UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Mong Tuyen Thi Tran,

Petitioner,

v.

Bruce SCOTT, Warden, Northwest ICE Processing Center; Cammilla WAMSLEY, Enforcement and Removal Operations, Seattle Field Office Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Todd LYONS, Acting Director and Senior Official Performing Duties of Director of ICE; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Respondents.

Civil Case No. 2:25-cv-01886-TMC-BAT

PETITIONER'S REPLY IN SUPPORT OF HER HABEAS PETITION

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I. INTRODUCTION

In an astonishing twist of facts, the government now reveals that for the past six months, it has warehoused Petitioner Mong Tran in an immigration detention center for no reason at all. Although an immigration agent claimed in sworn testimony in federal court in July that ICE submitted a travel document request for Ms. Tran on April 8, 2025, and that "removal is likely to occur within two months," Dkt. 3-6 at ¶¶16-17, the government now reports that the ICE entity that processes travel document requests does not have the request. Dkt. 14 ¶12. Where did it go? Was it never filed? Did Vietnam reject it? The government offers no explanation.

Instead, for the past six months the government has apparently made no effort to remove Petitioner Tran—the headquarters office that processes travel documents did not have the request. For six months, the government has needlessly taken Petitioner Tran from her family, including her young children who need her, and her thriving business in Maryland. From the day she was detained until today, her family and community back home have advocated relentlessly for her release, including in successive habeas corpus petitions, while the government simply warehoused her in an immigration detention facility on the other side of the country.

Petitioner Tran's re-detention and now extended detention is unlawful. Civil immigration detention is permitted only to effectuate removal where the individual is a flight risk or a danger. Petitioner is neither a flight risk or a danger, and the government plainly has not used it to effectuate her removal. As a result, her detention is unconstitutionally punitive. Moreover, it is now paradigmatically indefinite. The government's sudden re-detention of Petitioner Tran after 21 years of compliance with her order of supervision and failure to provide her the post-arrest

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notice and opportunity to respond provided in the regulation, violated her regulatory rights and her procedural due process rights.

For these reasons, this Court should order her immediate release and that she may not be re-detained without the approval of this Court upon receipt and examination by this Court of a travel document to Vietnam and a scheduled departure date.

Although the parties agreed to an expedited briefing schedule on the habeas petition to resolve this matter expeditiously in lieu of a TRO, *see* Dkt. 8, Petitioner understood that the government would be responding to Petitioner's briefing and evidence on the TRO. To avoid repetition of arguments and re-filing of evidence, Petitioner incorporates by reference her opening brief and evidence submitted in support of the TRO. *See* Dkt. 3-1 to 3-15.

II. ARGUMENT

a. Petitioner's Detention is Unconstitutionally Punitive.

Civil detention is constitutionally permissible only in "special and narrow nonpunitive circumstances." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In the immigration detention context, it is permitted by statute only to prevent flight or protect against a danger to the community while the government seeks to execute a removal order. *Id.* In 1893, the Supreme Court declared that deportation is not a punishment but rather "a method of enforcing the return to his own country of an alien who has not complied [with the immigration laws]." *Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893). *See Reno v. AADC*, 525 U.S. 472, 491 (1999). Immigration detention has thus been upheld by the Courts as constitutionally permitted for the narrow and limited purpose of effectuating the civil nonpunitive sanction of deportation. *See Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid."); *see also Zadvydas*, 533 U.S. at 697

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(distinguishing constitutionally questionable post-order immigration detention from "detention pending a determination of removability").

Civil immigration detention, however, is prohibited when it is not used for its purported purpose. Here, for the past six months, the government has not imprisoned Petitioner Tran for the purpose of effectuating her removal. It has apparently imprisoned her without making any effort to remove her. The government either did not request her travel document, despite telling a district court in July that it had, Dkt. 3-6 ¶¶16-17, or it lost or misplaced it, or Headquarters somehow never received it, Dkt. 14 ¶12. Whatever the truth is, the government's use of immigration detention here is impermissibly punitive because it has not been used to effectuate her removal to Vietnam. *See Zadvydas*, 533 U.S. at 690 (where "detention's goal is no longer practically attainable, detention no longer bears a reasonable relation to the purpose for which the individual was committed.") (cleaned up).

