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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Nam Ngoc Tran,

Petitioner,

v.

CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center, **PATRICK DIVVER**, San Diego Field Office Director ICE Enforcement Removal Operations **TODD M. LYONS,** Acting Director, Immigration and Customs Enforcement. **KRISTI NOEM,** Secretary of the Department of Homeland Security

Respondents.

CIVIL CASE NO.: **3:25-cv-02366-AGS-KSC**

Traverse in Support of Petition for a Writ of Habeas Corpus

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Response in Support of Motion for a Temporary Restraining Order

INTRODUCTION

With the Government's Return in hand, this Court should grant the petition outright on all grounds, or at least order Mr. Tran's release under a temporary restraining order ("TRO"). To do so, the Court need only follow recent decisions in this district and around the country.

First, in their response, the Government fails to address count 3 of the petition, and as such an opposition to that count should be deemed waived, and the count should be considered uncontested. In April 2024, Mr. Tran was granted deferred action based on his pending U-visa. Deferred action gives Mr. Tran authorized presence in the United States and prohibits his removal. *Lee v. Holder*, 599 F.3d 973, 974–75 (9th Cir. 2010). Detaining Mr. Tran while his deferred action is still in place is a violation of his due process rights. As such, Mr. Tran's petition should be granted based on count 3 alone.

Second, the Government claims that Mr. Tran's requests are barred by 8 U.S.C § 1252(g). However, Mr. Tran is challenging the constitutionality of his detention, not the core proceedings involved in his removal.

Third, the Government claims that Mr. Tran is lawfully detained as ICE is working to acquire necessary travel documents, but this claim is simply not supported by the evidence or the facts in this case. The government has failed to deport Mr. Tran for the last 15 years and the government detained him without securing a travel document from Vietnam, or even formally requesting one. Moreover, the statistics submitted by the government do not provide a full picture of DHS' ability to deport Vietnamese nationals and they also fail to account for significant delays in travel document issuance – delays that bear both on timing and on the likelihood of success. Moreover, Mr. Tran has been granted deferred action based on his pending U-visa, and as such ICE is prohibited from taking any action, including removing Mr. Tran to Vietnam. *Lee v. Holder*, 599 F.3d 973, 974–75 (9th Cir. 2010. These facts provide good reason to believe that there is no significant likelihood of removal in the reasonable foreseeable future.

Finally, the Government claims that ICE did not violate its own regulations when it revoked Mr. Tran's order of supervision. In their response, the Government failed to address all of the violations under 8 C.F.R. § 241.4(l)(2); § 241.13(i). Specifically, the Government does not provide any evidence that (1) Mr. Tran's

OSUP was revoked by the ICE executive associate director, a field officer director, or an official "delegated the function or authority" as required by the regulations, (2) ICE gave notice to Mr. Tran of the reasons for revocation and an opportunity to be heard in an interview where Mr. Tran would have the opportunity to respond to the reasons for revocation, or (3) that ICE conducted an individualized determination that revocation was appropriate in Mr. Tran's case. Last month, on a record meaningfully indistinguishable from this one, Judge Huie granted a habeas petition for failure to follow § 241.13(i). *Rokhfirooz v. Larose*, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025). This Court should therefore grant the petition on all grounds.

ARGUMENT

I. The Government's fails to address Count 3 of Mr. Tran's petition and as such any opposition should be deemed waived and Count 3 should be considered uncontested.

In Count 3 of his amended petition, Mr. Tran states that his due process rights were violated when he was detained because he has deferred action based on his pending U-visa. Mr. Tran's deferred action status gives him authorized presence in the United States and prohibits his removal. USCIS Policy Manual, Vol. 1, Part H, Ch. 2(A)(4), https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2 (last visited October 28, **2025**). Mr. Tran's status in deferred action is in place the duration of the time that Mr. Tran is on the waitlist for a U-visa. *See* Doc.11.

Deferred Action is defined by USCIS as "a form of prosecutorial discretion to defer removal action (deportation) against an alien for a certain period of time. Aliens granted deferred action are considered to be in a period of stay authorized under USCIS policy for the period deferred action is in effect." USCIS Policy Manual, Vol. 1, Part H, Ch. 2(A)(4), https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2 (last visited October 28, **2025**). "The term 'deferred action' has carried consistent meaning 'for decades' as the Government's 'formal determination not to remove a particular individual.'" *Sepulveda Ayala v.*

Bondi, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400, at *7-8 (W.D. Wash. July 24, 2025).

