

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

BAO NHAT DOAN THAI,

PETITIONER,

Case No. 3:25-CV-2221-X

v.

KRISTI NOEM, et al.,

RESPONDENTS.

REPLY BRIEF IN SUPPORT OF HABEAS PETITION
& PRELIMINARY INJUNCTION

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INTRODUCTION

For more than twenty-three years, Petitioner, Bao Nhat Doan Thai, did everything the United States government asked of him. After a conviction in 2002, he was ordered removed to Vietnam on May 20, 2003—a country that would not take him back. Recognizing this reality, the government released him 183 days later, on November 19, 2003. Said differently, even though ICE knew Mr. Thai could not be removed when he was ordered removed on May 20, 2003, they detained him for another 183 days before releasing him on OSUP.¹

To be clear, Mr. Thai 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. Thai 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. Thai's present confinement: it is not a necessary administrative measure, but a punitive act devoid of legal justification. Indeed, in resolving this matter it is Mr. Thai's position that the most important question that must be asked is: what was the purpose of Mr. Thai's detention when he was detained more than a month ago? And what is the purpose of his detention today? The government's response artfully evades this, the most important issue, to determining whether Mr. Thai is being unlawfully detained right now. The government does so by completely ignoring this threshold issue and skipping forward to reasons Mr. Thai's detention would be lawful in

¹ (Dkt. no. 10 p. 5.)

the future—when it has actually obtained travel documents and confirmation of a removal flight.

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. Thai. 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. Thai 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 22 years.

The standard justifications for civil immigration detention are wholly absent here. Mr. Thai is not detained because he is a flight risk. The most powerful evidence of this is his own action on July 25, 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 does not even have all the documents necessary to make a request for 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. Thai'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. Thai'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. Thai 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. Thai. Detention sooner becomes plainly punitive and contrary to the constitutionally permissible civil detention requirements in this country. And second, it is Mr. Thai'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. Thai's position ensures the Constitution, statutes, and regulations, are not violated through arbitrary detention. Furthermore, Mr. Thai's position, for reasons

explained below and in an accompanying Motion for an Evidentiary hearing, serves the important policy interests of Mr. Thai departing for Vietnam sooner as well as in a far more cost-efficient manner. As explained below and in the Motion for an Evidentiary Hearing, the process for obtaining travel documents from Vietnam is easier when the pre-95 immigrant is not detained by ICE when the travel document request is being made and considered.

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 did not even bother translating the necessary documents (which have been in ICE's possession for decades), before it detained Mr. Thai when he dutifully appeared for his annual check in. Likewise, ICE made zero effort to notify Mr. Thai to bring other necessary documents or information with him to the check in, much less before it detained him. 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. Thai 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. Thai 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. Thai respectfully requests that 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. Alternatively, Mr. Thai respectfully requests that this matter be set for an evidentiary hearing.

ARGUMENT

“The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of law.’”² “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.”³ 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.’”⁴ 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.⁵ In so doing, it is Mr. Thai’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. Thai’s “presence at the moment of removal.”

² *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (quoting U.S. Const. Amend. 5).

³ *Id.* (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

⁴ *Id.*

⁵ *Id.* at 699.

As detailed below, Mr. Thai 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. Thai 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. Thai.

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

ICE seems to believe that, even though it detained Mr. Thai for more than six-months after he was ordered removed in 2003, that they have a fresh six-month, presumptively valid window to effectuate his removal (at ICE's convenience). In so doing, 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 ICE's authority to re-arrest and indefinitely⁶ 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.

⁶ The words "indefinite" or "indefinitely" when used in this brief to refer to Mr. Thai'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. Thai'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. Thai 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. Thai 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.⁷

Similarly, a decision out of the Eastern District of Texas from earlier this month 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.⁸

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

⁷ *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025).

⁸ *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. Thai 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 and 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.”⁹ To that end, this Court must ask whether Mr. Thai’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.*”¹⁰

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. Thai’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. Thai 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.

⁹ 533 U.S. at 699.

¹⁰ *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. Thai, 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. Thai 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. ICE regulations clearly envision a joint effort between the noncitizen and ICE to obtain travel documents before detention.

Respondents' reliance on its authority falters for another reason: ICE regulations clearly envision a world in which ICE and the noncitizen work together before making the decision to re-detain. The regulations first consider the noncitizen's efforts and then the steps ICE has taken in securing the requisite documentation for the noncitizen. By detaining Mr. Thai before giving him an opportunity to request the documents himself, ICE is making the process counterproductive. This is incomprehensible for two reasons.

