IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BAO NGUYEN,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Case No. 3:25-CV-1913-L-BT

REPLY BRIEF IN SUPPORT OF HABEAS PETITION & PRELIMINARY INJUNCTION

INTRODUCTION

For more than twenty-three years, Petitioner Bao Nguyen did everything the United States government asked of him. After a conviction in 1999, he was ordered removed to Vietnam on September 10, 2001—a country that would not take him back. Recognizing this reality, the government released him 109 days later, on December 28, 2001.

To be clear, Mr. Nguyen has never attempted to stop his removal to Vietnam. And he is not attempting to stop his removal to Vietnam now. Despite leaving when he was a young child, Mr. Nguyen is not afraid of removal to Vietnam. He is, however, afraid of being unnecessarily detained in overcrowded ICE detention

It is essential to be clear about the nature of Mr. Nguyen's present confinement: it is not a necessary administrative measure, but a punitive act devoid of legal justification. Civilized societies have long understood that locking a human being in a cage is a profound deprivation of liberty, an act so severe that its mere threat is used to deter criminal conduct. This is precisely what is happening to Mr. Nguyen. He is currently confined in an overcrowded facility, enduring the immense mental, emotional, and physical distress that accompanies total loss of freedom. Yet, this is not punishment for a crime: Mr. Nguyen has spent the last few decades being a devoted husband and father, a contributing member of his community, and a law-abiding citizen. Equally important, he has complied with all ICE has asked of him on the OSUP for more than 23 years.

The standard justifications for civil immigration detention are wholly absent here. Mr. Nguyen is not detained because he is a flight risk. The most powerful evidence of this is his own action on July 24, 2025: he voluntarily appeared for a scheduled ICE check-in,

fully aware he would be arrested. A man who walks willingly into his own detention is not a man who will later abscond. Nor is he detained because it is necessary to ensure his imminent removal. By the government's own admission, it has not yet even requested the travel documents required to deport him, meaning his removal is not—and has never been—imminent. This begs the question: why is he being detained? The answer is that there is no legitimate reason. The government is effectively asking this Court for a blank check to inflict the punishment of imprisonment without cause, in direct contravention of the bedrock principle that civil detention must be strictly limited and justified by a significant, non-punitive interest. ICE's claimed reason for his detention is basically "we're detaining him because we think we can."

Given the lack of any legitimate basis for Mr. Nguyen's continued detention, where there is neither a risk of flight nor any threat to public safety, it is difficult to discern a rationale for ICE's actions. The most plausible explanation is that ICE is maintaining his detention solely to inflate its statistical enforcement figures in service of meeting the Agency's arbitrarily elevated deportation targets. A basis that is as illegal as it is immoral.

This case presents two questions of profound importance to the rule of law: (1) what is required before the government may re-detain a noncitizen pursuant to 8 C.F.R. § 241.13(i)(2) on the basis of "changed circumstances"? And (2) where there is no evidence of flight risk how long prior to removal may such noncitizen be re-detained in ICE's physical custody? Mr. Nguyen's position is simple and logical: First, the "changed circumstances" should be the specific circumstances that prevented removal in the past. Here, for example, "no travel documents" from Vietnam for Mr. Nguyen is the

circumstance that has prevented his removal. Accordingly, it seems reasonable to require that this circumstance has definitively changed before ICE re-detains a noncitizen like Mr. Nguyen. Detention sooner becomes plainly punitive and contrary to the constitutionally permissible civil detention requirements in this country. And second, it is Mr. Nguyen's position that, absent evidence of flight risk, ICE should not be able to re-detain him more than 72 hours prior to the scheduled removal flight.

