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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TAI TRUONG,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.: 25-cv-2597-JES

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

In his petition for habeas relief and request for a Temporary Restraining Order and injunction, Mr. Truong asserted three claims for relief. First, he argued that procedural due process prevented ICE from removing him pending a scheduled hearing on October 2, 2025, to vacate his prior criminal conviction and file a motion to reopen. Second, he argued that the Court should order him released because ICE failed to comply with its own regulations for redetaining him. Third, he argued that ICE should not remove him to a third country without adequate notice and an opportunity to be heard.

Mr. Truong hereby notifies this Court that at the hearing on October 2, 2025, his motion to vacate his prior conviction was denied. Mr. Truong thus withdraws his request for a TRO and habeas relief on the basis of his first claim.

Skipping forward to his third claim, Mr. Truong takes the government at its word that it has obtained a travel document to Laos, that it will remove him to Laos no later than November 1, 2025, and that it does not seek to remove him to a third country. *See* Dkt. 7-1, Cole Declaration at 3. Mr. Truong thus withdraws his request for a TRO and habeas relief on the basis of his third claim.

However, Mr. Truong continues to seek a temporary restraining order and habeas relief on the basis of his second claim—that ICE failed to comply with the regulations for redetaining him. He does so to seek release from detention until November 1, 2025, in order to pack his belongings, wrap up his affairs, and say goodbye to his family. Such relief is particularly important to Mr. Truong because ICE officers arrested him while he was driving to his father's funeral, and he has not had an opportunity to be with his family or prepare for his removal to Laos.

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ARGUMENT

I. Although Mr. Truong withdraws his request for relief on Claims One and Three, this Court should grant Mr. Truong relief on Claim Two and order his release until November 1, 2025.

As explained above, Mr. Truong withdraws his request for relief on Claim One (seeking a stay of removal to adjudicate his motion to vacate conviction and motion to reopen) and Claim Three (seeking advance notice of any removal to a third country). However, Mr. Truong continues to seek relief under Claim Two and asks that this Court order that he be released until at least November 1, 2025, to allow him to pack his belongings, close his bank account, wrap up his affairs, and say goodbye to his family.

A. This Court has jurisdiction to consider Claim Two.

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 reasoned 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 Mr. Truong's Claim Two, because he challenges only violations of ICE's mandatory duties under the regulations (and the Constitutional guarantee underlying them). 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. Truong's] continued detention and the process required in relation to third country removal." *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").

In short, Mr. Truong does not challenge whether the government may "execute" his removal under 8 U.S.C § 1252(g)—only whether it may be detain him up to the date it does so. This Court thus has jurisdiction.

B. The government does not meaningfully dispute that Mr. Truong's re-detention violated the regulations.

On July 12, 2025, as Mr. Truong was driving to his father's funeral, he was pulled over by four unmarked ICE vehicles. *See* Dkt. 1 at 18, Truong Declaration.

ICE officers arrested him and have detained him for nearly three months. *Id.* At the time of his arrest, Mr. Truong was not told why ICE was revoking his supervised release, as the regulations require. *See* 8 C.F.R. § 241.13(i)(3) ("*Upon revocation,* the alien will be notified of the reasons for revocation of his or her release.") (emphasis added). Nor did ICE "conduct an initial informal interview promptly after his or her return to Service custody to afford [Mr. Truong] an opportunity to respond to the reasons for revocation stated in the notification." *Id.* The government does not dispute these facts.

Instead, the government makes several irrelevant arguments. First, it argues that "ICE provided Petitioner with notice of his revocation on October 7, 2025." Dkt. 7 at 6 (citing Exhibit 4). But October 7 was nearly three months *after* ICE arrested Mr. Truong, rather than "[u]pon revocation" of his supervised release on July 12. 8 C.F.R. § 241.13(i)(3). Moreover, the October 7 revocation states:

> This letter is to inform you that your case has been reviewed, and it has been determined that you will be kept in custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your immigration and criminal history. Based on the above, and pursuant to 8 CFR 241.4, you are to remain in ICE custody at this time.

Dkt. 7-2 at 12. This only tells me Mr. Truong why he will "remain in ICE custody"—not the initial "reasons for revocation" on July 12. 8 C.F.R. § 241.13(i)(3). And the vague reference to his "immigration and criminal history" does not satisfy the regulations requiring that revocation may only occur if Mr. Truong violated the conditions of his supervised release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances, the Service determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). In other words, not only did ICE fail to provide the "reasons for revocation" *at the time* of revocation, those "reasons" had *nothing to do* with whether he violated the conditions of his supervised release or there was a significant likelihood of

removal in the reasonably foreseeable future—the only bases for revoking his supervision. Thus, the October 7 notice does not cure the government's regulatory violations.