The Ninth Circuit has consistently held that deferred action means the Government agency '**takes no action** to proceed against an apparently deportable [noncitizen] based on a prescribed set of factors generally related to humanitarian grounds,'" an interpretation that "finds strong support in Supreme Court precedent, circuit authority, and USCIS policy." *Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400, at *7-8 (W.D. Wash. July 24, 2025) *emphasis added*; *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999). No action includes no enforcement action such as detention or removal, as echoed in Ninth Circuit precedent. *See Lee v. Holder*, 599 F.3d 973, 974–75 (9th Cir. 2010) (interim relief program providing deferred action to U-visa applicants prevented their removal from the United States); *see also Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 958 (9th Cir. 2017) (dissent) (explaining that while deferred action does not grant legal status, it is the Government's "commitment not to deport"); De *Sousa v. Dir. of U.S. Citizenship and Immigr. Servs.*, 755 F. Supp. 3d 1266, 1268 (N.D. Cal. 2024) (holding interim benefit of deferred action "protects [noncitizens] against removal from the United States" while U-visa applicants wait for a visa to become available under the statutory cap).

The Government fails to address Count 3 in their response. "Where a non-moving party fails to address an argument raised by the moving party in the opposition brief, district court may consider any arguments unaddressed by the non-moving party as waived." *Hartranft v. Encore Capital Group.*, Inc., 543 F. Supp. 3d 893, 913 (S.D. Cal. 2021). Therefore, the Court should deem Count 3 waived and uncontested. Mr. Tran's petition should be granted on Count 3 alone.

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II. Section 1252(g) does not deprive this Court of jurisdiction.

This Court has jurisdiction. Contrary to the government's arguments, § 1252(g) does not bar review of "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

In *Ibarra-Perez*, the Ninth Circuit squarely held that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

The same logic applies to all of Mr. Tran's claims, because he challenges only violations of ICE's mandatory duties under statutes, regulations, and the Constitution. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of Mr. Tran's detention. *Y.T.D.*, 2025 WL 2675760, at *5. Many courts agree. *See, e.g.*, *Kong*, 62 F.4th at 617 ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim

concern[ing] detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard prior to removal of an alien to a third country").

Therefore, this Court does have jurisdiction over Mr. Tran's petition.

III. The Government does not contest any of the TRO factors except for success on the merits, meaning that Mr. Tran need only show a serious merits question to receive a TRO.

In light of the government's response, Mr. Tran is at least entitled to a TRO. In deciding whether to grant a TRO, this Court must consider the four *Winter* factors: (1) likelihood of success on the merits, (2) irreparable harm, (3) balance of harms, and (4) the public interest. *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 985–86 (9th Cir. 2025). But under the sliding-scale approach, "if the balance of hardships tips sharply in the [petitioner's] favor and the other two *Winter* factors are satisfied," a petitioner can obtain a TRO "so long as there are serious questions going to the merits—a lesser showing than likelihood of success on the merits." *Id.* (cleaned up). Here, the Government does not contest that Mr. Tran is suffering irreparable harm or claim that a TRO would visit any harm on the government. And he has, at a minimum, raised a serious question on the merits. That alone supports immediate release. *See Tran v. Noem*, 25-CV-2334-JES (granting TRO and releasing petitioner on the same regulatory claims raised here).

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IV. The Government has not proved that Mr. Tran's detention is lawful

a. The Government has not shown that there is a Significant Likelihood of Removal in the Reasonably Foreseeable Future.

The Government provides no evidence that Mr. Tran will likely be removed to Vietnam at all, let alone in the reasonably foreseeable future. Again, here it is important to note that Mr. Tran has deferred action and cannot be removed as discussed in detail in Mr. Tran's amended petition and in section I of this Traverse. The Government does not address this in their response and DO Lara-Ramirez's does not even mention Mr. Tran's deferred action in his declaration. Since Mr. Tran's removal is prohibited by his deferred action status, it is clear that it is not significantly likely that his removal is in the reasonably foreseeable future.

Moreover, in the context of the revocation of the OSUP, DO Lara-Ramirez's assertion that "ICE routinely obtains travel documents for Vietnamese citizens," and that "ICE has removed at least 587 Vietnamese citizens" including some pre-1995 arrivals, does not show that Mr. Tran's removal is significantly likely, for several reasons. Doc. 15-1 at ¶ 15.