Mr. Nguyen's position ensures the Constitution, statutes, and regulations, are not violated through arbitrary detention. Right now, the decision to re-detain a pre-1995 Vietnam immigrants appears to be predicated on whether the noncitizen walked into ICE's field office for an annual check-in. ICE does not even bother starting the travel document request process first. This type of arbitrary decision making is what the U.S. Constitution and the regulations at 8 C.F.R. § 241.13(i) sought to prevent. Now, the government's response leaves no doubt that it wants the Court to rubber stamp its decision to re-arrest and indefinitely detain Mr. Nguyen on nothing more than a vague "executive branch assessment" that gives it speculative hope that it might, one day, succeed where it has failed for a generation. And it wants the Court to approve of ICE depriving Mr. Nguyen of his liberty even though it has not—and indeed cannot—provide any valid reason for his detention (e.g. flight risk). This position, however, is contrary to the statutes, regulations, and the Constitution.

For these reasons and those stated below, Mr. Nguyen respectfully requests that the Court set this matter for an evidentiary hearing. Mr. Nguyen further respectfully requests the Court order ICE to release him from custody and enjoin ICE from re-detaining him

until the circumstances that has prevented his removal for years has in fact changed and the "moment of removal" has arrived.

ARGUMENT

"The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person ... of ... liberty ... without due process of law.'"[1] "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects."[2] Accordingly, the Supreme Court has explicitly stated "that government detention violates this clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, . . . or in certain special and 'narrow' nonpunitive 'circumstances,' . . . where a special justification . . .outweighs the "individual's constitutionally protected interest in avoiding physical restraint."[3] To this end, civil detention may not be penal in nature and it must be limited to "a period reasonably necessary to secure removal" to comport with the Constitution and controlling statutes.[4] In so doing, it is Mr. Nguyen's position that ICE must follow the process set forth in the regulations, the circumstance previously preventing removal must have changed, and ICE must not take him into custody for any longer than is necessary to "assure" Mr. Nguyen's "presence at the moment of removal."

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[1] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (quoting U.S. Const. Amend. 5).

[2] *Id.* (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

[3] *Id.*

[4] *Id.* at 699.

As detailed below, Mr. Nguyen is likely to succeed in demonstrating ICE's detention of him is unlawful and invalid, the harm he will suffer is irreparable while the requested injunction will cause no harm to Respondents, and finally that a balancing of the equities and public interest favor an injunction requiring ICE to release Mr. Nguyen immediately. Before addressing these issues, however, it is important to address the proper legal framework for determining the lawfulness of ICE's current detention of Mr. Nguyen.

I. Zadvydas is NOT applicable to the re-detention of Mr. Nguyen, but it does provide the constitutional principles which guide the analysis in this case.

Respondents fundamentally mischaracterize the legal framework governing Mr. Nguyen's re-detention. By suggesting they have a fresh six-month, presumptively valid window to effectuate his removal (at ICE's convenience), Respondents improperly attempt to shoehorn this case into the framework of *Zadvydas v. Davis*, 533 U.S. 678 (2001). This is not a *Zadvydas* case. This case is not about the initial authority to detain a noncitizen following a final order of removal. Rather, it concerns the authority of Immigration and Customs Enforcement (ICE) to re-arrest and indefinitely[5] detain a man who, after a prior period of detention, was released on an Order of Supervision (OSUP) for years precisely because his removal was not significantly likely in the reasonably foreseeable future.

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[5] The words "indefinite" or "indefinitely" when used in this brief to refer to Mr. Nguyen's detention, are meant to describe the length of his detention as "unknown" or an "unspecified period of time." When given their ordinary meaning Respondents cannot truly claim that Mr. Nguyen's detention is anything but indefinite as they have provided no time frame whatsoever for even making the request for travel documents, much less when it believes it will get them.

The controlling authority for this scenario is not *Zadvydas*, but the specific federal regulation governing the revocation of release: 8 C.F.R. § 241.13(i). As another federal court recently explained in a case with indistinguishable facts:

> Respondents argue that, because Mr. Nguyen has been detained for less than six months, his detention pending execution of his removal order is presumptively reasonable under *Zadvydas*... Respondents' argument misses the mark. This case is not about ICE's authority to detain in the first place... This case is about ICE's authority to re-detain Mr. Nguyen after he was issued a final order of removal, detained, and subsequently released on an OSUP. The DHS regulation, 8 C.F.R. § 241.13(i), applies to non-citizens in Petitioner's situation.[6]

