

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

DIEN XUAN NGO.

PETITIONER,  
v.

KRISTI NOEM, et al.,

RESPONDENTS.

Case No. 3:25-CV-1943-L-BT

**MOTION FOR EVIDENTIARY HEARING ON HABEAS PETITION  
& PRELIMINARY INJUNCTION**

NOW COMES Petitioner Dien Ngo, by and through undersigned counsel, and files this Motion for Evidentiary Hearing on Habeas Petition & Preliminary Injunction. This motion, filed at the same time as Mr. Ngo's Reply Brief in Support of Habeas Petition & Preliminary Injunction. To avoid being repetitive, Mr. Ngo incorporates by reference the facts, relevant procedural history, and legal arguments in that brief. As noted in the Reply brief and discussed in greater detail below, Respondent's Response Brief and the Declaration of DO Hagerty attached as Ex. 1 make numerous ambiguous, factually unsupported, and/or disputed statements. For these reasons and those discussed more fully below, Mr. Ngo respectfully requests that the Court set this matter for an evidentiary hearing.

- I. **An evidentiary hearing is necessary for the Court to hear testimony on a number of ambiguous, factually unsupported, and/or disputed statements made in the Government's response and DO Hagerty's declaration.**

Mr. Ngo, respectfully submits that an evidentiary hearing is necessary to resolve critical factual disputes central to his Petition for a Writ of Habeas Corpus. Respondents' Response and the supporting declaration of Deportation Officer Hagerty are predicated on a series of ambiguous, misleading, and factually questionable assertions. These are not matters of legal interpretation but contested facts that go to the very heart of whether Mr. Ngo's detention is lawful.<sup>1</sup> When the government seeks to deprive a man of his liberty after 23 years of compliance with an Order of Supervision, it must do so on the basis of clear, credible, and verifiable facts. Because Respondents' justification for Mr. Ngo's detention fails to meet this standard and is directly contradicted by the evidence, a hearing is required to adjudicate his petition.

Specifically, Respondents' entire case for detaining Mr. Ngo rests on three pillars of disputed fact: (1) the existence of a "recent" change in circumstances justifying detention; (2) the actual likelihood of effectuating his removal; and (3) compliance with mandatory due process regulations. The current record reveals profound conflicts on all three points that cannot be resolved on the papers alone.

A. A Hearing is Necessary to Determine the Veracity of Respondents' "Changed Circumstances" Justification.

The cornerstone of the government's argument is that a "recent" change in policy now permits the removal of Vietnamese nationals who arrived before 1995. This assertion

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<sup>1</sup> See *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) (explaining an evidentiary hearing is warranted where a habeas petitioner's claims, if true, would entitle him to relief and the record presents a factual dispute).

is both factually disputed and intentionally vague, requiring testimony and factual development.

*i. The "Recency" of the Policy Change is a Contested Material Fact.*

Respondents claim that Vietnam "has *recently* changed its stance and began to accept such persons." However, evidence already submitted by Petitioner establishes this policy change occurred in 2020—nearly five years ago.<sup>2</sup> The government's characterization of a half-decade-old policy as "recent" is, at best, misleading. And its not the first time ICE has made the vague representation about Vietnam "recently" changing its policy—without including the fact that the policy change happened 5 years ago when the 2020 MOU was issued.<sup>3</sup>

Specifically, in *Nguyen v. Hyde*, the court explained how's pre-evidentiary conclusory statements about recent changes resulted ICE conceding the referenced change was the 2020 MOU:

Respondents stated "[t]he United States has recently entered into a repatriation agreement with Vietnam, and ICE has started to remove Vietnamese citizens to Vietnam consistent with that agreement." At the June 17, 2025, hearing, I noted that Respondents' assertions were conclusory; there was nothing in the Notice of Revocation or in the record—no statistics or supporting facts—identifying said repatriation agreement and showing that ICE had started to remove pre-1995 Vietnamese refugees, like Mr. Nguyen, to Vietnam. In other words, Respondents did not identify any facts to support that ICE re-detained Mr. Nguyen based on changed circumstances that would show his removal to be significantly likely in the reasonably foreseeable future. In fact, at the hearing,

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<sup>2</sup> (Pet'r's App., Ex. 3).