As the petition showed without contradiction, pre-1995 arrivals face unique removal challenges: They are exempted from the 2008 treaty entirely, and only some are eligible for removal under the 2020 Memorandum of Understanding ("MOU"). *See* Memorandum of Understanding (Nov. 21, 2020)[1], And statistics show that the vast majority of ICE's travel document requests for pre-1995 Vietnamese immigrants have historically been denied, even under the MOU. *Id.* at 4-5.

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1. **Requesting Travel Documents is not sufficient to show that removal is reasonable likely.**

[1]https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/Pre-95-Vietnam-Deportation-Advisory.pdf

DO Lara-Ramirez does not even attest that Mr. Tran qualifies for repatriation under the MOU in the first place. The MOU applies only to persons meeting certain criteria, but the government has never disclosed in full what those criteria are. *Nguyen*, 2025 WL 2419288, at *6. Without knowing if Mr. Tran meets the MOU's terms, this Court cannot know whether he is even eligible to be considered (or, more accurately, reconsidered) for repatriation to Vietnam. All DO Lara-Ramirez says about Mr. Tran's individual circumstances is that ICE has requested the travel document for him. But "under *Zadvydas*, the reasonableness of [Mr. Tran]'s detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of [Mr. Tran]'s detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019).

Many courts have agreed that requesting travel documents does not itself make removal reasonably likely. See, e.g., *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case was "still under review and pending a decision" did not meet respondents' burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), report and recommendation adopted, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might be forthcoming or why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

2. Vietnam is not consistently adhering to the 30-day period for Travel Document Issuance.

In a previous declaration submitted from the Government, DO Cole claimed that when ICE submits a travel document request for an immigrant, "[t]he Vietnam embassy has thirty (30) days to issue the TD." Doc. 5-1 at ¶ 11. DO Cole got the 30-day timeline from the 2020 MOU itself—Section 8 commits Vietnam to answering within that time frame. *See* Memorandum of Understanding (Nov. 21, 2020), *available at* https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/Pre-95-Vietnam-Deportation-Advisory.pdf. ("Within thirty (30) calendar days from the receiving date of a request for a travel document from DHS, MPS intends to issue the travel document when the individual meets the eligibility criteria listed in Section 4 of this MOU."). But while DO Cole says that the consulate is *supposed to* issue travel documents in that time, he never says that the embassy *actually does* in practice. Experience shows that Vietnam does not consistently issue travel documents in 30 days. And in fact, according to DO Lara-Ramirez, 30 days have already lapsed since ICE requested Mr. Tran's travel documents. Doc. 15-1 at ¶ 10.

Delays have plagued the MOU repatriation process since the beginning. Government reports[2] reveal that between 2021 and 2023, Vietnam never issued a travel document within 30 days. Instead, in the 4 cases in which Vietnam issued travel documents, the issuance time ranged from 2 months to over 15 months.

TD request date	**TD issuance date**	**Delay**
11/4/21	1/6/22	2 m, 2 d
10/18/21	3/4/22	4 m, 14 d
2/14/22	4/14/22	2 m

[2] All quarterly reports are linked here: https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports

4/13/21	8/5/22	1 y, 3 m, 23 d

The experiences of the 14 immigrants who did not receive travel documents provide further evidence of delay. Snapshot reports about these immigrants' status reveal that at least 12[3] of the 14 were held for over a month after ICE requested their travel documents, presumably awaiting an answer.

TD request date	**Snapshot report date**	**Delay as of report**
10/29/21	12/21/21	1 m, 22 d
2/24/22	3/14/22	18 d
12/17/21	3/14/22	2 m, 25 d
4/14/22	6/12/22	1 m, 29 d
3/10/22	6/12/22	3 m, 2 d
9/30/22	12/14/22	2 m, 14 d
10/5/22	12/14/22	2 m, 10 d
10/18/22	12/14/22	1 m, 27 d
10/25/22	12/14/22	1 m, 20 d
1/23/23	3/5/23	1 m, 11 d
10/25/22	3/5/23	4 m, 9 d
4/12/23	6/11/23	2 m
5/31/23	9/10/23	3 m, 11 d
8/25/23	9/10/23	17 d

More recent experience shows that these delays have not gone away. For example, the Petitioner in *Nguyen*, a pre-1995 Vietnamese citizen, experienced these delays in obtaining his travel documents and ultimately was ordered release by the Court. *Nguyen*, 2025 WL 2419288, at *4. In that case, an ICE official swore

[3] The other two may also have been detained for over a month awaiting an answer, but the reports happened to come out less than 30 days after ICE submitted travel document requests on their behalf.

that a client's travel document request was already actively "under review" by Vietnam by July 26, 2025. *Id.* When confronted with the over-30-day delay, ICE officials changed the story, claiming that ICE actually had not submitted the travel document request on the dates provided in the previous declarations. *Id.* The inconsistency caused the court to find that an ICE official had made a "false representation," "reflect[ing] adversely on the [official's] overall credibility." *Id.*

The pattern of delay in issuance of travel documents, and the fact that more than 30 days have lapsed since ICE requested Mr. Tran's travel documents, supports the claim that Mr. Tran will not be removed in the reasonably foreseeable future.

