge Scott Palk's decision in this district in *Pham v. Bondi*, No. 25-CV-01157-SLP, 2025 WL 3243870, at *1 (W.D. Okla. Nov. 20, 2025), which noted that "[d]istrict courts in the Tenth Circuit… have found that a failure to establish changed circumstances [before revoking an OOS] amounts to a due process violation that justifies release." *See* R&R at 15-16 n.10.

Notably, in another case from this district which mistakenly held that ordering compliance with regulation is the proper remedy for a procedural due process violation stemming from a regulatory violation, rather than ordering immediate release, the petitioner appealed and, on appeal, filed a motion for interim release pending appeal under Fed. R. App. P. 23(b). *See Bahadorani v. Bondi*, No. 25-6177, Doc. 21 (10th Cir. Nov. 17, 2025). Despite a vigorous and well-argued opposition memorandum from

Respondent' counsel, the Tenth Circuit granted the motion for interim release, sending a strong signal that the district court erred. *See id.*, Doc. 28 (10th Cir. Dec. 18, 2025). The case remains pending.

Thus, while the magistrate can hardly be faulted for relying on this Court's prior decision when preparing the R&R, that reliance was misplaced because this Court's prior decision was wrongly decided and likely to be overturned. As such, this Court should re-examine its legal holdings and reach a different outcome in this case, granting the petition and ordering Petitioner's immediate release. If this petition is also denied, and the R&R affirmed, the undersigned counsel intends to represent this petitioner in another pro bono appeal to the Tenth Circuit and will seek to consolidate the case with Mr. Nguyen's pending appeal.

Petitioner also takes issue with the magistrate's claim that "here… it appears Respondents have complied with the notice and opportunity to be heard" mandated by regulation. *See* R&R at 17. This factual finding is both clearly erroneous and lacking in substantial evidence.

The magistrate cites Doc. 11, Att. 2 to claim that "Respondents gave Petitioner an opportunity for a personal interview to respond to the revocation, which he declined." *See* R&R at 16. No such claim appears in Doc. 11, Att. 2, as there is no Doc. 11, Att. 2 in the record. It appears that the magistrate likely meant to cite to Doc. 13 instead. *See* ECF Nos. 13 (Supplemental Declaration of Martin Castillo), 13-1 (Decision to Continue Detention). On this issue, the magistrate states:

Petitioner complains that Respondents did not give him an initial interview,

> did not identify who reviewed his case, and did not issue a written decision detailing what changed circumstances warranted his re-detention as required by 8 C.F.R. §§ 241.4 and 241.13. Doc. 1, at 5-6. But, as noted above, Respondents gave Petitioner an opportunity for a personal interview to respond to the revocation, which he declined. Doc. 11, Att. 2, at 1, 3. They then reviewed his "file," any information Petitioner had submitted to the reviewing officials, and "the factors for consideration set forth at 8 C.F.R. § 241.4(e), (f), and (g)," before issuing a written decision to continue Petitioner's detention pending his removal to Vietnam. *Id.* Att. 2, at 5. The reasons for the decision were that ICE "expect[ed] to receive the necessary travel documents to carry out [Petitioner's] removal," that removal was "likely to occur in the reasonably foreseeable future," and that the removal was "considered to be in the public interest." *Id.* This decision complied with the applicable regulations. *See* 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. Thereafter, if the alien is not released from custody following the informal interview provided for in paragraph (h)(3)[sic] of this section, the provisions of § 241.4 shall govern the alien's continued detention pending removal."); *see also* 8 C.F.R. § 241.13(i)(3) ("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.").

R&R at 16-17.

The fatal flaw with the magistrate's ruling on this issue relates to timing. Petitioner was detained on June 8, 2025, but the custody determination the magistrate relies upon to deny relief was not issued until August 26, 2025, was not purportedly served upon Petitioner until November 11, 2025, and there is no signature from Petitioner indicating that he received the document claiming he did not want an interview. *See* ECF No. 13-1. The plain language of the governing *pre-deprivation* regulation states that "**[u]pon 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**." 8 C.F.R. § 241.13(i)(3) (emphasis added). The overwhelming majority of other district courts to consider this language have held that "upon revocation" requires ICE to serve the Revocation Notice at the moment of re-detention, not months after re-detention has occurred.[1]

