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

Khoung Quang Le,

Petitioner

v.

Pamela Bondi, Attorney General; et al.,

Respondents.

Case No.: 4:25-CV-06180

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

EXPEDITED HANDLING REQUESTED

INTRODUCTION

Petitioner filed a petition seeking a writ of habeas corpus on December 21, 2025. ECF No. 1. On December 23, 2025, the Court issued an Order compelling Respondents to "show cause with a filing that establishes the propriety of Petitioner's continued detention," noting that "[s]uch filing must be made by December 29, 2025, absent extension." ECF No. 4.

Respondents did not submit any filing in response to the habeas petition until January 7, 2026 (9 days after the deadline). ECF No. 6. In that document, Respondents admitted that they received from the Clerk's office the Order to Show Cause, and simply "failed to calendar the original show cause deadline" because they failed to read the case caption. *See id.* at 1, n.2. Respondents indicate that the Court "informally authorized the Government to file this response" on January 7, 2026, but the undersigned is aware of no such authorization. Regardless, the filing is untimely and should be rejected as such, as Respondents' excuse for late filing hardly constitutes "good cause." Nonetheless,

Petitioner will briefly address the merits of the response.

ARGUMENT

Respondents' argument fundamentally misunderstands who bears the burden of demonstrating changed circumstances when the government re-detains a noncitizen who was previously released on an Order of Supervision pursuant to 8 C.F.R. § 241.13.

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

> **Revocation for removal.** The Service may revoke an alien's release under this section and return the alien to custody **if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.**

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

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

8 C.F.R. § 241.13(i)(3) (emphasis added). The "determination" must be a "written decision based on the administrative record, including any documentation provided by the alien, regarding the likelihood of removal and whether there is a significant likelihood that the alien will be removed in the reasonably foreseeable future" and must be "provide[d]… to the alien with a copy to counsel of record." 8 C.F.R. § 241.13(g).

Myriad courts, including this one, have repeatedly held that violations of 8 C.F.R.

§ 241.13(i) are independent due process violations that require immediate release. *Accord, e.g.*, *Yee S. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2879479, at *6 (D. Minn. Oct. 9, 2025) (ordering release because Petitioner has shown that ICE's re-detention of him . . . violated the law because ICE did not comply with its own regulations under section 241.13(i)(2)"); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("The[] regulations clearly indicate, upon revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed."); *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) ("ICE's decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (finding petitioner was likely to succeed on unlawful redetention claim because "there is no indication that an informal interview was provided"); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (holding that ICE's failures to follow regulatory revocation procedures rendered detention unlawful); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025) ("because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release"); *Phan v. Noem*, No. 25-CV-2422-RBM-MSB, 2025 WL 2898977, at *5 (S.D. Cal. Oct. 10, 2025) ("**The Court's research indicates that every district court, except one, to consider the issue has 'determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful**

and the petitioner's release must be ordered.'") (emphasis added; footnote and citations omitted); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (agencies are required to follow their own regulations); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required."); *Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *8-9 (S.D. Tex. Oct. 16, 2025); *Phong Van Do v. Bondi*, No. 4:25-CV-05643, ECF No. 10 (Slip Op.) (S.D. Tex. Dec. 18, 2025); *Bon Van Nguyen v. Bondi*, No. 4:25-CV-05827, ECF No. 11 (Slip Op.) (S.D. Tex. Dec. 19, 2025); *Da Van Le v. Bondi*, No. 4:25-CV-06179, ECF No. 8 (Slip Op.) (S.D. Tex. Jan. 7, 2026) ("The Court concludes that Respondents' re-detention of Petitioner failed to comply with 8 CFR § 241.13, thereby violating Petitioner's right to due process of law.").

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

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

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

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

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

This Court has also recently issued a favorable decision under § 241.13(i)(2)-(3). *See Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *8-10 (S.D. Tex. Oct. 16, 2025); *Phong Van Do v. Bondi*, No. 4:25-CV-05643, ECF No. 10 (Slip Op.) (S.D. Tex. Dec. 18, 2025); *Bon Van Nguyen v. Bondi*, No. 4:25-CV-05827, ECF No. 11 (Slip Op.) (S.D. Tex. Dec. 19, 2025); *Da Van Le v. Bondi*, No. 4:25-CV-06179, ECF No. 8 (Slip

Op.) (S.D. Tex. Jan. 7, 2026).

Conversely, Respondents make no argument and cite no cases about whether their actions in this matter complied with 8 C.F.R. § 241.13(i). Instead, Respondents build their entire defense on the claim that Petitioner needs to sit on his hands for another four months or so before his due process rights vest under *Zadvydas*. Respondents submit no affidavits from any deportation officer indicating that a travel document request has been submitted, nor that a travel document has been obtained or is significantly likely to be obtained in the reasonably foreseeable future. Respondents make no attempt to rebut any of Petitioner's well-pleaded factual allegations regarding due process violations under 8 C.F.R. § 241.13 stemming from noncompliance with pre-deprivation procedures mandated by law despite having been ordered to answer, thereby admitting the allegations. *See* Fed. R. Civ. P. 8(b)(6). Respondents do not even state in a conclusory fashion that Petitioner's removal to Vietnam is significantly likely to occur in the reasonably foreseeable future. *See generally* ECF Nos. 6, 6-1, 6-2; *see also, e.g.*, *Sun v. Noem*, 2025 WL 2800037, at *2-3 (S.D. Cal. Sept. 30, 2025) ("Respondents say they are 'putting together a travel document [TD] request to send to [the] Cambodian embassy,' and that '[o]nce ICE receives the TD, it will begin efforts to secure a flight itinerary for Petitioner.' The Court finds these kind of vague assertions—akin to promising the check is in the mail—insufficient to meet ICE's own requirement to show 'changed circumstances' or 'a significant likelihood that the alien may be removed in the reasonably foreseeable future.'") (record citations omitted); *Hoac v. Becerra*, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) ("The fact that Respondents intend to complete a travel document request for Petitioner does not

make it significantly likely he will be removed in the foreseeable future."); *Roble v. Bondi*, --- F. Supp. 3d. ---, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (finding insufficient the government's assertion that ICE "requested third country removal assistance from [Enforcement and Removal Operations] HQ").