3. Because the government failed to provide the number of travel document requested, this Court cannot know how likely it is that Mr. Tran will be removed.

Finally, DO Lara-Ramirez states that 587 Vietnamese immigrants have been removed to Vietnam in ("FY") 2025, of those 587, 324 arrived in the United States pre-1995. Doc. 15-1 at ¶ 16. Notably, statistic does not show that Vietnam is issuing travel documents on a reasonably foreseeable timeline: DO Lara-Ramirez says that these immigrants were removed in FY2025 but provides no information about when the travel document requests were made. *See Nguyen*, 2025 WL 2419288, at *17 (making this point). Just as importantly, DO Lara-Ramirez's statistic does not establish the *proportion* of Vietnamese citizens that are successfully removed when ICE seeks travel documents. For instance, "[i]f DHS submitted 350 requests and Vietnam issued travel documents for 32[4] individuals, Respondents may very well have shown that removal is significantly likely in the reasonably foreseeable future. On the other hand, if DHS submitted 3,500 requests and only 32[4] individuals received travel documents, Respondents would not be able to meet their burden." *Nguyen*, 2025 WL 1725791, at *4. To do that kind of calculation, this Court would need not only the number of travel document requests granted, but also "the total

number of requests that were made." *Id.* DO Lara-Ramirez does not provide that information.

That matters when combined with the evidence of delay provided here. It could well be that the 324 travel documents represent only a small slice of the documents requested. In most cases, Vietnam may not have answered at all. Without knowing how likely it is that any given travel document request will be accepted, this Court cannot know the chances that any individual Vietnamese immigrant will be removed.

V. ICE did not Adhere to the Regulations Governing Revocation of OSUP.

In their response, the Government does not dispute that ICE failed to comply with their own regulations under 8 C.F.R. § 241.13.

First, the Government claims that ICE did provide Mr. Tran of notice, however the documents provided to Mr. Tran on the day of his detention do not address his OSUP and certainly do not notify him that the OSUP is being revoked or the reason or reasons it's been revoked. Doc. 15-2. Moreover, there was no informal interview that allowed Mr. Tran an opportunity to be heard.

Under 8 C.F.R. § 241.13(i) applies to persons released after providing good reason to believe that they will not be removed in the reasonably foreseeable future, such as Mr. Tran. These regulations permit an official to "return[s] [the person] to custody" because they "violate[d] any of the conditions of release." 8 C.F.R. § 241.13(i)(1); *see also id.* § 241.4(*l*)(1). Otherwise, they permit revocation of release only if the appropriate official (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," **and** (2) makes that finding "on account of changed circumstances." *Id.*

No matter the reason for re-detention, the re-detained person is entitled to "an initial informal interview promptly," during which they "will be notified of the

reasons for revocation." *Id.* §§ 241.4(*l*)(1), 241.13(i)(3). The interviewer must "afford[] the [person] an opportunity to respond to the reasons for revocation," allowing them to "submit any evidence or information" relevant to re-detention and evaluating "any contested facts." *Id.* This did not happen in Mr. Tran's case, and the Government does not dispute that, therefore ICE did not follow its own regulations.

That is dispositive. "ICE's failure to afford [Mr. Tran] such an interview violated his right to due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164–65 (W.D.N.Y. 2025); *see also Rombot*, 296 F. Supp. 3d at 386–89; *You v. Nielsen*, 321 F. Supp. 3d 451, 463–64 (S.D.N.Y. 2018). And that violation requires release, because (1) government agencies are required to follow their own regulations, and (2) these particular regulations provide the most "minimal process" that the Constitution would permit before "someone's most basic right of freedom is taken away." *Ceesay*, 781 F. Supp. 3d at 164–65; *see also Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) ("The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." (cleaned up)). That is reason enough to grant this petition.