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[1] *See, e.g.*, *Yee S. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2879479, at *6 n.9 (D. Minn. Oct. 9, 2025) ("The Court is also concerned that Respondents may not have complied with their obligation to notify Petitioner '***[u]pon* revocation**' of 'the reasons for revocation.' 8 C.F.R. § 241.13(i)(3) (emphasis added). **As noted above, ICE did not serve the Revocation Notice until after Petitioner was already re-detained.** (Doc. No. 7 at 3–4; Rev. Notice.) **The lack of factual detail also undermines the legitimacy of the Revocation Notice**") (some emphasis added); *Rokhfirooz v. Larose*, --- F. Supp. 3d ---, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) ("Because DHS failed to make the determination required by Section 241.13(i)(2) for revoking Petitioner's release, the Court has no occasion to address the adequacy of the reasons stated for such a determination. The Court cannot conclude that Petitioner was '[u]pon revocation' duly notified of those reasons, or that DHS 'conduct[ed] an initial informal interview promptly ... to afford [Petitioner] an opportunity to respond to the reasons for revocation in the notification,' as required by Section 241.13(i)(3)."); *Roble v. Bondi*, 803 F. Supp. 3d 766, 772 (D. Minn. Aug. 25, 2025) ("DHS's own regulations contemplate that a noncitizen will have an opportunity to 'respond to the reasons for revocation stated in the notification' during the initial informal interview after re-detention. 8 C.F.R. § 241.13(i)(3). But Roble cannot be expected to 'respond to the reasons for revocation stated in the notification' if the notification does not actually state any reasons for revocation. Not only does this scenario border on the Kafkaesque; it is also contrary to law. Because ICE violated its own regulations when it detained Roble without notifying him of the reasons why he was being detained, Roble is entitled to habeas relief."); *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."); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (finding an informal interview was required under §§ 241.4 and 241.13 where ICE intended to enforce the petitioner's removal order but nothing in the record showed it conducted such an interview); *M.Q. v. United States*, 776 F. Supp. 3d 180, 187, 190, 190 n.1 (S.D.N.Y. 2025) (holding § 241.4(l) required ICE to provide petitioner, who had not violated conditions of release, with notice and an informal interview); *Constantinovici v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2898985, at *6 (S.D. Cal. Oct. 10, 2025) ("In this case, the record before the Court shows that Petitioner was

"Upon" means "immediately or very soon after." *See Upon*, DICTIONARY.COM (last visited Feb. 1, 2026).[2] "Promptly" means "at once or without delay." *See Promptly*, DICTIONARY.COM (last visited Feb. 1, 2026).[3] Here, an astounding 79 days elapsed between when Petitioner was arrested on June 8, 2025 and when he purportedly denied having an interest in being interviewed on August 26, 2025, and 95 days elapsed between when Petitioner was arrested and when he was purportedly served with the document

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not given any notice of the reasons for his re-detention prior to his arrest or an opportunity to respond to such reasons. First, **despite both regulations requiring notice '*upon revocation*,' ICE did not provide Petitioner with a Notice of Revocation of Release until almost a month after he was taken into custody** and two days after he filed this lawsuit. 8 C.F.R. § 241.4(l)(1) (emphasis added); id. § 241.13(i)(3). **The record therefore establishes that Petitioner did not receive notice at any point before, or at the time of, his arrest.**") (some emphasis added); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *9 (S.D. Fla. Sept. 9, 2025) ("The opportunity to contest detention through an informal interview is not some ticky-tacky procedural requirement; it strikes at the heart of what due process demands. ... Here, Petitioner has been in custody for over seventy-five days without ever having received a meaningful opportunity to be heard or to contest the basis for his re-detention. ... **Nor does the faint promise of an opportunity to be heard three months down the line satisfy what due process requires**. ... If the eventual promise of a formal review were enough to cure a due process violation, ICE would be able to hold individuals for approximately three months after revocation with no meaningful opportunity to be heard.") (emphasis added); *Santamaria Orellana v. Baker*, No. 25-CV-1788-TDC, 2025 WL 2444087, at * (D. Md. Aug. 25, 2025) ("Here, the record likewise establishes that Santamaria Orellana was not afforded the process required by 8 C.F.R. § 241.4 and 8 U.S.C. § 241.13 before having his release revoked. In one sense, this case presents a more stark case of a violation of due process because, unlike in *Rombot*, *Ceesay*, and *Cordon-Salguero*, there is absolutely no record of the decision to revoke Santamaria Orellana's release, much less one that was presented to him, which reveals an even more significant due process problem because **no one—not the Court, not Santamaria Orellana, and not even Respondents—knows with any degree of certainty what legal and factual basis was relied upon in making the determination, which hinders any meaningful challenge to the decision**.") (emphasis added).