Similarly, a decision out of the Eastern District of Texas four days ago, explained:

> [T]his is not your typical first round detainment of an alien awaiting removal. Petitioner was previously detained, then released on supervised release for several years, and his 90-day removal period expired. *Zadvydas*, relied upon by Respondents, dealt with the initial detainment of an alien awaiting removal. After *Zadvydas*, the immigration regulations were revised to implement administrative review procedures for those aliens detained beyond the removal period, including those who are re-detained upon revocation of their supervised release.[7]

While *Zadvydas* does not control, its core reasoning illuminates the central question here: what constitutes a *reasonable* period of detention? The answer to that question, and the constitutional permissibility of the detention itself, depends entirely on the circumstances. Common sense dictates a profound difference between the six-month period immediately following a removal order and the re-detention of an individual decades later, after years of perfect compliance with supervision, who voluntarily appears for a check-in knowing full well he is almost certain to be taken into custody. In other

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[6] *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025).

[7] *Escalante, v. Noem, et. al.*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025).

words, the analysis for individuals like Mr. Nguyen who report to ICE expecting to be detained after years of compliance on OSUP is much different than for noncitizens who have just been ordered removed are still within the statutory removal period.

The "historic purpose of the writ," as *Zadvydas* reminds us, is "to relieve detention by executive authorities without judicial trial."[8] To that end, this Court must ask whether Mr. Nguyen's detention "exceeds a period reasonably necessary to secure removal," measuring reasonableness "primarily in terms of the statute's basic purpose, namely, *assuring the alien's presence at the moment of removal.*"[9].

At its simplest, this inquiry is not unlike the one magistrate judges conduct daily in detention hearings: what, if any, conditions are necessary to assure a person's appearance? The answer requires an individual assessment. Here, Mr. Nguyen's circumstances overwhelmingly demonstrate that prolonged detention is not necessary. His years of unwavering compliance with his OSUP and his status as a law-abiding citizen for decades establish he is not a flight risk. Most powerfully, Mr. Nguyen demonstrated his commitment to compliance in the most definitive way possible: he walked into an ICE office for a scheduled appointment, fully aware of the agency's recent practice of detaining pre-1995 Vietnamese immigrants and surrendered himself. There can be no more compelling evidence that he is not a flight risk.

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[8] 533 U.S. at 699.

[9] *Id.* (emphasis added).

In the criminal justice system, courts routinely trust individuals facing certain and lengthy prison sentences to remain on release pending sentencing. This trust is based on their history of compliance and is buttressed by severe criminal penalties for failure to appear. The same presumption should apply with even greater force to Mr. Nguyen, who is separated by decades from any criminal conduct and faces a potential 10-year federal prison sentence for absconding from ICE officials under 8 U.S.C. § 1253(a)(1). To achieve its sole legitimate purpose—assuring his presence at the moment of removal—ICE should not need to have Mr. Nguyen detained for any more than 24 to 48 hours before a scheduled departure. He does not need to be detained for months on end while ICE may or may not begin the process of seeking travel documents.

II. Mr. Nguyen is likely to succeed in demonstrating his current detention is unlawful and invalid because ICE detained him without making an individualized determination as to his "changed circumstances" and without following the process required by 8 C.F.R. § 241.13(i).

Respondents' authority to detain Mr. Nguyen is not boundless as the government would assert. While 8 U.S.C. § 1231(a) provides the general statutory framework for post-removal-order detention and supervised release, "[t]he revocation of that release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release for purposes of removal. Specifically, a noncitizen's release may be revoked 'if, on account of changed circumstances," it is determined that "there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.'"[10] Furthermore, the

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[10] *Pham v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025) (quoting 8 C.F.R. § 241.13(i)(2)).

regulations go on to proscribe the process for revocation based on a determination of changed circumstances as follows:

> [T]he 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.[11]

These regulations, not *Zadvydas* or 8 U.S.C. § 1231, govern ICE's re-detention of individuals who have been released after a determination was made that they could not be removed. The first step in this process is necessarily a determination of changed circumstances. Then, once that determination is made, ICE is required to follow the interview and notice requirements of § 241.13(i)(3). As discussed below, ICE's failure to do either of these things properly provide two independent bases for granting this Petition and request for an injunction.

