

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

Nam Ngoc TRAN,

Petitioner,

v.

Christopher J. LAROSE, *in his official capacity*  
*as Warden of Otay Mesa Detention Center;*  
Patrick DIVVER, *in his official capacity as*  
*San Diego Field Office Director, ICE Enforcement*  
*Removal Operations;* Todd LYONS, *in his official*  
*capacity as Acting Director of Immigration and*  
*Customs Enforcement;* and Kristi NOEM, *in her*  
*official capacity as Secretary of Homeland Security,*

Respondents.

Case No. '25CV2366 BEN KSC

**PETITION FOR WRIT  
OF HABEAS CORPUS**

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**I. INTRODUCTION**

1. Petitioner Nam Ngoc Tran (“Mr. Tran”) is a 47-year-old Vietnamese national who first entered the United States in 1981 at the age of four as a refugee and subsequently became a lawful permanent resident (“LPR”). He has resided in California for 44 years. Mr. Tran is married to a U.S. citizen and has four U.S. citizen children.

2. In 2010, an Immigration Judge ordered Mr. Tran deportable due to a federal criminal conviction and issued an order of removal to Vietnam. ICE could not effectuate the removal, so Mr. Tran was released from ICE custody and placed under an order of supervision. For the last 15 years, Mr. Tran has complied with all conditions of his order of supervision.

3. On August 12, 2025, ICE apprehended Mr. Tran outside of his daughter's school and detained him. ICE revoked the Order of Supervision, although Mr. Tran does not believe he received a notification of the revocation. Mr. Tran remains confined at Otay Mesa Detention Center in San Diego, California.

4. The revocation of Mr. Tran's order of supervision violates 8 C.F.R. § 241.13(f), (i)(2), the Fifth Amendment's Due Process Clause, and the Administrative Procedure Act.

5. Mr. Tran therefore seeks a writ of habeas corpus directing his immediate release.

## **II. VENUE AND JURISDICTION**

6. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution (Suspension Clause).

7. Venue lies in this Division because Mr. Tran is detained in Otay Mesa Detention Center, within the San Diego Division, and Respondent LaRose is his immediate custodian. See 28 U.S.C. §§ 2241(d), 1391(e).

## **III. PARTIES**

8. Petitioner Nam Ngoc Tran ("Mr. Tran") is a 47-year-old Vietnamese national who resides in San Diego, California. He is currently detained at the Otay Mesa Detention Center in San Diego, California.

9. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center. As such, Respondent is responsible for the operation of the Detention Center where Mr. Tran is detained. Because ICE contracts with private

prisons such as Otay Mesa to house immigration detainees such as Mr. Tran, Respondent LaRose has immediate physical custody of the Petitioner.

10. Respondent Patrick Divver is the San Diego Field Office Director (“FOD”) for ICE Enforcement and Removal Operations (“ERO”). As such, Respondent Divver is responsible for the oversight of ICE operations at the Otay Mesa Detention Center. Respondent Divver is being sued in his official capacity.


11. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (“ICE”). As such, Respondent Lyons is responsible for the oversight of ICE operations. Respondent Lyons is being sued in his official capacity.

12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (hereinafter “DHS”). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

#### IV. EXHAUSTION OF REMEDIES

13. No statutory exhaustion requirement applies. Nonetheless, Mr. Tran has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

#### V. STATEMENT OF FACTS

14. Mr. Tran is a Vietnamese national born on . He entered the United States as a refugee in 1981, when he was about four years old. Mr.



Tran eventually became an LPR. He has lived continuously in California for over forty years. He resides in San Diego, California.

15. Mr. Tran supports his U.S. citizen wife, and their two U.S. citizen daughters, [REDACTED] (born [REDACTED]) and [REDACTED] (born [REDACTED]), Mr. Tran also has two older U.S. citizen sons, Ethan (born [REDACTED]) and Derek (born [REDACTED]) from a previous marriage. In addition to his wife and children, Mr. Tran helps take care of his older LPR brother, Mua, who has schizophrenia and lives in an in-patient treatment facility.