At this point, there is no credible or reliable evidence that the government has requested a travel document for Petitioner Tran. The only evidence the government has offered in this habeas action and Petitioner's prior habeas action in Maryland are the bald assertions by two ICE officers. ICE, however, has never asked Petitioner Tran to complete the Self-Declaration Form that Vietnam requires for a travel document request for a person who arrived in the United States before 1995. Dkt. 3-8 at 8; Declaration of Mong Tran ¶1, filed concurrently. *See* Dkt. 3-1 at 5. For all we know, the truth could be that ICE did not submit a travel document in April, which would render the past six months of detention unconstitutionally punitive and indefinite. It could also be true that it has not submitted it now, despite claiming it has, which would continue Petitioner's punitive and indefinite detention.

Alternatively, it could be true that ICE submitted the request in April, but that it was rejected by Vietnam, which would mean her removal is not foreseeable and detention is unconstitutionally indefinite. It could be that the request was made and simply lost or misplaced, which also would signal that government is making no concerted effort to remove her and her

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detention is impermissibly punitive. *See Zadvydas*, 533 U.S. at 721 (Kennedy, J., dissenting) (confirming the majority's understanding that "both removable and inadmissible aliens are entitled to be free from detention that is arbitrary and capricious"). Or it could be that the government asserts now that the travel document request has vanished only to convince this Court to give it another chance and restart the clock on reasonable foreseeability—that too would be impermissible.

Whatever the truth is, none of it points to a constitutionally permissible length or purpose of immigration detention. Moreover, this conduct sits within the context of a disturbing trend of ICE re-detaining pre-95 Vietnamese nationals without justification at their scheduled check-ins and detaining them for extended periods before even initiating the travel document request process. Declaration of Tin T. Nguyen ¶10, filed concurrently. As Julie Valencia attests, in the 30 pre-1995 Vietnamese cases she has screened of individuals detained in the Northwest ICE Processing Center in Tacoma, ICE did not begin the travel document process until many months into their detention. Declaration of Julie Valencia ¶¶2-4, filed concurrently. In one case, ICE detained an individual on March 1, 2025 and did not begin the travel document process with him until August 2025. *Id.* ¶3. That individual is still detained with no travel document. *Id.*

b. Petitioner's Detention is Unconstitutionally Indefinite.

ICE has held Petitioner in custody for nearly six months since it re-detained her in May 2025, and, cumulatively, nine months in unsuccessful efforts to remove her over the past 20 years. After the presumptively reasonable six-month period, if the Petitioner shows that there is good reason to believe that there is no significant likelihood of removable in the reasonably foreseeable future, then the government must rebut that assertion with evidence. *Nguyen v. Scott*, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025) (citing *Zadvydas*, 533 U.S. at 699, 701). The government has not.

Here, Petitioner has met her burden to demonstrate that removal is not significantly likely in the reasonably foreseeable future. First, it is uncertain whether ICE has truly submitted a

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travel document request to Vietnam, either previously or recently. At no point has an ICE officer interviewed her about her ties to Vietnam, asked her to complete the Self-Declaration Form or gathered the other information known to be required by Vietnam under the MOU for repatriation of pre-95 Vietnamese arrivals. Dkt. 3-8. If no travel document request has been made, then Petitioner's detention is patently indefinite.

Second, taking ICE's attestations to be true, the fact that ICE submitted a travel document request in April, over seven months ago, and never issued a travel document, is itself evidence that a travel document is not coming now, or ever. The government has not disclaimed the veracity of Officer Burki's testimony in July, Dkt. 3-6, it has only stated that when a new officer inquired with Headquarters, they "did not have the original request from April 8, 2025." Dkt. 14 ¶12.

Third, even if ICE has now re-submitted the travel document request, there is no evidence that Vietnam will now issue a travel document expeditiously. Indeed, the government offers no evidence that Vietnam has done so in other cases, nor provided any reason to believe they would do so here, where every other data point signals the opposite. Rather, it offers only the conclusory statement that "Vietnam has been processing travel documents within thirty days." Dkt. 14 ¶13. Vietnam clearly did not do so when ICE requested Petitioner's travel document in April, despite Officer Burki's claims in July that Vietnam would issue the travel documents within two months. Dkt. 3-6. And Vietnam has not done so in scores of other cases. *See* Valencia Decl. ¶¶ 2-4; Declaration of Tin T. Nguyen ¶7 (in almost a hundred cases of pre-95 individuals, Vietnam did not issue a travel document within 30 days or less). *See also Nguyen v. Scott*, 2025 WL 2419288, at *15 (citing examples of prolonged delays in Vietnam issuing travel documents).