Respondents conceded the Court's point, while clarifying that the referred-to "recently entered into repatriation agreement" was the 2020 MOU.<sup>4</sup>

This temporal discrepancy is a material factual dispute. The significance of which cannot be overstated in the case of Mr. Ngo. Indeed, if the change occurred five years ago, the Court must ask—and can only learn through testimony—why ICE released him in June 2023 because in DO Hagerty's words, "ERO was unable to remove him to Vietnam at that time."<sup>5</sup> Nor does it explain why they did not detain him when he reported the next year in 2024, only to abruptly detain him on July 22, 2025, without any new intervening development. Was it because circumstances changed making it significantly likely Mr. Ngo would be removed to Vietnam? Or was the decision guided largely by arbitrary and impossible arrest quotas being issued by the White House? The answer may well reveal that his detention is not a response to a new process in place, but is arbitrary and pretextual.

*ii. The Government's Vague Claims of Removal Success Obscure the Actual Likelihood of Mr. Ngo's Removal.*

To justify detention, the government must show that removal is reasonably foreseeable. Its declaration fails to do so, offering only vague and unquantified assertions that require scrutiny at a hearing.

- The declaration claims awareness of "many individuals" removed to Vietnam. How many is "many"?
- It states that on a July 15th charter flight, "several of these individuals had arrived... prior to 1995." Was "several" two, or ten? What percentage of the pre-1995 individuals that ICE attempted to remove were actually successful?

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<sup>4</sup> *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at \*3 (D. Mass. June 20, 2025).

<sup>5</sup> (Dkt. No. 13 at p. 3.)

- Petitioner has reason to believe a significant number of pre-1995 Vietnamese nationals were removed from that very flight manifest for reasons other than their own actions.

A court cannot determine the likelihood of Mr. Ngo's removal based on such imprecise and self-serving terms. An evidentiary hearing is necessary to compel Respondents to provide concrete data: the total number of pre-1995 individuals for whom travel documents have been sought, the number of documents issued, the number of removals effectuated, and the average time frame for this process. Without these facts, the government's claim that removal is likely is nothing more than unverifiable speculation.

B. A Factual Dispute Exists as to Whether Respondents Complied with Regulatory Due Process.

Respondents claim that at the time of his arrest, Mr. Ngo was afforded an "informal interview" in compliance with 8 C.F.R. § 241.13(i). More specifically, DO Hagerty's declaration states:

10. At the time of his arrest, NGO was informed that he would be detained because he was subject to a final order of removal and there is now a likelihood of removal back to Vietnam. In accordance with 8 C.F.R. § 241.13(i)(3), NGO was informed that the reason for his revocation was that ICE believed that he could be removed to Vietnam. NGO was given the opportunity to respond during this informal interview.

Completely absent from this statement is how (not too mention when) DO Hagerty made this determination.

Based on the statements in his declaration, it is quite unlikely that he was involved with the actual re-detainment of Mr. Ngo on July 22, 2025. First, DO Hagerty's duties listed in the declaration do not include making arrests, processing, conducting interviews, etc.<sup>6</sup> Furthermore, based on information, belief, and statements in DO Hagerty's declaration, it appears the basis for his knowledge is through reviewing his case—which is code in ICE language for reviewing the alien file and all of the relevant DHS systems that track things such as encounters, interviews, and statements by noncitizens.<sup>7</sup>

What is DO Hagerty's basis for the statements he made in paragraph 10 of his declaration? Surely the best evidence of the process being adhered to is the report, system entry, or other documentation that was actually made at the time of Mr. Ngo's re-detainment. This begs the question: why not submit that documentation? These facts were explicitly pled in the habeas petition and are now in dispute.<sup>8</sup>

A hearing is required to question DO Hagerty under oath about the events of July 22nd:

- Did he or whoever arrested Mr. Ngo contemporaneously document this "informal interview"? Did anyone realize and conclude on that day that an informal interview was conducted? Or did this conclusion get reached within 24-hours of its inclusion in the declaration?