A. Mr. Nguyen is likely to succeed in showing his re-detention was unlawful because ICE did not make an individualized determination as to changed circumstances and admits that the one circumstance that has prevented removal in the past (no travel documents) has not changed.

The government's power to revoke supervised release and re-detain a noncitizen is strictly circumscribed. The regulation at 8 C.F.R. § 241.13(i)(2) provides that ICE may revoke release "if, on account of changed circumstances, [ICE] determines that there is a

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[11] 8 C.F.R. § 241.13(i)(3).

significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." As the First Circuit has held, and district courts have recently reaffirmed in cases identical to this one, before re-detaining an individual like Mr. Nguyen based on "changed circumstances," there must be "(1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."[12]

Significantly, in the context of re-detention, the burden is one the government to show an individualized change of circumstances sufficient to demonstrate a true "significant likelihood that the alien may be removed."[13] This is not a mere formality. The regulation requires ICE to consider specific factors when making this determination, including "the history of the Service's efforts to remove aliens to the country in question," "the ongoing nature of the Service's efforts to remove *this alien and the alien's assistance with those efforts*," and "the reasonably foreseeable results of those efforts."[14] The inquiry is, by its very nature, individualized and fact-intensive.

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[12] *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2)); *Pham v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *4–6 (E.D. Cal. July 16, 2025), *Hoac v. Beccerra, et al.*,, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025), and *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025).

[13] *Escalante, v. Noem, et. al.*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); *see also See Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding Zadvydas 6-month presumption not applicable where alien is "re-detained" after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent's burden to show removal is now likely in the reasonably foreseeable future).

[14] *See* 8 C.F.R. § 241.13(f) (setting out factors to consider including "the history of the alien's efforts to comply with the order of removal, the history of the Service's efforts to remove aliens to the country in question or to third countries, including the ongoing nature of the Service's efforts to remove this alien and the alien's assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of

As an initial matter, the process for requesting travel documents for pre-95 Vietnam immigrants has—apparently—been in place since 2020.[15] This process is apparently so daunting and time consuming that ICE still has not even submitted the request to its headquarters for Mr. Nguyen.[16] . een detaining pre-95 Vietnam immigrants ccording to DO Thompson, ver informed Mr. In this case, ICE has made no attempt to claim it made "an individualized determination" that Mr. Nguyen's circumstances have changed. To the contrary, ICE admits that the decision to take Mr. Nguyen back into custody was based on the (unsubstantiated) claim that it is aware of "individuals with final orders of removal being removed to Vietnam- both aliens that entered the United States before and after 1995";[17] and a the claim that on July 15, 2025, "ERO removed approximately 20 individuals on a charter flight to Vietnam."[18] This generalized information does not provide the Court with an idea of how likely any given pre-95 Vietnam immigrant is to be issued travel documents.[19] The numbers DO Thompson provides are completely meaningless without more information. As one court pointed out in a similar case, these numbers mean very little as they fail to provide "evidence regarding the percentage of successful requests

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the Department of State regarding the prospects for removal of aliens to the country or countries in question.").

[15] (Pet'r's App. Ex. 3.)

[16] (Dkt. No. 12 at pp. 3 – 4, ¶ 11.)

[17] (Dkt. No. 9 p. 5 ¶ 10.)

[18] (*Id.* at p. 6 ¶ 12.)

