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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION**

Thuc Vien Ho,

Petitioner,

v.

Gregory J. Archambeault, *in his official
capacity as Field Office Director, San Diego
Field Office, U.S. Immigration and Customs
Enforcement,*

David R. Rivas, *in his official capacity as
Warden, San Luis Regional Detention Center,*

**United States Department of Homeland
Security,**

**United States Immigration and Customs
Enforcement,**

Respondents.

Case No. CV-25-03753-PHX-JJT (JZB)

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE TO
ORDER TO SHOW CAUSE**

**I. RESPONDENTS DO NOT DISPUTE THAT ICE UNLAWFULLY
DETAINED PETITIONER**

“The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e]’ any
‘person ... of ... liberty ... without due process of law.’ Freedom from imprisonment—from
government custody, detention, or other forms of physical restraint—lies at the heart of the liberty
that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491 (2001). At its core,
Respondents’ position is that ICE unlawfully deprived Petitioner, Thuc Vien Ho (“Mr. Ho” or

1 “Petitioner”), of his liberty on July 23, 2025, but that Mr. Ho should not be released because it
 2 provided him with a vague, blanket notice of revocation on October 16, 2025, following this
 3 Court’s Order To Show Cause (Doc 5), and could remove him if and when Vietnam issues a travel
 4 document. Doc. 8.

5 Because Respondents do not dispute that ICE failed to comply with both 8 C.F.R. § 241.4
 6 and 8 C.F.R. § 241.13 at the time of Mr. Ho’s detention, Doc. 8, this Court should order
 7 Respondents to immediately release Mr. Ho from custody, subject to his preexisting Order of
 8 Supervision. Petitioner filed his Petition for Writ of Habeas Corpus Pursuant to § 2241 and
 9 Motion for Emergency Temporary Restraining Order (Docs. 1-2.), on October 10, 2025, and the
 10 Court issued an Order to Show Cause the same day (Doc 5). That is not all that happened on
 11 October 10, 2025, that should direct the Court’s disposition here. The United States District Court
 12 for the Southern District of California, *Minh Nhat Phan v. Noem*, 3:25-cv-02422-RBM-MSB,
 13 2025 U.S. Dist. LEXIS 201411, *13-14 (S.D. Cal. Oct. 10, 2025), joined the chorus of district
 14 courts to grant habeas petitions and orders the immediate release of a Vietnamese nationals who
 15 were unlawfully detained. “The Court’s research indicate[d] that every district court, except one,¹
 16 to consider the issue has ‘determined that where ICE fails to follow its own regulations in
 17 revoking release, the detention is unlawful, and the petitioner’s release must be ordered.’” *Minh*
 18 *Nhat Phan*, 2025 U.S. Dist. LEXIS 201411, *13-14 (*quoting Rokhfirooz v. Larose et al.*, Case
 19 No.: 25-cv-2053-RSH-VET, 2025 U.S. Dist. LEXIS 180605, 2025 WL 2646165, *4 (S.D. Cal.
 20 Sept. 15, 2025) (and *citing Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017)

24 ¹ See *Medina v. Noem*, Case No. 25-cv-1768-ABA, 2025 U.S. Dist. LEXIS 154052, 2025 WL
 25 2306274, at *12 (D. Md. Aug. 11, 2025). “But even in *Medina*, the petition was denied without
 26 prejudice because the petitioner ‘has not pointed to authority showing that the remedy for a
 27 violation of [§ 241.4] (if such a violation has occurred) is release from detention.’” *Minh Nhat*
 28 *Phan*, 2025 U.S. Dist. LEXIS 201411, *13 (*quoting Medina*, 2025 U.S. Dist. LEXIS 154052, at
 *11. Here, as in *Minh Nhat Phan*, 2025 U.S. Dist. LEXIS 201411, *13, Petitioner has pointed to
 Ninth Circuit authority that the proper remedy is release from detention.

