IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

Liban Ali Osman,

Petitioner

v.

Pamela Bondi, Attorney General; et al.,

Respondents.

Case No.: 25-CV-4560-JWB-ECW

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

EXPEDITED HANDLING REQUESTED

PROCEDURAL & FACTUAL HISTORY

Petitioner incorporates by reference the facts alleged in his verified habeas corpus petition. *See* ECF No. 1. Respondents have provided a declaration from Deportation Officer ("DO") Angela Minner. ECF No. 7. DO Minner confirms that the government has been unable to deport Petitioner since he was ordered removed on April 25, 2011. *See id.*, ¶¶ 6-7. Minner's declaration does not contest and thereby confirms Petitioner's prior Order of Supervision ("OOS") issued under 8 C.F.R. § 241.13(i). ECF No. 7; ECF No. 1, ¶ 4; Fed. R. Civ. P. 8(b)(6). Minner does not contest and thereby concedes that Petitioner was not informed in writing of the reason for his redetention on December 8, 2025. *See* ECF No. 7; ECF No. 1, ¶¶ 55-62; Fed. R. Civ. P. 8(b)(6). Minner concedes that Petitioner was granted deferral of removal, demonstrating an institutional barrier to repatriation to Somalia. *See* ECF No. 7, ¶ 14. Minner does not contest and thereby concedes that Respondents do not have a travel document for Petitioner, and have not identified any third countries that are, or even might be, willing to accept Petitioner. *See* ECF No. 7. Minner

does not address Petitioner's significant criminal history, and how such criminal history makes it less likely that Petitioner will be accepted by a third country other than Somalia. *See id.* Minner claims in a wholly conclusory fashion that "ICE Headquarters and Removal Operations is actively working with the Department of State and the Department of Homeland Security on third country removal logistics" for Petitioner. *Id.*, ¶ 17. Minner does not state when Petitioner's travel document request is expected to submitted to or approved by ERO HQ or processed by the intended country of removal. *See* ECF No. 7. Minner 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 14+ years. *See id.*

Minner also notes that, "on December 15, 2025," or seven days after Petitioner filed his habeas petition, ICE filed a motion to reopen in the immigration court, seeking to terminate Petitioner's grant of deferral of removal. *See id.*, ¶ 18. Minner notes that "[t]his is the first step towards Osman's removal **if** DHS were to seek removal to Somalia in the alternative." *Id.* (emphasis added). However, it is far from a foregone conclusion that ICE's motion will be granted, as there are a number of pre-deprivation procedures and hearings that must occur, *see* 8 C.F.R. § 1003.17(d), and it seems that ICE is taking advantage of Petitioner being detained to seek expedited processing of its motion. Regardless, at present, the motion remains pending, and even if a hearing is granted, there is still additional process to complete before the removal proceedings can be reopened. Petitioner remains firmly entrenched in § 1231 detention.

Minner also attached various exhibits. One of these exhibits, attached to her

declaration as Exhibit F, is a Notice of Revocation of Release ("Notice"). *See* ECF No. 7-6. The Notice states in a wholly conclusory fashion that the decision to revoke release "has been made based on a review of your file and/or your personal interview on account of changed circumstances in your case. ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in your case." *Id.* The Notice adds that, "[s]ince being released, removal from the U.S. is now significantly likely in the reasonably foreseeable future. Based on changed circumstances in your case you will be brought back into ICE custody." *Id.* The Notice also claims that, [b]ased on the above, **and pursuant to 8 C.F.R. § <u>241.4</u>,** you are to remain in ICE custody at this time" and "will promptly be afforded an interview at which you will be given an opportunity to respond to the reasons for the revocation and to provide any evidence to demonstrate that your removal is unlikely." *Id.* (emphasis added).

DO Minner provided a copy of an Arrest Warrant as well. ECF No. 7-7. That arrest warrant claims that there is "probable cause to believe that Osman, Liban is removable from the United States," based upon, *inter alia*, "the pendency of ongoing removal proceedings against the subject." *Id.* There are no ongoing removal proceedings pending against Petitioner; Petitioner's removal proceedings ceased being ongoing in 2011. *See* ECF No. 1; ECF Nos. 7, 7-4. As a matter of law, the Arrest Warrant is incapable of supporting a determination that probable cause existed to arrest Petitioner on December 8, 2025.