[19] *Cf. Nguyen*, 2025 WL 1725791, at *4 (discussing ICE's failure to provide all the information needed to know whether there is any statistical significance to the number of travel documents or removals it has obtained).

to Vietnam to demonstrate changed circumstances."[20] Such generalized claims of changed circumstances by ICE to justify re-detention in similar cases has been rejected in multiple recent cases involving pre-95 individuals from Vietnam.[21]

Here, Mr. Nguyen was released after the statutory removal period had expired because INS could not obtain travel documents for him from Vietnam. Said differently, the "circumstance" which prevented his removal previously was that Vietnam did not issue travel documents. The absence of travel documents continued to be the circumstance that prevented INS and then ICE from removing Mr. Nguyen at any point in the 27-years that he was on OSUP. When ICE took Mr. Nguyen into custody on June 6, 2025, this circumstance had not changed.[22] In fact, nearly two months after he was taken into custody Respondents still had not even requested a travel document for Mr. Nguyen.[23]

This demonstrates that no individualized assessment occurred. Instead, ICE's decision was based on a generalized policy of re-detaining pre-1995 Vietnamese immigrants, triggered by the mere fact that Mr. Nguyen complied with his check-in requirement. The process for obtaining travel documents from Vietnam remains as complex, lengthy, and uncertain as it has been since the 2020 MOU was entered into. By

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[20] *Phan, v. Beccera, Respondent.*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at 4 (E.D. Cal. July 16, 2025).

[21] *Id.* (granting injunction and ordering ICE to release pre-95 Vietnam immigrant who ICE detained without following its own regulations and based only on generalized changes, not individualized ones); *see also Hoac v. Becerra, et al.*, , No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025) (same); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (same).

[22] (Dkt. no. 9 p. 6 ¶ 11.)

[23] (Dkt. No. 9 p. 6 ¶ 11.)

the government's own admission, they are not even bothering to start that lengthy process before imprisoning individuals like Mr. Nguyen. The Constitution and the agency's own regulations demand far more.

Respondents' reliance on *Ahmad v. Whitaker*,[24] is baffling but welcomed, as that case supports Mr. Nguyen's position. The government claims *Ahmad* is "factually like this case," but it omits the dispositive fact that made the changed circumstances legitimate in *Ahmad*: ICE already had Mr. Ahmad's travel documents in hand and his removal flight scheduled when he was detained less than two weeks before the flight was scheduled to depart.[25] If the facts here were truly "like" *Ahmad*, ICE would have had Mr. Nguyen's travel documents in hand and a flight scheduled for mid-June when they detained him at his annual check-in. And, under those circumstances, Mr. Nguyen would be in Vietnam now, not sitting in an ICE detention center while his habeas petition is litigated. In stark contrast to *Ahmad*, ICE detained Mr. Nguyen without travel documents in hand and, nearly two months later, still has not even requested them.

Ultimately, the facts of *Ahmad* demonstrate that when ICE follows its regulations and ensures a concrete individualized change of circumstances, noncitizens with years of compliance on OSUP are not detained until the circumstance that has prevented removal in the past has changed. Unfortunately, those critical facts in *Ahmad* are not present here.

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[24] *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540 (W.D. Wash. Dec. 4, 2018)

[25] *Id.* at 1.

Instead, the only real factual similarity is the "appalling" and consistently inhumane way in which ICE treats people, as the *Ahmad* court noted with disgust.[26]

Unlike the 2018 decision in *Ahmad*, the recent cases of *Nguyen v. Whitaker*, *Phan v. Beccerra*, and *Hoac v. Beccerra*, are factually identical in nearly every relevant respect. Each case involves a pre-95 Vietnam immigrant, a prior determination that removal could not be effectuated, years of compliance on OSUP, and ICE re-detaining each of the non-citizens without making an individualized concrete finding of changed circumstances or following the procedures set forth in § 241.13(i).[27] And in every single one of those cases, the district courts found ICE failed to (1) demonstrate the required individualized changed circumstances, and (2) ICE failed to follow the procedures required by the regulations including an informal interview, notice, and an opportunity to respond. These conclusions led all three courts to determine "that Petitioner has shown a likelihood of success on the

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[26] The *Ahmad* court did not mince words on this issue, stating:

> Although unable to grant Mr. Ahmed the relief he seeks, the Court is appalled by how ICE went about revoking his OSUP. Mr. Ahmad had given ICE no reason to suspect that he would not comply with the execution of his removal order when the time came. He already was wearing an ankle monitor. ICE officers told him that he would be permitted to take a family trip to visit his elderly parents after Christmas. But instead, they ripped him away from his family without any warning or opportunity to say goodbye. To make matters worse, the situation was entirely avoidable: ICE could have taken a number of other courses of action that would have lessened the blow of Mr. Ahmad's removal on him and his family. Were it in the Court's habeas power to remedy the way ICE treated Mr. Ahmad and his family, it would do so.
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> *Id.* at 6.