Of note, the government claims without evidence that a "travel document was issued" for Phong Nguyen, the petitioner in *Nguyen v. Scott*, the case recently heard by this Court. Dkt. 15-1 at 8. The government submits no evidence to support this claim and cites only an inaccessible-on-Pacer declaration submitted in another case as support for this claim. *Id.* Petitioner's counsel

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represented Phong Nguyen. No evidence was ever presented to her or Mr. Nguyen that a travel document had been issued; instead, in a phone call on September 9, counsel for the government claimed that a travel document had issued and it was "in the mail"—counsel for the government did not have an electronic copy of it, nor had he seen one to verify its existence. Second Pasquarella Decl. ¶¶3-4.

For all these reasons, Petitioner has demonstrated, and the government has not rebutted, her showing that removal is not reasonably foreseeable.

c. Petitioner's Re-Detention Violated Her Regulatory Rights.

The government was required to comply and did not comply with the revocation of release procedures in 8 C.F.R. § 241.13(i)(3). The government does not argue that it adhered to the regulatory procedures. Instead, it appears to argue that it's lack of compliance should not matter because Petitioner Tran would not have anything helpful to say in an initial interview. Dkt. 15-1 at 10. The government cites *Ahmad v. Whitaker*, 2018 WL 6928540, at *5 (W.D. Wash. Dec. 4, 2018) as support but in that case a travel document had already been issued and the government had scheduled the petitioner's removal. As a result, the court held there was no actionable injury for failure to provide the informal interview required by the regulations because the petitioner would not have been able to rebut the fact that removal was significantly likely in the reasonably foreseeable future. Here, there is clearly no travel document, and, as discussed above, there are ample reasons why it is not likely Vietnam will issue a travel document now or ever.

The government's violation of Petitioner's regulatory rights alone requires Petitioner's release from custody, as other courts have found. *See Hoac v. Becerra,* 2025 WL 1993771 (E.D. Cal. June 30, 2025) (ordering release because government did not comply with 8 C.F.R. § 241.13(i)(3)); *Phan v. Becerra*, 2025 WL 1993735, *4 (E.D. Cal. July 16, 2025) (same) ("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"); *Wing*

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Nuen Liu v. Carter, 2025 WL 1696526, at *2 (D. Kan. Jun. 17, 2025) ("officials did not properly revoke petitioner's release pursuant to [§] 241.13" because "most obviously. . . petitioner was not granted the required interview upon the revocation of release"); *Roble v. Bondi*, 2025 WL 2443453 (D. Minn. Aug. 25, 2025) (ordering release based on regulatory violation). *See also United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (agencies are required to follow their regulations); *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993) ("[W]hen a regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, and [the government] fails to adhere to it, the challenged deportation proceeding is invalid.").

Here, the regulatory violations are particularly egregious. Although the regulation required ICE to notify her "[u]pon revocation" of the reasons for revocation of her order of supervision, 8 C.F.R. § 241.13(i), it never did so. At best, it gave her a Notice of Revocation of Release for the first time on July 1, 2025, more than a month and a half after her re-detention, that offered as reasons for the revocation: "ICE has determined that you can be expeditiously removed from the United States" and "Your case is under review by the Government of Vietnam." Dkt. 3-1 at 5; Dkt. 3-11. At no point has an ICE officer explained why it contends that there are "changed circumstances" under § 241.13(i)(2) warranting re-detention, nor why the notice claims she can be "expeditiously removed"—a fact which has now, six months later, proven to be untrue. Dkt. 3-1 at 5. At no point has ICE conducted an "initial interview," provided her an opportunity to submit information, nor conducted a "revocation custody review," as the regulations require. 8 C.F.R. § 241.13(i)(3); Mong Tran Decl. ¶2.