16. Mr. Tran owns two businesses in San Diego, California and has several employees. Mr. Tran is also a homeowner, and he is able to support his family with his income.

17. On October 28, 2010, Mr. Tran was ordered removed to Vietnam by an immigration judge based on a federal criminal conviction. Vietnam was designated as the country of removal.

18. At the time of the order, Mr. Tran was in ICE custody. ICE could not effectuate the removal order as the United States did not have diplomatic relations with Vietnam, and no repatriation agreement existed between the two countries. On April 20, 2011, Mr. Tran was released under an order of supervision ("OSUP"). (**Exhibit A**, Order of Supervision). Since 2011, Mr. Tran has complied with all conditions of his OSUP and has attended annual check-ins with ICE.

19. On May 03, 2018, Mr. Tran filed Form I-918, Petition for U Nonimmigrant Status with U.S. Citizenship and Immigration Services ("USCIS").

(**Exhibit B**, Form I-918 Receipt Notice). U Nonimmigrant Status provides legal status for victims of certain qualifying crimes who have suffered mental or physical abuse and are helpful during the investigation or prosecution of such crime. Mr. Tran's petition for U non immigration status was based on an incident that occurred in 1996. On or about July 21, 1996, Mr. Tran was a victim of felonious assault and suffered serious physical harm requiring emergency medical treatment. Mr. Tran helped with the investigation and prosecution of the crime resulting in a conviction against the perpetrator.

20. In 2020, Vietnam and the United States signed a Memorandum of Understanding to allow for repatriation for certain individuals with removal orders who arrived in the United States before 1995. Despite this new Memorandum, ICE never attempted to obtain travel documents or remove Mr. Tran to Vietnam. Mr. Tran continued to comply with the OSUP and attended yearly ICE check-ins without incident.

21. On April 04, 2024, USCIS issued an informational notice in Mr. Tran's U nonimmigrant status case. (**Exhibit C**, USCIS Informational Notice). In the notice, USCIS stated, "[a]t this time, the evidence submitted with your petition appears to demonstrate that you have established the eligibility requirements for U nonimmigrant status. However, the statutory cap for U-1 nonimmigrant status has been reached for this fiscal year. Therefore, [USCIS] may not grant U-1 nonimmigrant status to any petition until new visas become available. As the fiscal year limit is the sole reason you cannot be granted U-1 nonimmigrant status,

your petition is placed on a waiting list. Once new visas become available, USCIS will issue approval notices for those cases on the waiting list”. *Id.*

22. Moreover, USCIS informed Mr. Tran that he had “been placed in deferred action as permitted by regulation. Deferred action is an act of administrative convenience to the government which gives some cases lower priority for removal”. *Id.*

23. On August 12, 2025, ICE apprehended Mr. Tran outside of his daughter’s school and detained him. Mr. Tran is detained at Otay Mesa Detention Center. It appeared that ICE revoked Mr. Tran’s OSUP.

24. Mr. Tran was detained solely because ICE arbitrarily revoked his OSUP without justification or reason in violation of their own regulations under 8 C.F.R. § 241.13(f), (i)(2). Mr. Tran now seeks habeas relief because continued detention violates the Fifth Amendment and the Administrative Procedure Act.

## VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

25. Habeas corpus relief extends to a person “in custody under or by color of the authority of the United States” if the person can show he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner’s claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement).

26. “[H]abeas corpus is, at its core, an equitable remedy,” *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that “[t]he court shall ... dispose of [] as law and justice



require,” 28 U.S.C. § 2243. “[T]he court’s role was most extensive in cases of pretrial and noncriminal detention.” *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008). “[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner’s release.” *Id.* at 787.