(ordering the petitioner released where, “[b]ased on ICE’s violations of its own regulations, the Court concludes [the petitioner’s] detention was unlawful”); *K.E.O. v. Woosley*, Civil Action No. 4:25-cv-74-RGJ, 2025 U.S. Dist. LEXIS 172361, 2025 WL 2553394, at *7 (W.D. Ky. Sept. 4, 2025) (noting “courts across the country have ordered the release of individuals” in ICE custody where ICE “violated their own regulations”); *Grigorian v. Bondi*, CASE NO. 25-cv-22914-RAR, 2025 U.S. Dist. LEXIS 175489, 2025 WL 2604573, at *10 (S.D. Fla. Sept. 9, 2025) (“The failure to provide [the petitioner] with an informal interview promptly after his detention or to otherwise provide a meaningful opportunity to contest the reasons for revocation violates both ICE’s own regulations and the Fifth Amendment Due Process Clause. This compels [the petitioner’s] release.”).

Petitioner respectfully requests this Court to reach the same conclusion as the district court in *Minh Nhat Phan*, 2025 U.S. Dist. LEXIS 201411, *14, because the record demonstrates ICE failed to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 in violation of law and Mr. Ho’s due process rights. *Id.* (citing *Diaz v. Wofford*, 1:25-CV-01079 JLT EPG 2025 U.S. Dist. LEXIS 173666, 2025 WL 2581575, at *7 (“DHS’s failure to follow its own procedural regulations may constitute a due process violation.”); see also *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 U.S. Dist. LEXIS 162519, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (“ICE’s failure to provide Petitioner with a timely Notice of Revocation or conduct an informal interview until nearly a month after taking her into custody is a grave violation of Petitioner’s due process rights in that they deprived her both of meaningful notice and an opportunity to be heard.”).

II. ICE’S VIOLATIONS OF THE REGULATIONS AND PETITIONER’S CONSTITUTIONAL RIGHTS ARE NOT HARMLESS

ICE’s failure to provide Mr. Ho with an interview and opportunity to respond to the Notice of Revocation and Release (Doc 8-2), issued on October 16, 2025, the eve of filing its response to the Court’s Order to Show Cause (Docs 5, 8), shows Petitioner’s detention since July 23, 2025,

1 is unlawful. The constitutional deprivation of Petitioner's liberty is anything but "harmless," as
 2 Respondents claim. Doc 8 at 6.

3 **1. Respondents Did Not Comply 8 C.F.R. § 241.4**

4 Release of a foreign national following a removal order may be revoked under 8 C.F.R. §
 5 241.4, when the Executive Associate Commissioner or a district director believes revocation "is
 6 appropriate to enforce a removal order or to commence removal proceedings against [a
 7 noncitizen]." 8 C.F.R. § 241.4(l)(2)(iii). "Upon revocation," the noncitizen "will be notified of
 8 the reasons for revocation of his or her release or parole" and "will be afforded an initial informal
 9 interview promptly after his or her return" to be given "an opportunity to respond to the reasons
 10 for revocation stated in the notification." § 241.4(l)(1).

11 At the time of his re-detention, ICE provided Petitioner without any notice, the basis of
 12 his re-detention, or an interview and opportunity to respond to the reasons for the revocation of
 13 his supervised release. (Doc. 1 at ¶¶ 31-38.); Doc 8-1. In fact, ICE admits it detained Petitioner
 14 without first revoking his supervised release. Doc 8-2. ICE abruptly detained Petitioner on July
 15 23, 2025, while outside his mother's home. Doc 1 ¶31. Mr. Ho had complied with the terms of
 16 his supervised release for twenty-five years, and ICE arrested him without a warrant. Doc. 1 ¶¶
 17 26-28. At no point from the time of his detention until he filed the petition for habeas corpus on
 18 October 10, 2025, did ICE revoke his release, provide Petitioner the required notice, an interview,
 19 or an opportunity to respond. *Id.*; Docs. 8-1, 8-2.