[27] *See Nguyen*, 2025 WL 1725791, at 5; *Phan*, 2025 WL 1993735, at *4-6; *Hoac*, 2025 WL 1993771, at *4-6.

merits of his claims that his re-detainment is unlawful because ICE had not complied with the controlling regulations to re-detain him."[28]

B. ICE's Failure to Follow the Process Required by its Own Regulations Provides an Independent Basis for Relief.

Separate and apart from the lack of changed circumstances, Mr. Nguyen's detention is unlawful because ICE violated its own mandatory procedural regulations. Indeed, 8 C.F.R. § 241.13(i) explicitly requires an informal interview, written notice of the reasons for the revocation, and an opportunity for the noncitizen to respond. Mr. Nguyen was afforded none of these procedural protections, at least not that he was aware of at the time.[29]

Mr. Nguyen's habeas petition explicitly raised this failure.[30] The sole evidence of claimed compliance with 8 C.F.R. § 241.13(i) is a single, conclusory paragraph in the declaration of DO Thompson.[31] This declaration, however, is devoid of the factual detail

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[28] *Phan*, 2025 WL 1993735, at *4; *Hoac*, 025 WL 1993771, at *5; *Nguyen*, 2025 WL 1725791, at 5 ("Based on ICE's violations of its own regulations, I conclude that Mr. Nguyen's detention is unlawful and that his release is appropriate.").

[29] A declaration from Mr. Nguyen consistent with this statement and other statements herein would (and still will) be provided if ICE ever provides permission to the contract detention facilities to provide detainees with legal documents for signature and return to their counsel. Unfortunately, the detention centers, including the one Mr. Nguyen is currently detained at, have indicated ICE has not provided them with permission to do so. Moreover, it is nearly impossible to schedule in person visits at which such declaration could be reviewed and signed.

Notably, ICE has provided no documentary evidence of these things taking place at the time of his re-detention. Based on information, belief, and extensive experience, ICE documents encounters and arrests like this one as a matter of course on documents such as an I-213 Record of Deportable Alien, or other relevant forms. Instead of such evidence, ICE has submitted a declaration that does not even purport to be from the officer who re-detained Mr. Nguyen on July 24, 2025.

[30] (Dkt. No. 1, pp. 24-25 ¶¶ 59–62.)

[31] (Dkt. no. 12 p. 3 ¶ 9.)

necessary to establish that Mr. Nguyen received a lawful "informal interview."[32] It fails to state who conducted the interview, what specific information was provided to Mr. Nguyen, or how he was given a meaningful opportunity to respond. Critically, DO Thompson does not claim to have personal knowledge of the arrest, and his duties appear to be administrative, suggesting his statements are based on a second-hand file review.[33]

Tellingly, Respondents have failed to produce any contemporaneous documentation of this alleged interview. The best evidence would be the official report or system entry made at the time of Mr. Nguyen's re-detainment on July 24, 2025. This is particularly true if, as Mr. Nguyen suspects, DO Thompson was not present at all during the process—as it means he would have had to have gotten that information from something or someone else. The who, what, and when of that information is of critical importance. The government's decision to rely on a vague, second-hand declaration instead of primary evidence creates a clear factual dispute as to whether the procedural safeguards of § 241.13(i) were actually followed. These things along with other issues with the statement in paragraph 9 are discussed in greater detail in the Motion for an Evidentiary Hearing being filed on the same date as the instant filing.[34]

An agency's failure to follow its own regulations is a fatal flaw. As multiple courts have recently held in cases identical to this one, when ICE fails to provide the interview

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[32] (*Id.*)

[33] (*Id.* at pp. 2-3 ¶¶ 2 & 9.)