[2] Available at: https://www.dictionary.com/browse/upon.

[3] Available at: https://www.dictionary.com/browse/promptly.

indicating he had no intention to request a **90-day custody review** interview. The 79 day delay represents 87.7% of the statutory 90-day removal period, and can hardly be said to have occurred promptly or "[u]pon revocation." Thus, a violation persists, and it cannot be cured by ordering Respondents, more than six months later, to perform a prompt "initial interview" because it is factually and physically impossible for Respondents to now perform such a prompt interview since more than six months has already elapsed since the moment of detention. At this stage, ordering compliance is a specious and illusory remedy.

The magistrate's conclusion that Respondents complied with regulation cannot stand against the undisputed facts of this case which demonstrate otherwise.

The magistrate's conclusion that Respondents complied with the notice and interview portions of the regulations is also wrong because the interview mandated by 8 C.F.R. § 241.13(i) is couched in the mandatory term, "will." *See Noreja v. Comm'r, SSA*, 952 F.3d 1172, 1181 (10th Cir. 2020) (interpreting "will" as the equivalent of "shall"). It is not the type of interview that can be declined. *See id.*; *see also* 8 C.F.R. § 241.13(i)(3). Tangentially, the magistrate erred by failing to recognize that even if the 90-day custody determination notice somehow properly "notified [Petitioner] of the reasons for revocation of his… release," it remains true that the Custody Determination stating the reasons for Petitioner's continued detention were not provided to Petitioner in writing until September 11, 2025, approximately two weeks after he supposedly declined an interview. As numerous judges have recognized, it is impossible to respond to reasons for revocation that are not known to the noncitizen at the time they are permitted to explain why their OOS should not be revoked. *See, e.g.*, *Roble v. Bondi*, 803 F. Supp. 3d 766, 772 (D. Minn.

Aug. 25, 2025) ("DHS's own regulations contemplate that a noncitizen will have an opportunity to 'respond to the reasons for revocation stated in the notification' during the initial informal interview after re-detention. 8 C.F.R. § 241.13(i)(3). But Roble cannot be expected to 'respond to the reasons for revocation stated in the notification' if the notification does not actually state any reasons for revocation. Not only does this scenario border on the Kafkaesque; it is also contrary to law. Because ICE violated its own regulations when it detained Roble without notifying him of the reasons why he was being detained, Roble is entitled to habeas relief."); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *9 (S.D. Fla. Sept. 9, 2025); *Santamaria Orellana v. Baker*, No. 25-CV-1788-TDC, 2025 WL 2444087, at * (D. Md. Aug. 25, 2025).

## II. The magistrate failed to address a number of viable claims.

The magistrate completely ignored a number of independent due process claims raised by Petitioner that constitute independent bases for ordering immediate release. Illustratively, Petitioner pleaded that ICE failed to comply with various federal statutes and regulations that "require ICE to follow certain procedures before they redetained Nguyen." ECF No. 1, ¶ 21. Petitioner identified the following statutory and regulatory violations:

a. **Nguyen's redetention has not been reviewed or authorized by any member of the Headquarters Post-order Detention Unit ("HQPDU") or ERO HQ.** *See* 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); 8 C.F.R. § 241.4(c)(2)-(3), (d)(2), (e), (g)(2)-(3), (i)(1)-(3), (i)(7), (k)(2)-(4), (l)(3) (same).

b. **Nguyen's redetention has not been reviewed or authorized by the Executive Associate Commissioner or District Director.** *See* 8 C.F.R.

§§ 241.4(l), (c)(2)-(4), (d)(1)-(2), (i)(1), (i)(6), (j)(1)-(4), (k)(2), (k)(4), (l)(2)-(3).

c. **Nguyen 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.** *See* 8 C.F.R. § 241.13(i)(2); *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001).

d. Nguyen has not received a written decision stating the reasons for his redetention. *See* 8 C.F.R. § 241.13(g); *Momennia v. Bondi*, 2025 WL 3011896, at *6 (W.D. Okla. Oct. 15, 2025) ("ICE is required to issue a written decision. § 241.13(g)."); 8 C.F.R. § 241.4(h)(4), (k)(1)(i), (k)(2)(iii); 8 C.F.R. §§ 241.13(e)(1), (e)(2), (e)(6); *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3243870, at *1 n.2 and accompanying text (W.D. Okla. Nov. 20, 2025).

e. Nguyen has not received an individualized post-detention interview to determine whether his OOS should be reinstated or to otherwise allow Nguyen to provide information to demonstrate there is no significant likelihood of his removal in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(i)(2)-(3).