First, the numerous documents needed for the travel document application are items that Mr. Thai could most likely locate or obtain himself.¹¹ Likewise, the ability of Mr. Thai

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to obtain alternative means of verifying he was in fact born in Vietnam¹² can be arduous when the individual has complete access to their phones, email, personal documents, and a delivery services like UPS. This already arduous process becomes unnecessarily complex and lengthy when the noncitizen is being forced to gather these things from an overcrowded ICE detention facility. Simply put, there is a lot the non-citizens could and would do if provided the opportunity.

Second, DO Hagerty's declaration states that ICE must provide a translated version of the IJ's removal order and criminal history to Vietnam.¹³ DO Haggerty continues that this process takes approximately five business days to complete. Only once that is done, then the documents will be sent to ICE headquarters. This begs the question—why hasn't this been done before? And when DO Hagerty made this sworn statement it had been far more than five days since Mr. Thai was re-detained in late July. So, clearly this exercise takes longer than the five business days that DO Hagerty suggests.

More troubling, however, is that this requirement would not exist if Mr. Thai were making the request himself while not detained.¹⁴ Indeed, if ICE had informed Mr. Thai that there was a process for requesting travel documents from Vietnam and directed him to start the process on his own, then a translated copy of the removal order would not even be

¹² E.g. locating family who was in Vietnam at the time of birth and remains there now, locating a "family book," etc. *See* n. 13, *infra*.

¹³ "Vietnam Travel Documents," Collective Freedom, <https://www.collective-freedom.org/vietnam-travel-documents> (last accessed Aug. 30, 2025) (explaining steps for Vietnamese with removal orders can request a Vietnamese passport for the first time; nothing shows that a translated document is required).

¹⁴ *Id.*

required. Said differently, ICE is not only wasting taxpayer money on the detention costs of noncitizens like Mr. Thai who no one claims is a danger or flight risk, but they are also needlessly wasting taxpayer money on the resources it takes to translate and gather the necessary documents.

Moreover, through approaching the removal process in a manner that plainly puts the proverbial cart before the horse, ICE is actually delaying the removal of most the pre-95 immigrants it either has in custody now or plans to detain in the future. ICE has known about the process for requesting pre-95 travel documents since about 2020 when the MOU was signed.¹⁵ But it kept this information from Mr. Thai, and 1,000s of others similarly situated, until after taking him into custody in 2025. If ICE had directed him in April 2025 (about the time it started re-detaining pre-95 immigrants) to take the steps necessary to obtain travel documents and bring proof of such efforts to his annual check in, it is entirely possible that Mr. Thai would have had travel documents before he checked in on July 25, 2025. In fact, if ICE is to be believed about its confidence in Vietnam issuing travel documents, then Mr. Thai definitely would have had travel documents by the July 25, 2025 check in. And, in that scenario, Mr. Thai likely would have availed himself of the alternative of self-deportation by getting himself a flight to Vietnam no later than July 24, 2025.

To be clear, taking steps to obtain travel documents and provide proof of such efforts is a standard condition when a noncitizen is placed on OSUP because travel documents

¹⁵ (Pet'r's App. Ex. 2.)

necessary for removal cannot be obtained. If ICE had taken this simple (previously) normal course of action in Mr. Thai's case alone, it would have saved thousands of taxpayer dollars. Even those who are in favor of the current immigration policies, surely cannot be in favor of ICE acting in a way that both wastes government resources and serves to delay Mr. Thai's removal to Vietnam.

III. Mr. Thai 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. Thai 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."¹⁶ Furthermore, the 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

¹⁶ *Phan 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)).

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.¹⁷

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. Thai 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 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. Thai based on "changed circumstances," there must be "(1) an individualized determination (2) by ICE that, (3)

¹⁷ 8 C.F.R. § 241.13(i)(3).

based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.”¹⁸

Significantly, in the context of re-detention, the burden is on the government to show an individualized change of circumstances sufficient to demonstrate a true “significant likelihood that the alien may be removed.”¹⁹ 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.”²⁰ The inquiry is, by its very nature, individualized and fact-intensive.

¹⁸ *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2)); *Phan 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); *Roble v. Bondi, et al.*, No. 25-CV-3196, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025).

¹⁹ *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).

²⁰ *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 the Department of State regarding the prospects for removal of aliens to the country or countries in question.”).

