

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

BAO NHAT DOAN THAI,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

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

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

NOW COMES Petitioner, Bao Nhat Doan Thai, by and through undersigned counsel, and files this Motion for Evidentiary Hearing on Habeas Petition & Preliminary Injunction. This motion is filed at the same time as Mr. Thai's Reply Brief in Support of Habeas Petition & Preliminary Injunction. To avoid being repetitive, Mr. Thai 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. Thai 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. Thai 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. Thai's detention is lawful.¹ When the government seeks to deprive a man of his liberty after 22 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. Thai'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. Thai 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

¹ 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.² The government’s characterization of a half-decade-old policy as “recent” is, at best, misleading. This temporal discrepancy is a material factual dispute. If the change occurred five years ago, the Court must ask—and can only learn through testimony—why ICE continued to release Mr. Thai after his annual check-ins for the last several years, only to abruptly detain him on July 25, 2025, without any new intervening development. Was it because circumstances changed making it significantly likely Mr. Thai 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. Thai’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”?

² (Pet’r’s App., Ex. 3).

- The declaration states DO Hagerty has made 30 travel document requests to Vietnam since January 2025.³ It then boasts that the DO has received 12 travel documents as a result. These numbers are not limited to pre-95 Vietnam arrivals as the declaration explicitly states that this. This means that of the 30 travel documents DO Hagerty has requested from Vietnam in the past 8-months, he is still waiting from a response on a majority (60%) of them. A track record like this hardly supports confidence in Mr. Thai's removal being likely in the reasonable future.
- The declaration also 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?
 - 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.
- Likewise, the reference to a flight in August in the declaration fails to provide details that would allow the Court to determine if there is any significance of the claims being made by DO Hagerty to Mr. Thai's specific case. Again, there is no way to know whether 1 out of 57 individuals were pre-95 arrivals or if it was anywhere near 50% of them.
 - Petitioner has reason to believe that ICE has left out relevant information about that flight. For example, Petitioner believes that at least 10 noncitizens were unable to depart on that ICE Charter flight because ICE failed to timely transport them to the flight's location.

A court cannot determine the likelihood of Mr. Thai'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

³ (Dkt. no. 10 p. 6.)

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. Thai was afforded an “informal interview” in compliance with 8 C.F.R. § 241.13(i). More specifically, DO Hagerty's declaration states:

11. At the time of his arrest, THAI 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 to Vietnam. In accordance with 8 C.F.R. § 241.13(i)(3), he was informed that the reason for his revocation and was given the opportunity to respond during this informal interview.

Initially, it is important to point out that this statement by DO Hagerty is nothing more than him “parroting the statutory language.”⁴ As discussed in detail in the Reply Brief being filed contemporaneously with this motion, courts have soundly rejected nearly identical statements by ICE deportation officers seeking to claim they complied with 8 C.F.R. § 241.13(i).⁵ In so doing, the *Robles* court for example, explained the multitude of problems with notice that is nothing more parroting the standard, perhaps most notably the

⁴ (Dkt. no. 10 p. 6.)

⁵ (Pet'r's Reply Br. at 21 – 23.)

fact that such vague notice applicable to anyone being re-detained fails to provide the noncitizen with the information needed to respond as envisioned by the regulations.⁶

Equally important, completely absent from the statement above is how (not to 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. Thai on July 25, 2025. First, DO Hagerty's duties listed in the declaration do not include making arrests, processing, conducting interviews, etc.⁷ 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.⁸

What is DO Hagerty's basis for the statements he made in paragraph 11 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. Thai's re-

⁶ *Roble v. Bondi*, 2025 WL 2443453, at *3 (D. Minn. Aug. 25, 2025) (“The notice summarily asserts that changed circumstances render Roble's removal from the U.S. significantly likely in the reasonably foreseeable future. That language is not individualized . . . in fact, it applies to *any* noncitizen detained under 8 C.F.R. § 241.13(i)(2), since the notice simply mirrors the legal standard applicable to detaining a noncitizen released on [OSUP]. Providing a notice that simply recites the language of the regulation does not satisfy the Government's obligation to provide the “reasons” why [the OSUP] was revoked. . . . The essence of due process is notice and an opportunity to respond. Indeed, DHS's own regulations contemplate that a noncitizen will have an opportunity to “respond to the reasons for revocation stated in the notification” during the initial informal interview after re-detention. 8 C.F.R. § 241.13(i)(3). But [one] cannot be expected to “respond to the reasons for revocation stated in the notification” if the notification does not actually *state* any reasons for revocation.”).

⁷ (Dkt. no. 10 p. 6.)

⁸ (*Id.* at pp. 2-3.)

detainment. This begs the question: why not submit that documentation? These facts were explicitly pled in the habeas petition and are now in dispute.⁹

The suspicion is based on other declarations DO Hagerty submitted previously in other cases which did not include any statements even alluding to an “informal interview” or the process set forth in 8 C.F.R. § 241.13(i)—much less an explicit citation to the regulation.

A hearing is required to question DO Hagerty under oath about the events of July 25th:

- Did he or whoever arrested Mr. Thai 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?
- What specific information did ICE convey to Mr. Thai on July 25, 2025, to provide him notice of the reasons it believed 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. Thai which would have given him the ability to meaningfully respond as required by the regulation?
- Did whoever spoke with Mr. Thai that day intentionally and deliberately give Mr. Thai an “opportunity to respond” to ICE’s claim it could now remove him? Or, looking back when preparing the declaration signed by DO Hagerty on August 25, 2025, did ICE conclude that Mr. Thai 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. Thai the understanding that he was being given an opportunity to respond?

⁹ Mr. Thai is more than willing to sign a declaration indicating that he was not aware that an “informal interview” was conducted; nor was he 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 getting an in-person visit scheduled is not a possibility in the near future (i.e., next month or so).

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. Thai 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. Thai'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. They then speculate that a charter flight *may* be available in "2-3 months." The intervening steps—submission to headquarters, consular processing by Vietnam—could take weeks or months.

This creates a real possibility that Mr. Thai could be detained for a period approaching or exceeding twelve months—twice the presumptively reasonable period of detention under *Zadvydas v. Davis* for noncitizens immediately following a final order. It is untenable that the government could re-detain someone after 22 years of liberty for any period longer than what is necessary to assure his presence at the moment of 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

Both the Reply Brief and the above, demonstrate that there are significant factual discrepancies concerning Mr. Thai's re-detention which require an evidentiary hearing to flesh out. For this reason, those above, and the ones articulated in the Reply Brief, Mr. Thai 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 on Saturday, August 30, 2025, undersigned counsel emailed Assistant U.S. Attorney Ann Haag regarding this motion. Given that her position was sought on a Saturday, 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

Dan Gividen