The Government is asserting that ICE revoked release because of a significant likelihood of removal, but that is not enough. The regulation requires that the likelihood of removal arise out of "changed circumstances." 8 C.F.R. § 241.13(i)(2). Here, the same 2008 treaty and 2020 Memorandum of Understanding ("MOU") have applied to Mr. Tran's removal for 15 and 5 years, respectively. DO Lara-Ramirez identifies no changed circumstances, nor does he assert that ICE premised re-detention on any such changes. Doc. 15-1. And "Respondents have not provided any details about why a travel document could not be obtained in the past, nor have they attempted to show why obtaining a travel document is more likely this time around." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025). Respondents have

announced only their "intent to eventually complete a travel document request for Petitioner," which "does not constitute a changed circumstance." *Id.*

In *Rokhfirooz*, Judge Huie determined that these requirements were not met on a record materially indistinguishable from this one. 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025). There, the government failed to produce "any documented determination, made prior to Petitioner's arrest, that his release should be revoked." *Id.* at *3. Judge Huie also remarked in *Rokhfirooz* that the government had produced "no record constitut[ing] a determination even after Petitioner's arrest that there is a significant likelihood that Petitioner can be removed in the reasonably foreseeable future." *Id.* Here, the government provides no documented, pre-arrest determination that release should be revoked. Thus, as in *Rokhfirooz*, there is "no evidence that DHS has made such a determination as to the revocation of Petitioner's release even after the fact of arrest, up to the present day." 2025 WL 2646165, at *4.

ICE is required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established."). A court may review a re-detention decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

Numerous courts have released re-detained immigrants after finding that ICE failed to comply with applicable regulations. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or.

Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025). That includes Judge Huie last month. *Rokhfirooz*, 2025 WL 2646165.

(1) Mr. Tran has demonstrated that he suffered substantial prejudice

In their response, the government claims that Mr. Tran fails to show that he suffered substantial prejudice. As detailed in his declaration, Mr. Tran has been in the United States since he was 4 years old. *See* Doc. 11 Declaration of Nam Ngoc Tran (Tran Decl.). In the last 15 years, while he was under the OSUP, Mr. Tran continued to build a life for himself and his family in the United States. Mr. Tran owns two businesses in San Diego County with multiple employees. *Id.* at ¶ 4. His untimely and unlawful detention has negatively impacted not only his businesses, but his two young U.S. citizen daughters and U.S. citizen wife. *Id.* at ¶ 8. It is clear to Mr. Tran that if he continues to be detained, he will lose his businesses and his home. *Id.* at ¶ 9.

Moreover, in April 2024, Mr. Tran was granted deferred action based on his pending U-visa. Deferred action is an affirmative benefit issued, in this case, by USCIS after a thorough background check and warrants certain benefits including lawful presence in the United States and prevents the individual's removal. *Lee v. Holder*, 599 F.3d 973, 974–75 (9th Cir. 2010) (interim relief program providing deferred action to U-visa applicants prevented their removal from the United States). Mr. Tran relied on his grant of deferred action and continued to build strong family and community ties in the United States. Tran Decl.

Mr. Tran did not receive any notification that his OSUP would be revoked and was not given any time to get his affairs in order before his detention, therefore Mr. Tran was not able to ensure that his family was prepared to take over his businesses and now those businesses are facing potential bankruptcy and closure.

Id. at ¶ 12. Additionally, Mr. Tran's deferred action is still in place, and ICE should not have taken any action on his prior removal order. *Lee v. Holder*, 599 F.3d 973, 974–75 (9th Cir. 2010). As such, despite the Government's assertion that "[a]t the time of his re-detention, Petitioner knew he was subject to a final order of removal to Vietnam", Mr. Tran correctly relied on the issuance of deferred action to protect him from removal.

Moreover, for 15 years, including in 2024, Mr. Tran attended annual check-ins with ICE as was repeatedly told he would not be removed, and no steps were ever taken by ICE to remove him to Vietnam. Tran Decl. at ¶ 2.

Had Mr. Tran received written notice and an interview, as required by the regulations, he would have been able to dispute the revocation of his OSUP and relied on his deferred action status to dispute ICE's contention that there was a significantly likelihood of his removal to Vietnam in the reasonably foreseeable future.

CONCLUSION

For all these reasons, this Court should grant the petition or at least enter a temporary restraining order. In either case, the Court should (1) order Mr. Tran's immediate release, and (2) prohibit the government from removing Mr. Tran to a third country without following the process laid out in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025).

Respectfully submitted this 28 day of October, 2025.

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