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

Binh Thai Nguyen, Petitioner v. Pamela Bondi, Attorney General; et al., Respondents.	Case No.: 5:26-cv-00056-HE **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 Bradley McNari ("McNari"). ECF No. 15-2. McNari confirms that the government has been unable to deport Petitioner since he was ordered removed on August 9, 2012. *Id.*, ¶27. In fact, in 2012 and 2019 the government submitted for a travel documents for Mr. Nguyen and Vietnam would not take him back despite the 2017 MOU memo which Vietnam agreed to take back pre-1995 Vietnamese. *See* ECF No. 17-1, p. 5-7; 41-42; ECF No. 17-5, p. 8. McNari's declaration does not contest and the evidence in the record shows that Petitioner was issued an Order of Supervision ("OSUP") under 8 C.F.R. § 241.13(i). ECF No. 17-1 When Respondents released Petition on OSUP they were well aware of Petitioner's criminal history and found he was not a danger to the community and they could not deport him in the reasonably foreseeable future. *See* ECF No. 15-1; No. 17-1, p. 42.

Respondents than accused of Petitioner of falsely claiming that he did not complete the self-declaration form ("form") and provided this court with a copy the signed form. *See* ECF No. 17-1, p. 5-7. But if the court looks closely at the form and compare it to the *new* declaration form per the MOU memo, the form is slightly different on number 8. Petitioner was not given the new form to complete. *See* Ex. 2 p. 41-42. ICE used the Petitioner's signed 2012 form to submit for the travel document in there January of 2026 request. In 2012 Petitioner was wearing a green shirt when he was detained. *See* ECF 17-3, p. 11. That same photo was on the 2012 self-declaration form that Respondent blacked it out when they submitted for the request in 2026. *See* ECF No. 16, p. 16. Recent photos of Petitioner shows how he has aged. Petitioner is being dishonest with the Court that Petitioner completed a new self-declaration form for them to submit to Vietnam. You'll note in 2018 Petitioner also filled out a self-declaration form when ICE requested for his travel documents in 2019. *See* ECF No. 17-5, p. 5.

Bottom line, McNari's declaration and exhibits support they did *not* serve Petitioner with notice to revoke his OSUP and they conceded they revoked his OSUP because he violated the terms of his OSUP. There is also no evidence demonstrating there is a significant likelihood of Petitioner being removed in the reasonably foreseeable future. Respondents misconstrue the law and even Respondents don't know what Respondent is arguing.

ARGUMENT

I. Revocation of Petitioner's OSUP under 8 U.S.C. §241(*l*)(2) still requires following procedural requirements.

8 U.S.C. §241(*l*)(2) simply gives the government discretion when to revoke release but they must still follow the procedure safeguards set forth in 8 U.S.C. §241(*l*)(1) which provides: …Any alien …who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody…Upon revocation, the alien will be notified of the reasons for revocation of his release. … be afforded an initial informal interview ... *See also 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").

Here, ICE revoked Petitioner's OSUP without notice or an informal interview in violation of his due process rights, this court must order immediate release.

II. Petitioner's detention time must be aggregated.

Respondents' primary error in the argument lies in failing to recognize that because Petitioner has already been released on an OSUP 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 finding of NSLRRFF. 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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[1] *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001) ("once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, **the Government must respond with evidence sufficient to rebut that showing**") (emphasis added); 8 C.F.R. § 241.13(i)(2) ("The Service may revoke an alien's release under this section and return the alien to custody **if, on account of changed circumstances,** the Service determines that **there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.**") (emphasis added); *see also Roble v. Bondi*, No. 25-cv-3196, --- F. Supp. 3d ---, 2025 WL 2443453 (D. Minn. Aug. 25, 2025) (granting habeas and ordering release based on less egregious regulatory violations); *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673 (D. Minn. Sept. 3, 2025) (same); *Yee S. v. Bondi*, No. 25-CV-02782-JMB-DLM, --- F. Supp. 3d ---, 2025 WL 2879479 (D. Minn. Oct. 9, 2025) (same); *Constantinovici v. Bondi*, No. 3:25-CV-02405-RBM-AHG, --- F. Supp. 3d ---, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025) (same); *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) (granting habeas and ordering release); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (finding petitioner was likely to succeed on unlawful redetention claim because "there is no indication that an informal interview was provided"); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (holding that ICE's failures to follow regulatory revocation procedures rendered detention unlawful); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025) ("because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release"); *Momennia v. Bondi*, No. 25-CV-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025) (R&R), *adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025) (granting habeas relief based on a variety of 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

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.* Additionally, in *Hoac v. Becerra*, the government argued that ICE's intent to apply for a

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foreseeable future."); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("The[] regulations clearly indicate, upon revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed."); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 n.2 (D. Mass. June 20, 2025); *cf. Va V. v. Bondi*, No. 25-CV-2836 (LMP/JFD), *slip op.* at *6-12 (D. Minn. Aug. 11, 2025) (denying relief because a travel document was obtained, but holding that until ICE proved it had a travel document allowing for immediate deportation, it failed to demonstrate changed circumstances justifying redetention of an individual under 8 C.F.R. § 241.13(i)).