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

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);

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]

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); *Hmung v. Bondi*, No. 25-CV-1303-J, 2025 WL 3657221 (W.D. Okla. Dec. 9, 2025), *adopted* 2025 WL 3670499 (W.D. Okla. Dec. 17, 2025) (same); *Phong Van Do v. Bondi*, No. 4:25-CV-05643, ECF No. 10 (Slip Op.) (S.D. Tex. Dec. 18, 2025) (same); *Bon Van Nguyen v. Bondi*, No. 4:25-CV-05827, ECF No. 11 (Slip Op.) (S.D. Tex. Dec. 19, 2025) (same); *Liban O. v. Bondi*, No. 25-CV-04560-JWB-ECW, ECF No. 10 (D. Minn. Dec. 17, 2025) (same).

[2] *Supra* at n.2; *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) ("ICE's decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("The[] regulations clearly indicate, upon revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed."); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 n.2 (D. Mass. June 20, 2025); *cf. Va V. v. Bondi*, No. 25-CV-2836

As the *Abuelhawa* court sitting in this district recently noted, "[t]he requisite showing under" 8 C.F.R. § 241.13(i)(2) "must be made, and of its terms can only be made, by the Government. This is so because the provision states that an alien may be returned to custody 'if, on account of changed circumstances, *the Service determines* that there is a significant likelihood that the alien may be removed in the foreseeable future.'" *Abuelhawa*, 2025 WL 2937692, at *8 (alteration as original).

"Courts have found that… increase in frequency of removals alone does not demonstrate significant likelihood of removal in the reasonably foreseeable future." *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3243870, at *2 (W.D. Okla. Nov. 20, 2025); *compare, e.g., Sang Nguyen* v. *Bondi*, No. EP-25-CV-323-KC, 2025 WL 3120516 at *7 (W.D. Tex. Nov. 7, 2025) (lack of details in Vietnam removal data contributed to no finding of significant likelihood of removal in the reasonably foreseeable future) *and, e.g., Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151-52 (same) *with Tran v. Baker*, No. 25-CV-1598-JRR, 2025 WL 2085020 at *4-5 (D. Md. July 24, 2025) (finding that detailed removal data for pre-1995 Vietnamese citizens, travel documents obtained prior to detainment, and scheduled meeting with Vietnamese consulate established significant likelihood of removal in the reasonably foreseeable future).

At present, the following is true: (1) Respondents do not have a travel document; (2) Vietnam has not promised that a travel document will be forthcoming; (3) there is no

(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)).

known timeline for when a travel document will be produced assuming *arguendo* one is eventually issued; (4) Respondents make no claim to have submitted a travel document request to Vietnam (or any other country); (5) Respondents have provided no proof of Petitioner's Vietnamese citizenship; (6) Respondents detained Petitioner in violation of federal regulations; and (7) Respondents make no claim that Petitioner has been interviewed by the embassy, nor that an interview is scheduled.

As was true in *Momennia*, as of January 7, 2026, "ICE's sole justification for [Petitioner's] continued detention appears to be that 'we're working on it' while conceding 'a lack of visible progress.'" *Momennia*, 2025 WL 3011896, at *7. "That does not suffice under either the regulations or *Zadvydas*." *Id.* (citing *Yee S. v. Bondi*, 2025 WL 2879479, at *5 (D. Minn. Oct. 9, 2025) (finding that "the record does not support a determination that Petitioner is significantly likely to be removed in the reasonably foreseeable future" when Petitioner's home country of Burma was not an option for removal, ICE could "direct the Court to no facts in the record supporting a conclusion that any specific country where Petitioner is not a citizen would agree to accept him," and "Respondents simply repeat the vague and conclusory assertions that 'ICE is in the process of obtaining a travel document'"); *Sun v. Noem*, 2025 WL 2800037, at *2-3 (S.D. Cal. Sept. 30, 2025) ("Respondents say they are 'putting together a travel document [TD] request to send to [the] Cambodian embassy,' and that '[o]nce ICE receives the TD, it will begin efforts to secure a flight itinerary for Petitioner.' The Court finds these kind of vague assertions—akin to promising the check is in the mail—insufficient to meet ICE's own requirement to show 'changed circumstances' or 'a significant likelihood that the alien may be removed

in the reasonably foreseeable future.'") (record citations omitted); *Hoac v. Becerra*, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) ("The fact that Respondents intend to complete a travel document request for Petitioner does not make it significantly likely he will be removed in the foreseeable future."); *Roble v. Bondi*, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (finding insufficient the government's assertion that ICE "requested third country removal assistance from [Enforcement and Removal Operations] HQ").

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

Momennia, 2025 WL 3011896, at *8.

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

00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("The[] regulations clearly indicate, upon revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed.").

CONCLUSION

The Court must order Respondents to immediately release Petitioner.

DATED: January 7, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 7, 2026, the foregoing was filed and served on counsel for Respondents via the Court's CM/ECF service.

/s/ Nico Ratkowski
Nico Ratkowski, Esq.