As an initial matter, the process for requesting travel documents for pre-95 Vietnam immigrants has—apparently—been in place since 2020.²¹ This process is apparently so daunting and time consuming that ICE still has not even submitted the request to its headquarters for Mr. Thai.²² In this case, ICE has made no attempt to claim it made “an individualized determination” that Mr. Thai’s circumstances have changed. To the contrary, ICE admits that the decision to take Mr. Thai 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”;²³ and a the claim that on July 15, 2025, “ERO removed approximately 20 individuals on a charter flight to Vietnam.”²⁴

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.²⁵ The numbers DO Hagerty 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 to Vietnam to demonstrate

²¹ (Pet’r’s App. Ex. 3.)

²² (Dkt. No. 10 at pp. 5.)

²³ (Dkt. No. 10 p. 5.)

²⁴ (*Id.* at p. 6.)

²⁵ *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).

changed circumstances.”²⁶ 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.²⁷

Here, Mr. Thai 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. Thai at any point in the 27-years that he was on OSUP. When ICE took Mr. Thai into custody on July 25, 2025, this circumstance had not changed.²⁸ In fact, nearly two months after he was taken into custody Respondents still had not even requested a travel document for Mr. Thai.²⁹

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. Thai 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

²⁶ *Phan, v. Beccera, Respondent.*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at 4 (E.D. Cal. July 16, 2025).

²⁷ *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).

²⁸ (Dkt. no. 10 p. 6 ¶ 10.)

²⁹ (Dkt. No. 10 p. 6 ¶ 10.)

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

When both the spirit and letter of the regulations are followed ICE waits until travel documents have been obtained and the means of removal (e.g. charter flight, bus, commercial flight, etc.) have been scheduled. Under those circumstances, noncitizens who are re-detained pursuant to 8 C.F.R. § 241.13(i) cannot find relief in filing a habeas petition. This is illustrated by *Ahmad v. Whitaker*.³⁰ In *Ahmad*, ICE already had travel documents in hand and Mr. Ahmad's removal flight scheduled when he was detained less than two weeks before the flight was scheduled to depart.³¹ If the facts of this case were remotely close to similar to those in *Ahmad*, ICE would have had Mr. Thai's travel documents in hand and a flight scheduled for August when they detained him at his annual check-in on July 25, 2025. And, under those circumstances, Mr. Thai 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. Thai without even bothering to get necessary documents translated first—much less having travel documents in hand. As a result, more than a month later, Mr. Thai remains in ICE custody and ICE still hasn't completed the translation of an IJ order issued 22 years ago.

³⁰ *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540 (W.D. Wash. Dec. 4, 2018)

³¹ (*Id.* at 1.)

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.³²

Unlike the 2018 decision in *Ahmad*, the recent cases of *Nguyen v. Whitaker*, *Phan v. Beccerra*, *Hoac v. Beccerra*, *Nguyen v. Scott*,³³ and *Roble v. Bondi*,³⁴ are factually similar in nearly every relevant respect. Each case involves a noncitizen, 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).³⁵ And in every single one of those cases, the district courts found ICE failed to (1) demonstrate the required individualized changed circumstances and (2) follow the

³² The only real factual similarity is the “appalling” way in which ICE went about re-detaining the noncitizen. 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.

Id. at 6.

³³ *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21, 2025).

³⁴ *Roble v. Bondi, et. al.*, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025).

³⁵ See *Nguyen*, 2025 WL 1725791, at 5; *Phan*, 2025 WL 1993735, at *4-6; *Hoac*, 2025 WL 1993771, at *4-6; *Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *15-20; *Roble*, 2025 WL 2443453, at *4.

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 merits of his claims that his re-detainment is unlawful because ICE had not complied with the controlling regulations to re-detain him.”³⁶

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. Thai’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. Thai was afforded none of these procedural protections, at least not that he was aware of at the time.³⁷

³⁶ *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. Thai’s detention is unlawful and that his release is appropriate.”).

³⁷ A declaration from Mr. Thai 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. Thai 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. Thai on July 25, 2025.

Mr. Thai's habeas petition explicitly raised this failure.³⁸ The sole evidence of claimed compliance with 8 C.F.R. § 241.13(i) is a single, conclusory paragraph in the declaration of DO Hagerty.³⁹ This declaration, however, is devoid of the factual detail necessary to establish that Mr. Thai received specific notice of any changed circumstances in his immigration case and a lawful "informal interview."⁴⁰ It fails to state who conducted the interview, what specific information was provided to Mr. Thai, or how he was given a meaningful opportunity to respond. Critically, DO Hagerty 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.⁴¹

ICE's failure to conform with requisite notice has been addressed as recent as this past week in a District of Minnesota case with facts extremely similar to the ones at issue here.⁴² Mr. Roble, a Somali national who immigrated to the United States in 1995 as a refugee, was placed on an OSUP in 2019.⁴³ Like Mr. Thai, Mr. Roble was suddenly arrested in July 2025 with zero indication of any changed circumstances.⁴⁴ Mr. Roble subsequently filed a habeas application, along with a motion for a temporary restraining order, arguing

³⁸ (Dkt. No. 1, pp. 24-25 ¶¶ 59-62.)