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.; See, also*, *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); *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); *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").

Here, for 14 years, Respondents have attempted to obtain travel documents for Petitioner and have not explained how this time would be different now -- other than to state Vietnam is taking more Vietnamese back now than before. Petitioner urges this court to follow the holdings of *Roble* to grant the habeas petitions of similarly situated people.

Further, to the extent that Respondents submit the *Zadvydas* clock should automatically reset every time a noncitizen is released from custody on an OSUP,

Petitioner respectfully demurs. Numerous cases indicate otherwise,[3] as does common

[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

sense. If Respondents' 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. At present, Petitioner was detailed 2012, again on December 9, 2025.

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, Respondents unlawfully revoked Petitioner's OSUP under 8 C.F.R. § 241.13(g) or (i)(2)-(3) because Petitioner was ever notified in writing why Petitioner failed to comply with the condition of his release, no informal interview was provided, etc.[4] Because

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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 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.").

Petitioner's due process rights were violated at the moment of re-detention, Respondents have unclean hands and cannot receive the windfall benefit of non-aggregated detention periods. For the reasons discussed above, Petitioner's claims cannot be said to be premature.[5]

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

As of February 1, 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, 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—

[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.

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.").

Here Respondent requested for the travel but did not even include an updated self-declaration form from Petitioner but used the old one from 2012 and it has been more than 30 days and Vietnam has not even responded as required by the MOU memo. The MOU memo gives Vietnam *discretion* whether to take Petitioner. Vietnam exercised their discretion twice when Respondents went through the same process in 2012 and 2019 and Vietnam would not take him back. The mere fact that Vietnam is taking individuals back more now than before does not mean they will take Petitioner in light of his criminal records. Respondent therefore failed their burden of establishing significant likelihood that the alien may be removed in the reasonably foreseeable future.

IV. II. This Court has jurisdiction to review re-detention for purposes of executing a removal order.

U.S.C. § 1252(g) and § 1252(a)(2)(B)(ii) does not trip this court of jurisdiction. To entertain Respondent's argument would mean that these provisions effectively strip the district courts of jurisdiction to review either a direct or indirect challenge to a removal order, but still accepted jurisdiction over the petition. The *Ceesay* court rejected the government's argument that because the stated purpose of

his detention was to effectuate his removal, the case "stems from" his removal and was thus jurisdictionally barred, finding that it "proves far too much." *See Ceesay,* 781 F. Supp. 3d at 151 (citing, *e.g., Delgado v. Quarantillo*, 643 F. 3d 52, 55 (2d Cir. 2011). The *Ceesay* court observed that detention related to a final order of removal "always is related to the execution of an immigration order, but courts routinely hear habeas petitions filed by individuals challenging detention during the removal process." *Id.* at 152 (citing *Jennings v. Rodriguez,* 583 U.S. 281, 292- 95 (2018); *Zadvydas,* 533 U.S. 678, 688. It noted that district courts in the Second Circuit "have distinguished between challenges to ICE's discretion to execute a removal order, which are barred, and challenges to the *manner* in which ICE executes the removal order, which are not. *Ceesay,* 781 F. Supp. 3d at 152 (citing *Torres-Jurado v. Biden*, 2023 WL 7130898 (S.D.N.Y. Oct. 29, 2023) at *2 (collecting cases); *Ahmed v. Freden,* 744 F. Supp. 3d 259, 264 (W.D.N.Y. 2024). The Ceesay court concluded Petitioner was not challenging the legality of his removal order, but instead was arguing that "his detention was unlawful because the government improperly revoked the order of supervision under which he had been released for more than a decade," neither § 1252(b)(9) nor did § 1252(g) precluded the court from exercising jurisdiction over his petition. *Ceesay,* 781 F. Supp. 3d at 153-54. Bottom line, this court has jurisdiction and Petition will not be labor this point as numerous of courts have found jurisdiction in these types of cases.

CONCLUSION

The Court must order Respondents to immediately release Petitioner.

DATED: February 2, 2026

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