[34] (Dkt. no. 14 at pp. 4-6.)

and notice required by § 241.13(i), its decision to re-detain is invalid and release is the proper remedy.[35] As the court in *Nguyen* stated, "ICE, like any agency, has the duty to follow its own federal regulations... where an immigration regulation is promulgated to protect a fundamental right... and [ICE] fails to adhere to it, the challenged [action] is invalid."[36] This procedural failure provides a clear and independent basis upon which to grant the habeas petition and the motion for a preliminary injunction. Indeed, as stated above, the *Nguyen*, *Phan*, and *Hoac* courts all held the failure to conduct an informal interview and the other procedures required by the regulations was sufficient for petitioners to show a strong likelihood of success sufficient to meet the preliminary injunction standard. Mr. Nguyen respectfully requests this Court reach the same conclusion.

III. Mr. Nguyen has been and continues to be deprived of his life and liberty, things universally recognized as irreparable injuries; meanwhile, ICE will suffer no injury whatsoever if the injunction is granted.

Continued unlawful detention is, by its very nature, an irreparable injury.[37] The Supreme Court has affirmed that "[f]reedom from imprisonment...lies at the heart of the

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[35] *Phan*, 2025 WL 1993735, at *4 ("Because there is no indication that an informal interview was provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that his re-detainment was unlawful."); *See also Wing Nuen Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. Jun. 17, 2025) (finding "that officials did not properly revoke petitioner's release pursuant to [§] 241.13" because "and most obviously ... petitioner was not granted the required interview upon the revocation of his release"); *See Nguyen*, 2025 WL 1725791, at *5; *Phan v. Beccerra*, No. 25-cv-11472, 2025 WL 1993735, at *3 (D. Mass. July 1, 2025); *Hoac v. Beccerra*, No. 25-cv-11471, 2025 WL 1993771, at *3 (D. Mass. July 1, 2025)

[36] *Id.* (internal citations omitted).

[37] *Phan*, 2025 WL 1993735, at *5 ("Further, '[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

liberty" protected by the Due Process Clause.[38] "Where, as here, the 'alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary'."[39]

Every day Mr. Nguyen remains in custody, he is irreparably harmed by the loss of his fundamental liberty, his separation from his U.S. citizen wife and children, and the loss of his ability to provide for his family. The harm is not merely abstract. This is particularly true of Mr. Nguyen who was initially held at an ICE office which is not equipped for overnight detention, as it is an office building with a processing location within it. This raises grave concerns for his health and safety, especially given the recent, tragic death of a 55-year-old Vietnamese detainee in ICE custody and the rising number of in-custody deaths in 2025.[40] This risk constitutes a severe and irreparable harm that, when combined with the obvious irreparable injury of being unlawfully detained, it is the type of irreparable injury that warrants immediate judicial intervention.

The government did not address these plain irreparable harms to Mr. Nguyen at any point in its response. Instead, it attempted to re-cast the issue as Mr. Nguyen not having a right to never-ending-supervision. There are many problems with the government's argument. First, Mr. Nguyen is not seeking never-ending-supervision. Nor is he seeking to prevent or stop the government from removing him to Vietnam. He is simply asking ICE

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[38] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

[39] *Phan*, 2025 WL 1993735, at *5 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)).

[40] (Pet'r's App. Ex. 5.)

to follow the mandatory process required by § 241.13(i), to include ensuring there is an actual change in his circumstances (i.e. Vietnam has actually issued a travel document) and he is only detained when doing so is required to "assure his presence at the *moment* of removal." Not for months on end in overcrowded detention facilities. And certainly not before a travel document request has even been submitted.

IV. Balancing of the Equities and Public Interest Weigh Strongly in Favor of Mr. Nguyen's Requested Injunction

The balance of equities and public interest weigh overwhelmingly in Mr. Nguyen's favor. "Just as the public has an interest in the orderly and efficient administration of this country's immigration laws. [ ] the public has a strong interest in upholding procedural protections against unlawful detention."[41] Indeed, habeas petitions in and of themselves demonstrate a recognition of the strong public interest against unlawful detention of anyone present in the United States. For this reason (buttressed by the likelihood of success discussed above), the public interest weighs strongly in Mr. Nguyen's favor.