ECF No. 1, ¶¶ 21.a-e (emphasis added).

In the R&R, the magistrate only focused on subsection e, and seemed to infer that the written decision requirement referenced in subsection d and mandated by 8 C.F.R. § 241.13(g) is satisfied by the 90-day custody review decision well after revocation. However, the magistrate made no attempt whatsoever to explain why they believe Petitioner's detention is lawful in the absence of any factual claims by Respondents to have complied with 8 C.F.R. § 241.13(b)(2), (c), (d), (e), (f), (g), (h)(1), (h)(4)(i), (j). Nowhere in the record is there the slightest indication that Petitioner's detention was authorized or reviewed by any member of the HQPDU. *See* ECF Nos. 11, 11-1, 13, 13-1. This is important because numerous other courts have held that revocations and detention

occurring without authorization are *void ab initio.*[4]

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[4] *See, e.g.*, *Dang Pham v. Bondi*, Civ. No. H-25-5765, ECF No. 12 (Slip. Op.), at *8 (S.D. Tex. Jan. 9, 2026) (granting habeas corpus and immediate release after noting that the government's evidentiary filings "does not contain any facts showing that an order revoking Pham's Order of Supervision was ever issued, **that a revocation order was validly signed by anyone authorized to do so**, that notice was provided to Pham of the reasons for the revocation, or that he has been provided with the required informal interview.") (emphasis added); *Santamaria Orellana v. Baker*, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025) ("the revocation of Santamaria Orellana's release also violated the requirement that such a decision must be made either by an 'Executive Associate Commissioner' or by a 'district director.' ... At present, the 'Executive Associate Commissioner' referenced in the regulation is the Executive Associate Director of ICE. *See Ceesay*, 2025 WL 1284720, at *16. It is undisputed, however, that there is no evidence, documentary or otherwise, that the Executive Associate Director, or any district director, made the decision to revoke Santamaria Orellana's decision. Indeed, at the hearing, Respondents' counsel acknowledged that he does not know who made the decision."); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *9-10 (D. Or. Aug. 21, 2025) ("Here, the parties agree that Johnson is a Deputy Field Office Director and not the Executive Associate Director of ICE, a field office director, or any of the other positions enumerated in § 1.2. ... Nevertheless, Respondents maintain that Johnson had the authority to revoke Petitioner's release. *See* Johnson Decl. ¶ 4 ('On August 6, 2025, I signed an amended Notice of Revocation of the Order of Supervision ('OSUP'). I have the authority under the relevant regulations and delegation of authority to do so.'). **Respondents have not, however, provided the Court with a copy of a delegation order or any other evidence documenting the scope of any delegation of authority over the revocation of removal orders to Johnson or any other Deputy Field Office Director.** In *Ceesay*, the district court found that the absence of a delegation order giving an assistant field office director authority to revoke release, as well as the absence of caselaw to support the validity of such an order even if it did exist, rendered the revocation of the petitioner's release unlawful. *Ceesay*, 2025 WL 1284720, at *17. The Court finds this reasoning persuasive. In the absence of any evidence that Johnson had the authority to revoke Petitioner's release, other than Johnson's breezy assertion that he possesses the authority, the Court concludes that Petitioner's release was not lawfully revoked and that she is entitled to release on that basis alone.") (emphasis added; record citation omitted); *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

The magistrate also failed to identify the specific changed circumstances that justified redetention, or which now justify continued detention. While the magistrate did claim, in a somewhat conclusory fashion, that "Respondents have sufficiently rebutted the presumption that [Petitioner's] removal to Vietnam is not significantly likely in the reasonably foreseeable future," R&R at 13-14, this holding was based solely on the following:

> Here, the length of Petitioner's detention has only just exceeded the presumptively reasonable period of detention. ICE has reviewed the facts and circumstances of Petitioner's case and issued a written decision to continue his custody pending their expectation of a travel document from Vietnam. *See* Doc. 11, Att. 2, at 1.