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<sup>6</sup> (Dkt. no. 12 p. 2.)

<sup>7</sup> (*Id.* at pp. 2-3.)

<sup>8</sup> Mr. Ngo is more than willing to sign a declaration indicating that he was not aware that an "informal interview" was conducted; nor was told anything of substance other than telling him they were removing him to Vietnam; nor did he realize he had any opportunity to provide any response to ICE's decision to detain him. According to the detention facility, however, ICE has not given them permission to provide detainees with documents to sign and return to counsel. And, while Mr. Ngo was in Texas when his habeas petition was filed, he is now in Florence, AZ, removing the possibility for an in-person visit (even if one could get scheduled).

- What specific information did ICE convey to Mr. Ngo on July 22, 2025, to provide him notice of the reasons it believe circumstances had changed? Or, as the declaration seems to indicate, does ICE think that simply making the vague statement that they think he "could be removed" is sufficient under 8 C.F.R. § 241.13(i)? More to the point, what did they convey to Mr. Ngo which would have given him the ability to meaningfully respond as required by the regulation?
- Did whoever talked to Mr. Ngo that day intentionally and deliberately give Mr. Ngo an "opportunity to respond" to ICE's claim it could remove him now? Or, looking back within 24-hours of the declaration being digitally signed on August 8<sup>th</sup>, did ICE conclude that Mr. Ngo had an opportunity to respond? Regardless of when ICE realized it was giving him an opportunity to respond, what, if anything, does it believe it did to give Mr. Ngo the understanding that he was being given an opportunity to respond?

Simply telling a man he is being arrested and asking if he has questions does not satisfy the due process requirements of 8 C.F.R. § 241.13(i). Mr. Ngo respectfully requests that the Court hear testimony on this issue to determine what truly happened.

C. A Hearing is Needed to Establish a Credible Timeline for Removal.

Respondents' own admissions create grave doubt as to whether Mr. Ngo's removal can be effectuated within a reasonable period. They admit they are still merely "in the process of compiling the necessary documents" to *begin* the travel document request.<sup>9</sup> They then speculate that a charter flight *may* be available in "2-3 months."<sup>10</sup> The intervening steps—submission to headquarters, consular processing by Vietnam—could take weeks or months.

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<sup>9</sup> (Dkt. 13 at p. 4.)

<sup>10</sup> (Dkt. No. 13 p. 5.)

This creates a real possibility that Mr. Ngo could be detained for a period approaching or exceeding six months—the presumptively reasonable period of detention under *Zadvydas v. Davis* for noncitizens immediately following a final order. When combined with the nearly three months ICE kept him detained in 2023 this would provide the potential for Mr. Nguyen to spend nearly a third of the last 30-months being detained by ICE based on a claim they are working towards removal. An evidentiary hearing is the only way to establish a credible timeline by compelling Respondents to provide evidence, not speculation, about how long each step of this process will actually take.

### **CONCLUSION**

For the above stated reasons and those discussed in the Reply Brief, Mr. Ngo respectfully requests that the Court set this matter for an evidentiary hearing.

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

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**CERTIFICATE OF CONFERENCE**

I hereby certify that after 6 pm on August 15, 2025, undersigned counsel emailed Assistant U.S. Attorney Ann Haag regarding this motion. Given the late hour at which her position was sought, AUSA Haag has likely not had a chance to respond. Accordingly, the motion is being filed as opposed at this time.

RESPECTFULLY SUBMITTED,

*/s/ Dan Gividen*

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Dan Gividen