DO Minner provided a copy of ICE's notes from an alleged "informal interview" that supposedly occurred on December 8, 2025. ECF No. 7-6. The notes indicate that

Petitioner chose "to remain silent and is seeking legal representation," which is consistent with his claim that "[t]he Notice, if any, does not provide Petitioner with sufficient information to be in a position to rebut the factual allegations underlying the Notice at an informal interview." *See* ECF No. 1, ¶ 56.

In short, the DO declaration and attached exhibits do not support concluding there is a significant likelihood of Petitioner being removed in the reasonably foreseeable future. The evidence does not support concluding changed circumstances exist which justified revoking Petitioner's OOS. If anything, the evidence confirms that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future and that his detention occurred unlawfully and in violation of his due process rights.

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

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]

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

[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

The case before the Court is almost identical to the facts underlying Judge Provinzino's decision in *Roble*. *See Roble v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2443453 (D. Minn. Aug. 25, 2025). In that case, Judge Provinzino stated:

> Roble first contends that he was not given adequate notification of the reasons for the revocation of his release. ECF No. 1 ¶¶ 67, 108. ICE's **regulations require that when a noncitizen is notified of a release revocation, the "reasons" for that revocation must be stated in the notification**. 8 C.F.R. § 241.13(i)(3). Here, the notice to Roble provided that "ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in [his] case" and that "[s]ince being released, removal from the U.S. is now significantly likely in the reasonably foreseeable future. Based on changed circumstances in [his] case [he] will be brought back into ICE custody." ECF No. 8-10 at 1.
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> **Besides merely parroting the regulatory text governing re-detention, ICE's notice to Roble provides zero reasons as to *what* changed circumstances exist such that Roble's removal is now significantly likely in the reasonably foreseeable future.** *See* 8 C.F.R. § 241.13(i)(2). **The notice does not state, for example, that ICE had received or was seeking a travel document for Roble.** *See Chavez Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at *6 (S.D. Fla. Aug. 8, 2025); *Tran v. Baker*, No. 1:25-cv-01598-JRR, 2025 WL 2085020, at *4–5 (D. Md. July 24, 2025). **Nor does the notice state—as the Government now asserts a month after Roble was detained—that ICE was attempting to find a third country to accept Roble.** ECF No. 8 ¶ 25. **Rather, the notice summarily asserts that changed circumstances render Roble's removal from the U.S. significantly likely in the reasonably foreseeable future.** ECF No. 8-10 at 1. **That language is not individualized to Roble; in fact, it applies to *any* noncitizen detained under 8 C.F.R. § 241.13(i)(2), since the notice simply mirrors the legal standard applicable to detaining a noncitizen released on an Order of Supervision. Providing a notice that simply recites the language of the regulation does not satisfy the Government's obligation to provide the "reasons" why Roble's Order of Supervision was revoked.** 8 C.F.R. § 241.13(i)(3); *see Sarail A. v.*

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)).

> *Bondi*, No. 25-cv-2144 (ECT/JFD), ECF No. 9 at 5 (D. Minn. June 17, 2025) (recommending habeas relief when ICE similarly provided a notice that only parroted the regulatory text).
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> **That conclusion makes good sense here. The essence of due process is notice and an opportunity to respond.** *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); *Baldwin v. Hale*, 68 U.S. 223, 233, 1 Wall. 223, 17 L.Ed. 531 (1863) ("Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence."). **Indeed, 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.**

Roble, 2025 WL 2443453, at *3 (bold emphasis added).

As was noted in *Roble*, "the regulations at issue in this case place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future." *Roble*, 2025 WL 2443453, at *4 (citing *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, --- F.Supp.3d ---, 2025 WL 1725791, at *3 n.2 (D. Mass. June 20, 2025)). "Absent specific statutory or regulatory language on the allocation of the burden of proof (as is the case in 8 C.F.R. §

241.13(i)(2)), the Court is guided by the 'default rule' that the burden falls on the party who 'generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure of proof or persuasion.'" *Roble*, 2025 WL 2443453, at *4 (quoting *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005)). "Here, it is ICE that 'seeks to change the present state of affairs' by re-detaining [Petitioner], so the Court evaluates whether the Government has met that burden." *Id.*

Judge Provinzino further stated:

> **The Government appears to recognize that Roble cannot be removed to Somalia due to his deferral of removal under CAT. The Government asserts, however, that on August 11, 2025, ICE "requested third country removal assistance from [Enforcement and Removal Operations] HQ."** ECF No. 8 ¶ 25. **That is the only argument the Government makes for changed circumstances, and <u>it falls woefully short</u>. The bare fact that ICE officials in St. Paul have requested third-country removal assistance from ICE headquarters tells the Court nothing about the "history of [ICE's] efforts" to remove noncitizens similarly situated to Roble to third countries, the "ongoing nature of [ICE's] efforts to remove [Roble] and [Roble's] assistance with those efforts," and "the reasonably foreseeable results" of ICE's removal efforts.** 8 C.F.R. § 241.13(f). **Indeed, the Government does not disclose what "assistance" was requested of ICE headquarters, and it provides no evidence that such assistance will create a "significant likelihood that [Roble] may be removed in the reasonably foreseeable future."** 8 C.F.R. § 241.13(i)(2).
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> **Courts faced with similarly paltry evidence of changed circumstances have likewise concluded that the government failed to meet its burden under 8 C.F.R. § 241.13(i)(2).** In *Nguyen v. Hyde*, for example, the government asserted that changed circumstances made the petitioner's removal significantly likely in the foreseeable future because ICE was processing a travel document request for the petitioner. —— F.Supp.3d at ——, 2025 WL 1725791, at *4. The court rejected that argument, noting that the government "provided scant information" about "what concrete steps ICE has taken to process [the petitioner's] particular travel document" and the anticipated outcome of that travel document request. *Id.* **Here, the Government has similarly provided "scant information" about what "assistance" it has requested from ICE headquarters for a third**

> **country removal, and it has provided no information about the anticipated outcome of requesting that assistance.**
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> Additionally, in *Hoac v. Becerra*, the government asserted that ICE's intent to apply for a travel document for the petitioner constituted changed circumstances. No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025). The court disagreed, explaining that the government failed to provide "any details about why a travel document could not be obtained in the past, nor have they attempted to show why obtaining a travel document is more likely this time around." *Id.* **In this case, the Government also fails to show why Roble's removal to a third country is more likely in the reasonably foreseeable future, especially given that ICE was previously unable to remove Roble to a third country in 2019.** ECF No. 1 ¶ 60.
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> **This case is not a close call. Not only was ICE's release-revocation notice deficient, but even after detaining Roble for over a month, the Government still fails to show that his removal is any more likely today than the day he was released on his Order of Supervision.** Because the Government plainly failed to meet its burden to show that, "on account of changed circumstances ... there is a significant likelihood that [Roble] may be removed in the reasonably foreseeable future," ICE was not entitled to revoke Roble's Order of Supervision. 8 C.F.R. § 241.13(i)(2). **Put simply, ICE broke the law when it re-detained Roble, so habeas relief is warranted.**

Roble, 2025 WL 2443453, at *4-5 (bold and underline emphasis added).

The holdings of *Roble* have been relied upon by numerous district courts around the country to grant the habeas petitions of similarly situated people. *See, e.g.*, *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3477023 (W.D. Okla. Oct. 30, 2025), *adopted* 2025 WL 3243870 (Nov. 20, 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); *Hamidi*, No. 25-CV-1205-G, 2025 WL 3452454, at *3 (W.D. Okla. Dec. 1, 2025); *Constantinovici v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025). *Roble*'s holdings are also consistent with many other decisions from this district. *See, e.g.*,

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)"); *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)).

Roble is also consistent with the holdings of numerous other district courts to have considered similar claims as those presented by Petitioner. *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"); *Tadros v. Noem*, No. 25-cv-4108, 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").

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, 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

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.

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 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 actual 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 actually 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.[4] Because Petitioner's due process rights were violated at the moment of

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in excess of six months' [Doc. No. 18 at 20] despite the fact that his current detention has only lasted approximately five months.").

[4] *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

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 or should not be aggregated.

For the foregoing reasons, Petitioner's claims cannot be said to be premature.[5]

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

As of December 15, 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

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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.").

[5] Petitioner does not admit the 90-day removal period resets after ICE decides to re-detain a person for removal, nor does he accept that the regulation standing for that proposition is lawful. *But see* ECF No. 6 at 12. The regulation that allows the 90-day period to reset is *ultra vires* to 8 U.S.C. § 1231 and is unlawful under the APA. Regardless, because Respondents did not comply with 8 C.F.R. 241.13(i), the validity of the reset-regulation is purely academic and of no import here.

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.

CONCLUSION

The Court must order Respondents to immediately release Petitioner.

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Respectfully submitted,

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