R&R at 13. In other words, despite more than 200% of the 90-day removal period elapsing after Petitioner was *illegally* re-detained in violation of the pre-deprivation procedures required by 8 C.F.R. § 241.13, and despite the fact that Respondents still have not obtained a travel document for Petitioner, the magistrate blindly deferred to the opinion of a single deportation officer who is not even properly authorized to make revocation decisions in the first instance, and elevated that opinion over: (1) the prior determination of no significant likelihood of removal in the reasonably foreseeable future and prior inability to obtain travel documents for Petitioner; (2) the lack of visible progress in obtaining a travel document for Petitioner; (3) the lack of any claim to have scheduled an interview

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agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required."); *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.").

between Petitioner and the Vietnam Embassy for purposes of confirming Petitioner's identity and citizenship; (4) the illegal manner in which Petitioner was detained; (5) the fact that Petitioner was not served a written notice of the reasons for his continued detention until after he supposedly declined the opportunity for an interview; and, *inter alia*, (6) the fact that the DO affidavit claims that "[t]he majority of [deportations to Vietnam since February 2025] were citizens of Vietnam **who entered the United States prior to 1995**." *Compare* ECF No. 11-1, ¶ 8 (emphasis added) *with* R&R at 12 ("Petitioner is not a pre-1995 immigrant. He entered the United States in 2007."). Stated as simply as possible, the magistrate erred (for purposes of the changed circumstances pre-deprivation analysis) in holding that this record contains or contained sufficient evidence to find that there is a "**significant** likelihood of removal in the **reasonably foreseeable future**" at the moments of arrest or decision.

## III. The magistrate's R&R contradicts her prior decisions in substantially similar cases and fails to explain the basis for her radical shift in views on the law.

Almost every single material holding made in this case's R&R by Magistrate Mitchell is rebutted or contradicted by Magistrate Mitchell's R&R in *Chong Pham v. Bondi*, No. 5:25-CV-01157-SLP, ECF No. 18 (R&R) (W.D. Okla. Oct. 30, 2025), *adopted* 2025 WL 3243870 (W.D. Okla. Nov. 20, 2025). The magistrate makes no attempt to reconcile her own differences in opinion between largely identical cases. For example, Magistrate Mitchell recommended immediate release in *Pham* based on ICE's failure to abide by its own regulations. *See Pham*, ECF No. 18 at 7-15. Similarly, in *Pham*, Magistrate Mitchell found it necessary for ICE to "provide Petitioner with the required

[revocation] notice before his renewed detention." *Id.* at 15.

In another recent case, issued on the same day this Court denied habeas relief in *Khai Nguyen*, Magistrate Mitchell issued a R&R recommending relief for a similarly situated Vietnamese individual. *See Khanh Truong Nguyen v. Bondi*, No. 25-CV-1402-D, ECF No. 21 (R&R) (W.D. Okla. Dec. 31, 2025). In *Khanh Nguyen*, Magistrate Mitchell again recommended immediate release as the proper remedy for the same regulatory violations Petitioner in this case complains of. *See id.* For example, Magistrate Mitchell felt it important to emphasize in that other case that "Petitioner cannot 'respond to the reasons for revocation stated in the notification' if he was never served with a physical copy in the first instance," and that "Respondents… failed to demonstrate to the Court that they made the required determination for revocation under § 241.13(i)(2) **prior to redetaining** Petitioner. **This is crucial as 'ICE is not permitted to hold [Petitioner] indefinitely while it waits for travel documents from Vietnam**." *Khanh Nguyen*, ECF No. 21 at 16 (emphasis added) (quoting *Tran v. Bondi*, 2025 WL 3140462, at *3 (W.D. Wash. Nov. 10, 2025)).

In *Khanh Nguyen*, Magistrate Mitchell also pooh-poohed the claim she makes in this case that a pending travel document request combined with a "vague[] assert[ion] that ICE headquarters 'is actively working' with the State Department to remove Petitioner to Vietnam'" is somehow sufficient for Respondents to meet their burden of establishing changed circumstances under § 241.13(i) which justify redetention. *Compare Khanh Nguyen*, ECF No. 21 at 16-17 *with* R&R at 12-14.

Notably, in each of the above cases, the most recent iteration of post-final-order

detention was less than six months at the time the petition was filed, which the Respondents absolutely pointed out in their briefing, yet Magistrate Mitchell determined that immediate release remained the property remedy due the same types of regulatory violations complained of here; Respondents have not appealed any of those other decisions after they have been adopted. There is no reasoned basis for Magistrate Mitchell's change of heart, and her most recent interpretation of the INA and habeas corpus jurisprudence is an invitation for this Court to adopt the R&R and to subsequently be overturned on appeal. This Court must issue a decision that grants Petitioner's request for a writ of habeas corpus and which orders Petitioner's immediate release.