21 Respondents represent, without citing to any supporting authority, that § 241.4(l)(1) does
 22 not apply where, as here, ICE revoked under § 241.13(i)(3). Doc 8 at 6. This proves, however,
 23 that ICE never notified Petitioner why it re-detained him in the first place, and only did so in
 24 response to Mr. Ho's present petition raising serious credibility concerns about whether ICE's
 25 position is strictly a litigation position or based in fact. *Id.* This Court should not credit
 26 Respondents post-hoc attempts to rationalize violations of the regulations that govern the re-
 27 detention and revocation of a person's supervised release. *See M.S.L.*, 2025 U.S. Dist. LEXIS
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1 162519, 2025 WL 2430267, at *11 (“Courts have found that when ICE fails to follow its own
 2 regulations in revoking release, the detention is unlawful, and the petitioner's release must be
 3 ordered.”). Petitioner’s detention was unlawful, and the remedy is his immediate release. *See*
 4 *M.S.L.*, 2025 U.S. Dist. LEXIS 162519, 2025 WL 2430267, at *11 (finding an informal interview
 5 given 27 days after petitioner was taken into ICE custody “cannot reasonably be construed as . .
 6 . prompt” and granting habeas petition); *Quoc Chi Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP,
 7 2025 U.S. Dist. LEXIS 136002, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (finding
 8 petitioner likely to succeed on his claim that his detention was unlawful “[b]ecause there is no
 9 indication that an informal interview was provided”); *Wing Nuen Liu v. Carter*, Case No. 25-
 10 03036-JWL, 2025 U.S. Dist. LEXIS 115275, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)
 11 (finding “that officials did not properly revoke petitioner’s release” because “most obviously . . .
 12 petitioner was not granted the required interview upon the revocation of his release”).

14 2. Respondents Did Not Comply With 8 C.F.R. § 241.13

15 Section 241.13 provides “special review procedures” that apply where, among other
 16 conditions, a noncitizen “has provided good reason to believe there is no significant likelihood of
 17 removal to the country to which he or she was ordered removed, or to a third country, in the
 18 reasonably foreseeable future e.” 8 C.F.R. § 241.13(a). “The Service may revoke [a noncitizen’s]
 19 release under this section and **return the [noncitizen] to custody** if, on account of changed
 20 circumstances, the Service determines that there is a significant likelihood that the [noncitizen]
 21 may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2) (emphasis added).
 22 Contrary to Respondents’ claim, 241.13(a) did not allow ICE to detain Petitioner without first
 23 revoking his order of supervised release. Doc 8 at 6. At the time ICE “return[ed]” Petitioner “to
 24 custody,” it admittedly failed to make the necessary determinations in compliance with 8 C.F.R.
 25 §§ 241.13(a), (i)(2). Doc. 8-2. Respondents’ cannot detain Petitioner first and keep him in
 26 detention, (Doc 8 at 6-7), because “this section has the same requirements as 8 C.F.R. § 241.4 in
 27 that, ‘[u]pon revocation,’ the noncitizen ‘will be notified of the reasons for revocation of his or
 28

1 her release' and 'will be afforded an initial informal interview promptly after his or her return' to
2 be given 'an opportunity to respond to the reasons for revocation stated in the notification.' §
3 241.13(i)(3)." *Minh Nhat Phan*, 2025 U.S. Dist. LEXIS 201411, *10. "ICE's failure to provide
4 [Mr. Ho with] an interview and opportunity to respond is reason enough to find Petitioner's
5 detention unlawful." *Id.* Respondents must follow the regulations, and did not do so at the time it
6 returned him to custody. Doc 8-2.

7 In addition to the October 16, 2025 notice of revocation presented to this Court (Doc 8-
8 2), Respondents' evidence submitted evidence includes a sworn declaration of Deportation
9 Officer, Fernando Valenzuela (Doc 8-1), who does not dispute that at the time of Petitioner's re-
10 detention and return to custody, there was no determination of "a significant likelihood" that
11 Petitioner "may be removed in the reasonably foreseeable future" on account of "changed
12 circumstances." *Id.* at ¶¶ 16-18. *See* 8 C.F.R. § 241.13(i)(2). Respondents did not take any action
13 until August 10, 2025. Doc 8-1 at ¶ 16. Respondents do not dispute that Mr. Ho had complied
14 with his OSUP conditions of release which were set twenty-five years ago. Doc 8, 8-1.
15 Respondents also do not allege that Mr. Ho is a flight risk. *Id.*

16 Instead, Respondents assert a change in circumstances *following his return to custody*
17 show that there is now a significant likelihood that Mr. Nguyen will be removed to Vietnam in
18 the reasonably foreseeable future pursuant to 8 C.F.R. § 241.13(i)(2). Doc. 8-1. But, again, "ICE's
19 decision to re-detain a noncitizen like [Mr. Ho] who has been granted supervised release is
20 governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that,
21 (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably
22 foreseeable future." *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) (*citing* 8 C.F.R.
23 § 241.13(i)(2)). This finding is a condition precedent to re-detention. *Id.* The plain language of
24 the regulation, however, does not allow a court in the first instance to make the required
25 individualized finding, or allow Respondents to arrest and detain a person first and present
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1 justifications if the Petitioner seeks habeas relief. *Id.* Respondents' actions to detain Mr. Ho in
2 violation of law are inexcusable and require his immediate release.