³⁹ (Dkt. no. 12 p. 3 ¶ 11.)

⁴⁰ (*Id.*)

⁴¹ (*Id.* at pp. 2-3 ¶¶ 2 & 9.)

⁴² *Roble*, 2025 WL 2443453, at *1.

⁴³ (*Id.*)

⁴⁴ (*Id.*)

that ICE violated his due process rights and their own regulations when it re-detained him.⁴⁵ In considering whether ICE followed its own regulations, the district court considered that a noncitizen must “be notified of the reasons for revocation of his or her release” but this requirement is not satisfied by “simply recit[ing] the language of the regulation.”⁴⁶ Instead, “the essence of due process is notice and an opportunity to respond.”⁴⁷ If the notification “does not actually state any reasons for revocation,” then it cannot be said that the requisite process has been met.⁴⁸

This same reasoning is applicable to Mr. Thai’s case. Like Mr. Roble, Mr. Thai had not received any notice of what the changed circumstances actually encompassed. DO Hagerty’s affidavit only corroborates this fact by providing vague and conclusory statements about the notice that Mr. Thai received. Like the Minnesota district court found, this cannot be sufficient notice under due process. The failure to notify Mr. Thai what exactly has changed in his circumstances—whether that be his travel documents have now been procured and/or a flight has been scheduled to take him back to Vietnam—illuminates the fact that ICE has continued to fail in following their own guidelines and regulations. No specific facts have been alleged and therefore the requisite notice has not been provided.

Tellingly, Respondents have also failed to produce any contemporaneous documentation of this alleged interview. The best evidence would be the official report or

⁴⁵ (*Id.* at *2.)

⁴⁶ (*Id.* at *3.)

⁴⁷ (*Id.*)

⁴⁸ (*Id.*)

system entry made at the time of Mr. Thai's re-detainment on July 25, 2025. This is particularly true if, as Mr. Thai suspects, DO Hagerty 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.⁴⁹

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 and notice required by § 241.13(i), its decision to re-detain is invalid and release is the proper remedy.⁵⁰ 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

⁴⁹ (Dkt. no. 14 at pp. 4-6.)

⁵⁰ *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)

invalid.”⁵¹ 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. Thai respectfully requests this Court reach the same conclusion.

IV. Mr. Thai 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.⁵² The Supreme Court has affirmed that “[f]reedom from imprisonment... lies at the heart of the liberty” protected by the Due Process Clause.⁵³ “Where, as here, the ‘alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary’.”⁵⁴

Everyday Mr. Thai 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

⁵¹ *Id.* (internal citations omitted).

⁵² *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))).

⁵³ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

⁵⁴ *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))).

true of Mr. Thai 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 2025.⁵⁵ 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. Thai at any point in its response. Instead, it attempted to re-cast the issue as Mr. Thai not having a right to never-ending-supervision. There are many problems with the government's argument. First, Mr. Thai 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 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.

V. **Balancing of the Equities and Public Interest Weigh Strongly in Favor of Mr. Thai's Requested Injunction**

⁵⁵ (Pet'r's App. Ex. 5.)

The balance of equities and public interest weigh overwhelmingly in Mr. Thai'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."⁵⁶ 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. Thai'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. Thai. In this case, and many others, ICE's intention to indefinitely detain Mr. Nguyen 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. Nguyen's as to its detention statistics. But Mr. Nguyen 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. Thai has affirmed his willingness to purchase his own flight and depart immediately upon receiving travel documents. Any suggestion that Mr. Thai 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

⁵⁶ *Phan*, 2025 WL 19933735 (citing *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020)).

walked into custody on July 25th would suddenly become a flight risk when facing a final directive to depart.

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

Mr. Thai 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. Thai

did have control over the poor decision he made in 2003, that is not the same Mr. Thai who became a devoted husband and father who is adored by his community 22 years later.

In sum, the equities in this case weigh strongly in favor of Mr. Thai. The harm of ordering him released to Respondents is nonexistent. Mr. Thai 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 25, 2025, fully aware that he would likely be detained. Releasing Mr. Thai 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. Thai and his family if his is not released is significant and irreparable.

[Nothing further on this page.]

CONCLUSION

Respondents have failed to rebut any of the claims in Mr. Thai'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 22 years, Mr. Thai 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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