## IV. Petitioner's *Zadvydas* claim is not premature, and does not fail.

Petitioner incorporates the arguments above by reference to submit that Respondents have failed to rebut Petitioner's showing that there is no significant likelihood of his removal in the reasonably foreseeable future. Additionally, it is undisputed that Petitioner has been re-detained since June 8, 2025 beyond a presumptively reasonable period of six months. R&R at 10 ("as of this date, his time in custody has now exceeded six months").

The magistrate suggests that Petitioner's habeas corpus petition was premature at the time it was filed because it was filed before Petitioner had been detained in post-final-order custody for less than six months. *See* R&R at 10. This argument presumes that six months of post-final-order custody is *always* reasonable. However, as the Southern District of Texas has previously acknowledged, *Zadvydas*'s "**six-month presumption is not a bright line, however, and *Zadvydas* did not automatically authorize all detention until**

**it reaches constitutional limits.**" *Ali v. Dept. of Homeland Security*, 451 F. Supp. 3d 703, 707 (S.D. Tex. Apr. 2, 2020) (emphasis added; citation omitted). Because the six-month rule only renders up to six months of detention "presumptively" constitutional, the presumption can be rebutted. Because the presumption is capable of being rebutted, it is legal error to hold that a *Zadvydas*-based petition is unripe (*i.e.*, "premature") simply because it is filed before six months of custody has elapsed. *See Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (W.D. Wisc. 2008) ("Nothing about this scheme supports the conclusion drawn by many courts that the presumptive legality of detention within the first six months is irrebuttable. The *Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable."); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 ("At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

Moreover, Petitioner has factually rebutted the claim of reasonableness, even before reaching six months of administratively-final post-order detention, by demonstrating: (1) that Respondents did not comply with the post-90-day custody review procedures mandated by regulation that invoke review under 8 C.F.R. § 241.13 for examination of whether there exists no significant likelihood of removal in the reasonably foreseeable future; (2) Respondents did not give Petitioner the necessary "initial" informal interview "[u]pon revocation"; (3) Respondents' purported revocation of Petitioner's OOS occurred by someone who lacked the authority to issue said revocation; (4) evidence of Vietnam's recalcitrance; (5) a lack of changed circumstances justifying redetention at the moment of

redetention; and, *inter alia* (6) a visible lack of progress on obtaining a travel document for Petitioner. *See* ECF Nos. 1, 19.

Other courts have exercised jurisdiction over *Zadvydas*-based habeas petitions that were filed prior to reaching 6 months of post-final-order custody after the habeas applicant reaches 6 months of post-final-order custody. *See Olajide v. B.I.C.E.*, 402 F. Supp. 2d 688, 691-92 (W.D. Va. Nov. 30, 2005) ("Respondents argue that because Olajide had not been in BICE custody for more than six months at the time he filed his petition, his claim is not ripe for review. This argument mistakenly focuses on the date the petition was filed rather than the time the petition is adjudicated. … As of now, Olajide has been in custody for just over six months, more than the six-month presumptively reasonable period for post-removal order detention. Accordingly, his petition is now ripe for judicial review."); *see also Blanchette v. Connecticut General Ins. Corps.*, 419 U.S. 102, 139-40 (1974) (stating that "a change in circumstances altered the posture of the case" where issues were not ripe at the time they were in district court but were ripe before the Supreme Court, and holding, "**since ripeness is peculiarly a question of timing, it is the situation now rather than the situation at the time of the District Court's decision that must govern.**") (emphasis added); *Momennia v. Bondi*, No. CIV-25-1067, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025) (recommending granting habeas relief, in part, based on the petitioner's *Zadvydas* claim, which ripened during the pendency of the case), *adopted* 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025); *Kamara v. Kavanaugh*, 2013 WL 4541535, at *2 (D. Md. Aug. 26, 2013) (declining to dismiss a *Zadvydas* petition filed 11 days before the 6-month mark); *see also Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 ("At no point did the *Zadvydas* Court

preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

In light of the foregoing, the Court must reverse the magistrate's finding that Petitioner's *Zadvydas* claim was premature and decide that because there is no significant likelihood of release in the reasonably foreseeable future, and because Respondents have not adequately demonstrated otherwise, Petitioner must be immediately released from custody.

## CONCLUSION

The Court must reverse the magistrate and order Petitioner's immediate release.

DATED: February 1, 2026

Respectfully submitted,

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