While Petitioner does not dispute the government's and the public's strong interest in the enforcement of immigration laws, that abstract interest is in no way advanced by the needless and arbitrary detention of Mr. Nguyen. In this case, and many others, ICE's intention to indefinitely detain Mr. Nugyen in the speculative hope of someday getting a travel document to Vietnam is not grounded in the legitimate enforcement of the immigration laws, but rather the agency's desire to use Mr. Nugyen's as to its detention

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[41] *Phan*, 2025 WL 19933735 (citing *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

statistics. But Mr. Nugyen is not a statistic, he is a human being, and the agency's refusal to treat him as such underscores the necessity of granting this habeas petition. His ultimate removal to Vietnam simply does not require his pre-emptive confinement. Mr. Nguyen has affirmed his willingness to purchase his own flight and depart immediately upon receiving travel documents. Any suggestion that Mr. Nguyen would defy such an order is baseless, as his fear is of detention, not removal. No one can reasonably argue that a man who voluntarily walked into custody on July 24th would suddenly become a flight risk when facing a final directive to depart.

Moreover, Mr. Nguyen's detention is a profound waste of public resources that actively harms the public interest it purports to serve. Taxpayers are funding the tens of thousands of dollars required to keep him needlessly incarcerated. Allowing Mr. Nguyen to remain at liberty pending removal would not only save these significant detention costs but would also enable him to purchase his own ticket. Among other things, this would free up a seat on an alleged future charter, saving the public the additional two-to-three-month detention cost for the individual who will ultimately take the place of Mr. Nguyen on that flight. There is simply no public interest served by unnecessarily detaining a family's primary provider, a valued employee, and a man with a 23-year record of perfect compliance. His confinement is as fiscally irresponsible as it is legally unwarranted.

This brings up one final point on the detention of Mr. Nguyen and other pre-95 Vietnam immigrants. It is important to recall the true facts and history behind his presence here. An estimated 2 million Vietnamese refugees effectively chose the United States over Vietnam when they fled their country for the U.S. after the Vietnam war. Among them, was

Mr. Nguyen's family who fled with him when he was a young child. Eventually, Mr. Nguyen and his family were invited to the United States as refugees.

Mr. Nguyen had no control over his parents' decision to come here. He has never had control over Vietnam's decision not to issue travel documents to individuals who entered pre-95. And he did not have any control over ICE's decision to completely ignore its mandatory regulations for re-detention. Though a very different much younger Mr. Nguyen did have control over the poor decision he made in 1999, that is not the same Mr. Nguyen who became a devoted husband and father who is adored by his community 24 years later.

In sum, the equities in this case weigh strongly in favor of Mr. Nguyen. The harm of ordering him released to Respondents is nonexistent. Mr. Nguyen is not a danger to the community; he has lived peacefully and productively for decades. He is not a flight risk; he has complied with his OSUP and reported to ICE on July 24, 2025, fully aware that he would likely be detained. Releasing Mr. Nguyen to his OSUP, a status ICE itself deemed appropriate for over two decades, poses no conceivable harm to the government. Meanwhile, the harm to Mr. Nguyen and his family if his is not released is significant and irreparable.

CONCLUSION

Respondents have failed to rebut any of the claims in Mr. Nguyen's habeas petition indicating there is no lawful basis for his sudden and indefinite detention. They likely violated their own regulations, both substantively and procedurally. They have misrepresented key facts to this Court. Their legal arguments rest on a misreading of

precedent and a fundamental misunderstanding of constitutional limits on government power. The government's case is built not on facts, but on speculation; not on law, but on whim. For 23 years, Mr. Nguyen has lived under the shadow of a removal order that could never be executed. The reward for his decades of compliance should not be a cage. For all the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for a Writ of Habeas Corpus and order his immediate release from custody.

RESPECTFULLY SUBMITTED,

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