Moreover, ICE's conduct here further points to impropriety. On July 1, Officer Strzelczyk served Petitioner with the Notice of Revocation of Release to obtain her signature attesting that the document was served on her. Dkt. 3-1 at 5; Dkt. 14 ¶11. Officer Strzelczyk did not change the date on the documents to July 1 but rather left the date as May 12 (the date of her re-detention) and told her she needed to sign it as-is or else risk "re-sett[ing] the clock" on the

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length of her detention. Dkt. 3-5 ¶4. Officer Strzelczyk also did not change the names on the notice to reflect that he was the one serving the document but rather left the name of an officer in Maryland as though that person had served Petitioner on May 12 (they had not). Dkt. 3-11 at 2; Dkt. 3-1 at 5. Officer Strzelcyzk admits he asked for her signature then and did not change or alter the pre-populated notice. Dkt. 14 ¶11. This botched attempt to make it appear that Petitioner Tran had been properly served the notice of revocation at the time of her redetention was apparently motivated by Petitioner's first habeas action in Maryland. *See Tran v. Baker*, 2025 WL 2085020, at *6 (D. Md. July 24, 2025).

d. Petitioner's Re-Detention Violated Her Procedural Due Process Rights.

Finally, the government argues that Petitioner has no pre-deprivation procedural due process rights to notice and a hearing before her Order of Supervision is suddenly revoked. The government is wrong.

In 1972, the Supreme Court held the government could not take away a parolee's release on parole without notice and a hearing. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (holding that a parolee has a substantial interest in remaining out of custody on conditions of parole). The government claims that Petitioner Tran argues for a "new pre-deprivation hearing requirement for noncitizens with final removal orders," Dkt. 15-1 at 11, but there is nothing new about this requirement. It was announced in *Morrissey* and has since been applied in a range of immigration contexts, including for noncitizens released from custody with final removal orders. *See* Dkt. 3-1 at 19 (citing cases). Indeed, "immigrants have due process rights after final removal orders issue." *Chhoeun v. Marin*, 442 F. Supp. 3d 1233, 1246 (C.D. Cal. 2020) (citing *United States v. Raya-Vaca*, 771 F.3d 1195, 1198 (9th Cir. 2014)).

Here, as in the parole context, where the government has released an individual from immigration custody on an order of supervision, it follows from the rule in *Morrissey* that the government cannot revoke that release without notice and an opportunity to respond before any new arrest. Courts have applied this rule in the post-order revocation of release context. *See*

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Chhoeun, 442 F.Supp.3d at 1251 (holding due process requires advance notice before the government may re-detain a person subject to a final order of removal who has lived for decades on an order of supervision that has not been violated); *Zakzouk v. Becerra*, 2025 WL 2097470, at *3 (N.D. Cal. July 26, 2025) (holding procedural due process required an order against re-detention absent pre-deprivation notice and an opportunity to be heard); *Ortega v. Kaiser*, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025) (same).

Finally, the government claims that the post-detention revocation of release regulations are sufficient to protect Petitioner's liberty interests. They are not. "Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute." *Arzarte v. Andrews*, 2025 WL 223051, at *4 (E.D. Cal. Aug. 4, 2025) (citing *Young v. Harper*, 520 U.S. 143, 147-49 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey*, 408 U.S. at 482).

If ever there was a case to demonstrate why the procedural due process clause must guard against the arbitrary abuse of power by the government to revoke a person's release on supervision without cause, it is this one. Had the government given her advance notice that it believed circumstances had changed and that it could repatriate her to Vietnam and given her an opportunity to respond, her now six months of needless detention could have been averted. Instead, in violation of several overlapping constitutional, statutory and regulatory laws, it unlawfully re-detained her and has kept her in prolonged, punitive detention for nearly six months.

III. Conclusion

For the foregoing reasons, this Court should order Petitioner Tran's immediate release from custody. This Court should order that she may not be re-detained without approval from this Court to ensure that there is a permissible reason to detain her. For example, if the government obtains a travel document, detention should not be permitted until this Court verifies

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the existence of the travel document, that travel arrangements have already been made for a date certain, and that detention is necessary to secure her removal on that date and, if necessary, narrowly limited to only what is necessary to effect removal. Given the arbitrary use of detention in Petitioner's case up to this point, an order with respect to re-detention is necessary to secure her rights.

Respectfully submitted,

DATED: October 9, 2025

/s/ Jennifer Pasquarella

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