## VII. CAUSES OF ACTION

### COUNT ONE

#### UNLAWFUL DETENTION IN VIOLATION OF 8 C.F.R. SECTION 241.13 AND THE ADMINISTRATION PROCEDURE ACT – 5 U.S.C. § 706(2)(A)

27. Petitioner incorporates paragraphs 1 through 26 as if fully set out herein.

28. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

29. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

30. Regulation 8 C.F.R. § 241.13(i)(2), describes ICE’s own requirements to revoke an OSUP. Specifically, the regulation states, “[t]he Service may revoke an alien’s release under this section and return the alien to custody if, on account of

changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future”. 8 C.F.R. § 241.13(i)(2).

31. The regulation continues, “upon revocation, the alien will be notified of the reasons for revocation of his [ ] release. The Service will conduct an initial informal interview promptly after his [ ] 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 [ ] believes shows there is no significant likelihood he [ ] be removed in the reasonably foreseeable future, or that he [ ] 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. 8 C.F.R. § 241.13(i)(3).

32. In Mr. Tran’s case, ICE has not met their burden to establish that there has been a change in circumstances making it likely that Mr. Tran will be removed in the reasonably foreseeable future. In fact, ICE has not provided any reason for the revocation of Mr. Tran’s OSUP. Moreover, ICE did not provide Mr. Tran with any notification that his OSUP was going to be revoked or an opportunity to contest the revocation as required by their own regulations.

33. Respondents have already considered Mr. Tran’s facts and circumstances and agreed to release him under an OSUP. In making that decision ICE determined that Mr. Tran was not a flight risk or danger to the community.



Those circumstances have not changed. In fact, Mr. Tran is less of a flight risk now as he has viable relief pending with USCIS as a victim of a crime and has been issued deferred action. Moreover, there is no change of circumstances that indicates that Mr. Tran's removal is likely to happen in the foreseeable future. In the month that Mr. Tran has been detained, ICE has not been able to effectuate the removal order, Mr. Tran has not been issued any travel documents, and he has not been in contact with the Vietnamese consulate. ICE has not met their burden to revoke Mr. Tran's OSUP and re-detain him.

34. Detention based on an arbitrary revocation of an OSUP violates the clear regulations, is "not in accordance with law," and "in excess of statutory jurisdiction," under 5 U.S.C. § 706(2), entitling Petitioner to immediate release. *See M.S.L. vs. Bostock*, No. 6:25-cv-01204AA, 2025 WL 2430267, at \*15 (D. Oregon. August 21, 2025).

## **COUNT TWO**

### **UNLAWFUL DETENTION IN VIOLATION OF FIFTH AMENDMENT**

35. Petitioner incorporates paragraphs 1 through 26 as if fully set out herein.

36. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

37. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. CONT. amend. V. Freedom from bodily restraint is at the core of the liberty protected by the Due Process Clause. This vital liberty interest is at stake when

an individual is subject to detention by the federal government.

38. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

39. Under the civil-detention framework set out in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose.

40. Once ICE found Mr. Tran was not a dangerous or a flight risk, and issued an OSUP and released Mr. Tran from custody, the Government's lawful objectives were satisfied. Mr. Tran's re-confinement, especially without any violations of his OSUP conditions or change in circumstances, therefore, bears no reasonable, non-punitive relationship to any legitimate aim and is unconstitutionally arbitrary.

41. The continued detention of Mr. Tran pursuant to the arbitrary revocation of his OSUP violates his due process rights. But for intervention by this Court, Mr. Tran has no means of release.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release him from custody, under reasonable conditions of supervision;
- 3) Order Respondents to refrain from transferring Petitioner out of the jurisdiction of this court during the pendency of these proceedings and while

- the Petitioner remains in Respondents' custody;
- 4) Order Respondents to file a response within 3 business days of the filing of this petition;
  - 5) Award attorneys' fees to Petitioner; and
  - 6) Grant any other and further relief which this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this 11<sup>th</sup> day of September, 2025.

/s/Nerea Sholl Woods  
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