3 Even if the Court were tempted to excuse Respondents' unlawful detention of Petitioner
4 and last-minute attempt to cover-up their actions, Petitioner's release is immediately warranted
5 because ICE's re-detention was unlawful and the evidence presented does not provide sufficient
6 evidence that ICE is significantly likely to secure a travel document for Petitioner. *Kong*, 62 F.4th
7 at 620 (citing 8 C.F.R. §§ 241.13(f), (i)(2)). It is undisputed that after twenty-five years since
8 ordering Mr. Ho removed, Respondents have not secured a travel document for Mr. Ho to be
9 removed to Vietnam, but have personally threatened him with deportation to a third country. Doc
10 2-1 ¶21 (Declaration of Thuc Bui). In support of his motion for a temporary restraining order,
11 Petitioner submitted a sworn declaration from attorney, Tin Nguyen, who has personal knowledge
12 of the government's request for a travel document for Mr. Ho. Doc. 2-1 at ¶13. "On October 2,
13 2025, the Viet Nam Embassy" confirmed that the "case has been transferred to the civil protection
14 department" which is within the Vietnam Embassy, Ministry of Foreign Affairs. This is only the
15 beginning of the process of obtaining a travel document from the Government of Vietnam. The
16 Embassy has not sent the case to the Ministry of Public Safety in Vietnam. The in-country process
17 normally takes many months to complete." *Id.* "At this time, the Vietnam Embassy has not
18 decided on whether to issue a travel document for Mr. Ho." *Id.*

19
20 Without refuting Attorn Nguyen, Officer Valenzuela states an application for a travel
21 document for Mr. Ho was filed by ICE, to the Vietnam Embassy on September 25, 2025, and an
22 "ICE ERO attaché who anticipates "the Vietnamese Ministry of Public Security will issue the
23 travel document by October 25, 2025." Doc. 8-1 ¶19. Officer Valenzuela provides no basis for
24 the alleged timeline or the expectation that Vietnam will comply with the request for a travel
25 document. *Id.* Officer Valenzuela also relies on unverified statistics and conclusory assertions
26 that do not provide a full and fair assessment, including the percentage of applications for travel
27 documents Vietnam denies. *Id.*

Officer Valenzuela claims that “[d]uring fiscal year 2025, ICE removed at least 587 Vietnamese citizens to Vietnam. Of the 587, 324 of those were Vietnamese citizens who, like Mr. Ho, had immigrated to the United prior to July 12, 1995.” Doc. 8-1 at ¶ 21 (emphasis added). However, Officer Valenzuela also claims “ICE removed Vietnamese to Vietnam as recently as September 2025.” Doc. 8-1 at ¶22 (emphasis added). However, the record lacks some “very pertinent information[,]” including the total number of requests that were made to Vietnam, the number of applications rejected, and the factors Vietnam considers in denying or approving a request. *see Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 U.S. Dist. LEXIS 117495, *14-15 2025 WL 1725791 (D. Mass. June 20, 2025). In 2020, the United States and Vietnam signed a Memorandum of Understanding (“MOU”) to create a process for deporting pre-1995 Vietnamese immigrants. *See generally Mong Tuyen Thi Tran v. Scott*, 2:25-cv-01886-TMC-BAT, 2025 U.S. Dist. LEXIS 201561 *7, 2025 WL 2898638 (W.D. Wash. Oct. 12, 2025). “Under Section 4 of the MOU, Vietnam affirmed that it ‘intends to issue travel documents where needed, and otherwise to accept the removal of an individual subject to a final order of removal from the United States’ if the individual meets four conditions”² *Id.* “First, the individual must have Vietnamese citizenship (and only Vietnamese citizenship).” *Id.* “Second, the individual must have violated U.S. law, been ordered removed by a U.S. authority, and completed any sentence of imprisonment.” *Id.* “Third, the individual must have resided in Vietnam prior to arriving in the United States and have no right to reside in any other country or territory.” *Id.* The fourth condition has been redacted from the publicly disclosed version of the MOU filed by Petitioner, and Respondents have not offered any explanation of what it might be. Exhibit C, pg. 2.