Second, the government argues that there is "no legal basis for Petitioner's claim that he was entitled under the regulation to prior notice of revocation and re-detention." Doc. 7 at 6 (citing 8 C.F.R. § 241.4(*l*)(1)). But at a minimum, this notice must happen "*[u]pon* revocation"—not three months after. 8 C.F.R. § 241.4*(l)*) (emphasis added). And even assuming that an "initial informal interview" need only occur *after* re-detention, it still must occur "*promptly* after [the noncitizen's] return to Service custody." 8 C.F.R. § 241.4*(l)*) (emphasis added). Here, the government has submitted no evidence that in the three months since Mr. Truong was detained, it has conducted such a mandatory interview—let alone that it occurred "promptly." Thus, even under the government's version of events, ICE committed multiple ongoing regulatory violations.

B. These regulatory violations caused Mr. Truong prejudice.

The government has never claimed that it obtained—or even requested—travel documents prior to re-detaining Mr. Truong on July 12. *See* Dkt. 7. Assuming it did not, it had no authority to re-detain Mr. Truong given that there were no violations of supervised release or "changed circumstances" suggesting a "significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future" at the time of his re-detention. 8 C.F.R. § 241.13(i)(1) and (2). Accordingly, Mr. Truong was deprived of his liberty for an unspecified period of time—including his ability to work, earn money, spend time with his family, and attend his father's funeral. This alone caused him prejudice.

What's more, these regulations are "intended to provide due process in that they are fairly construed to be part of a procedural framework" that is "designed to ensure the fair processing of an action affecting an individual." *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug.

25, 2025) (quotations omitted). So "when they are not followed, *prejudice is presumed*." *Id.* (emphasis added). Indeed, the Ninth Circuit has held that while a petitioner "[o]rdinarily" has the responsibility to show prejudice, it "may be presumed" where "compliance with the regulation is mandated by the Constitution." *Sanchez v. Sessions*, 904 F.3d 643, 652 (9th Cir. 2018) (quotations omitted). Other circuits hold the same. *See Puc-Ruiz v. Holder*, 629 F.3d 771, 780 (8th Cir. 2010) ("As a general rule, prejudice will have to be specifically demonstrated, unless compliance with the regulation is mandated by the Constitution, in which case prejudice may be presumed.") (quotations and alterations omitted); *Martinez Camargo v. INS*, 282 F.3d 487, 492 (7th Cir. 2002) (same)."

Here, as in these cases, compliance with 8 C.F.R. § 241.13(i) and 8 C.F.R. § 241.4(*l*) ensures that a noncitizen will receive the procedural due process guarantee of notice and an opportunity to be heard. It confirms that ICE will not detain first and construct "changed circumstances" after—which is exactly what it appears to have done in this case by detaining Mr. Truong *before* it began seeking travel documents. Not only does this violation of a constitutionally-backed regulation mean that prejudice is presumed, the deprivation of Mr. Truong's liberty for an unspecified period of time stripped him of the opportunity to earn money, pack his belongings, say goodbye to his family, and attend his father's funeral. This is more than enough to show prejudice.

Because this Court has jurisdiction to consider Claim Two, and the government's violation of the regulations caused Mr. Truong prejudice, this Court should grant him relief on this Claim.

II. Mr. Truong satisfies the requirements of a TRO.

Finally, the government claims that Mr. Truong has failed to satisfy the requirements for a temporary restraining order. Doc. 7 at 9–11.

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As to the likelihood of success on the merits for Claim Two, the government simply repeats its merits argument in a single sentence—that "§ 1252(g) indisputably bars review over his claim," Mr. Truong is "lawfully detained," and that "any alleged regulatory noncompliance did not prejudice" him. For the reasons, above those conclusory statements fail.

As to the irreparable harm prong, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments,[1] the Ninth Circuit has specifically recognized the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

On the balance-of-equities/public-interest prong, the government is correct that there is a "public interest in prompt execution of removal orders." *Nken v. Holder*, 556 U.S. 418, 436 (2009). But that interest is diminished here because the government likely cannot remove Mr. Thai in the reasonably foreseeable future, and even if it could, it is equally "well-established that 'our system does not permit agencies to act unlawfully even in pursuit of desirable ends.'" *Nguyen*, 2025 WL 2419288, at *28 (quoting *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021)). It also "would not be equitable or in the public's interest to allow the [government] to violate the requirements of federal law" with respect to detention and re-detention, *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (cleaned up), or to imperil the

[1] The government cites several cases to support the position that illegal immigration detention is not irreparable harm. Doc. 7 at 10. But both cases involved immigrants who (1) had already received a bond hearing and (2) were actively appealing to the BIA, but (3) wanted a federal court to intervene before the appeal was done. *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *1 (W.D. Wash. Feb. 19, 2021), and *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *1–5 (N.D. Cal. Dec. 24, 2018). These courts indicated only that post-bond-hearing detention pending an ordinary BIA appeal was not irreparable harm. *Reyes*, 2021 WL 662659, at *3; *Lopez Reyes*, 2018 WL 7474861, at *10.

"public interest in preventing aliens from being wrongfully removed," *Nken*, 556 U.S. 418, 436.

Conclusion

For all these reasons, this Court should grant the petition, or at least enter a temporary restraining order and injunction ordering that Mr. Truong be released until his flight to Laos departs on November 1, 2025.

Respectfully submitted,

Dated: October 9, 2025

s/ Kara Hartzler

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