Respondents provided no data on the number of requests they have recently submitted to Vietnam, how many requests Vietnam has granted or denied, or how many, in either category, have concerned pre-1995 Vietnamese immigrants like Mr. Ho. Nor have Respondents provided

² The redacted copy of the Memorandum of Understanding is attached as Exhibit C.
PETITIONER’S REPLY TO RESPONDENTS’ RESPONSE TO ORDER TO SHOW CAUSE - 8

any of the underlying documents that might support the assertions in Officer Valenzuela's declaration. Doc 8-1. The Court should not credit Respondents' blanket assertion that Petitioner will be removed "in the reasonably foreseeable future." Doc 8-1, 8-2; *Mong Tuyen Thi Tran*, 2025 U.S. Dist. LEXIS 201561 *15-16, citing *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 U.S. Dist. LEXIS 58082, 2012 WL 1432229, at *4 (W.D. Wash. Apr. 25, 2012) ("conflicting statements concerning removal" indicate removal is unlikely); *Nguyen*, 2025 WL 1725791, at *4 (D. Mass. June 20, 2025) (lack of data on recent removal rates of pre-1995 Vietnamese immigrants undermined argument that removal was likely). Petitioner has shown, and Respondents have failed to rebut, that Petitioner's removal to Vietnam after thirty-five years in the United States (20 spent after receiving an order of removal) is not reasonably foreseeable. Doc 1-2.

The future is uncertain, but there is no doubt about ICE's unlawful detention of Mr. Ho and the separation from his family since July 23, 2025. He had no ability to arrange his affairs which the MOU plainly anticipates Vietnamese nationals will have prior to any accepted return. Exhibit C. Respondents unlawfully returned Mr. Ho to custody and have held him there without complying with the procedural regulations since July 23, 2025, and they did not provide him with notice or a "prompt interview." *Hoac*, 2025 U.S. Dist. LEXIS 13600, 2025 WL 1993771, at *4 (finding "Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance" such that "there is now a significant likelihood Petitioner will be removed to Vietnam in the reasonably foreseeable future"). Nothing in the record excuses Respondent's unlawful conduct, or otherwise demonstrates "a significant likelihood" that Petitioner "may be removed in the reasonably foreseeable future" on account of "changed circumstances." See 8 C.F.R. § 241.13(i)(2).

Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268, 74 S. Ct. 499, 98 L. Ed. 681 (1954); *United States v. Ramos*, 623 F.3d 672, 683 (9th Cir. 2010) ("It is a well-known maxim that agencies must comply

with their own regulations.”) (*quoting Ramon-Sepulveda v. INS*, 743 F.2d 1307, 1310 (9th Cir. 1984)). ICE admitted to its own failure to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13, in violation of Petitioner’s due process rights. ECF 8-1, 8-2; *Minh Nhat Phan*, 2025 U.S. Dist. LEXIS 201411, *10 *See Diaz*, 2025 U.S. Dist. LEXIS 173666, 2025 WL 2581575, at *7 (“DHS’s failure to follow its own procedural regulations may constitute a due process violation.”); *M.S.L.*, 2025 U.S. Dist. LEXIS 136002, 2025 WL 2430267, at *11 (“ICE’s failure to provide Petitioner with a timely Notice of Revocation or conduct an informal interview until nearly a month after taking her into custody is a grave violation of Petitioner’s due process rights in that they deprived her both of meaningful notice and an opportunity to be heard.”). Respondents and all their officers, agents, employees, attorneys, and persons acting on their behalf or in concert with them should be ORDERED to immediately release Petitioner from custody under the conditions of his most recent order of supervision. Should they seek to remove Petitioner to Vietnam or a third country, they must first afford him with notice and a meaningful opportunity to respond.

III. CONCLUSION

For the foregoing reasons, the Court should immediately grant Mr. Ho’s Petition for Writ of Habeas Corpus pursuant to § 2241, and order Mr. Ho’s immediate release from custody.

October 20, 2025

Respectfully Submitted,

/s/Jesse M. Bless

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CERTIFICATE OF SERVICE

I, Jesse M. Bless, hereby certify that on October 20, 2025, I served the above and foregoing, by causing a true and accurate copy of such papers to be filed and served on all counsel of record via the Court's CM/ECF electronic filing system.

/s/ Jesse M. Bless

Jesse M. Bless