

1 **Katie Hurrelbrink**

2 Federal Defenders of San Diego, Inc.

3 225 Broadway, Suite 900

4 San Diego, California 92101-5030

5 Telephone: (619) 234-8467

6 Facsimile: (619) 687-2666

7 katie_hurrelbrink@fd.org

8 Attorneys for Mr. Tran¹

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 KHA NGUYEN TRAN,

12 Petitioner,

13 v.

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

23 Respondents.

CIVIL CASE NO.: '25CV2963 TWR BLM

**Petition for Writ
of
Habeas Corpus**

[28 U.S.C. § 2241]

24
25
26 ¹ "A person for whom counsel is appointed shall be represented at every stage of
27 the proceedings from his initial appearance before the United States magistrate
28 judge or the court through appeal, including ancillary matters appropriate to the
proceedings." 18 U.S.C. § 3006A. Because this petition is ancillary to *Tran v.*
Noem, 25-CV-2391-BTM, in which Federal Defenders was previously appointed,
Federal Defenders understands its appointment to extend to this petition.

INTRODUCTION

On October 27, 2025, Kha Nguyen Tran was ordered released due to Respondents' failure to comply with 8 C.F.R. § 241.13(i). *Tran v. Noem*, 25-CV-2391-BTM, Dkt. No. 16 (S.D. Cal. Oct. 27, 2025). On October 31, 2025, ICE re-detained Mr. Tran. But ICE again failed to comply with the regulation in the course of the re-detention. This Court should therefore order Mr. Tran's release and stay his deportation to preserve the Court's jurisdiction.

STATEMENT OF FACTS

On September 15, 2025, Mr. Tran filed a habeas petition alleging (among other things) that the government failed to comply with 8 C.F.R. § 241.13(i) before re-detaining him. *Tran v. Noem*, 25-CV-2391-BTM, Dkt. No. 1 (S.D. Cal. Sept. 15, 2025). On October 27, 2025, a court ordered Mr. Tran's release on that basis, citing three aspects of 8 C.F.R. § 241.13(i) with which ICE failed to comply. First, the government produced no evidence that a changed-circumstances determination was or could have been made before Mr. Tran's arrest. Dkt. 16 at 4. Second, Mr. Tran received no written notice prior to the revocation of release. *Id.* at 5. Third, Mr. Tran did not receive a prompt informal interview. *Id.* at 6. The court therefore ordered Respondents to release Mr. Tran from custody. *Id.* at 7.

Following his release, ICE ordered Mr. Tran to check in on October 31, 2025. Exh. A at ¶ 2 (Declaration of Sherry O'Sullivan). Mr. Tran checked in as ordered. *Id.* at ¶ 2. Counsel and a Federal Defenders investigator accompanied him to the check in. *Id.* at ¶ 3. When Mr. Tran's name was called, he was escorted back to a small office in the Enforcement and Removal Operations space. *Id.* A man who identified himself as Officer Mejia led the meeting. *Id.* at ¶ 5. Mr. Mejia began by asking if Mr. Tran was aware that he has had a final removal order since 2007. *Id.* at ¶ 6. He then stated that ICE was revoking Mr. Tran's order of supervision and taking him into custody because ICE had travel documents for him and a flight to Vietnam was scheduled for November 4, 2025. *Id.* at ¶ 7. Officer Mejia then asked

1 Mr. Tran several biographical questions as well as questions about his health. *Id.*
2 ¶ 8. When Mr. Tran finished answering those questions, Officer Mejia again said
3 that his order of supervision was being revoked. *Id.* at ¶ 9.

4 At that point, Officer Mejia asked Mr. Tran if there was anything Mr. Tran
5 wanted to relate. *Id.* at ¶ 10. Mr. Tran provided several reasons not to revoke his
6 release. He noted that he was not a flight risk or a risk to the community, due to his
7 perfect record on release. *Id.* at ¶ 11. He explained that his elderly father serves as
8 caretaker for his disabled brother, and while he does not live with them, he visits
9 and assists them regularly. *Id.* at ¶ 12. He promised his father that if anything
10 happened to him, he would assume the role of the caretaker for his disabled brother.
11 *Id.*

12 Mr. Tran also explained that he is in the middle of attempting to fix his
13 immigration status. *Id.* at ¶ 11. He said that he was working with an attorney to try
14 to get his conviction vacated and his green card reinstated. *Id.*

15 Undersigned counsel then asked whether she could add a few points, and
16 Officer Mejia agreed. *Id.* at ¶ 13. Counsel reiterated that Mr. Tran was actively
17 seeking post-conviction relief in state court, and if granted relief, he would be able
18 to move to reopen his immigration case and potentially get his green card back. *Id.*
19 Counsel noted that if Mr. Tran were released even for a few weeks and rescheduled
20 for a later flight to Vietnam, Mr. Tran may be able to complete that process. *Id.* at
21 ¶ 15.

22 Officer Mejia responded that he was not the decisionmaker, and the decision
23 had already been made. *Id.* at ¶ 17. Counsel asked to confirm that the decision had
24 been made prior to the meeting. *Id.* at ¶ 18. Officer Mejia confirmed again. He said,
25 "It is already done." *Id.* He then ended the meeting and arrested Mr. Tran. *Id.* at
26 ¶¶ 19-20.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLAIMS FOR RELIEF

This Court should grant this petition and order Mr. Tran's immediate release, because conducting an interview only after the detention decision has been made does not comply with due process or 8 C.F.R. § 241.13(i).

I. Count 1: By granting Mr. Tran an interview only after the re-detention decision had already been made, ICE violated 8 C.F.R. § 241.13(i) and Procedural Due Process under the Fifth Amendment.

As noted, the release order in *Tran v. Noem* was premised on three regulatory violations. Though the court left open the possibility that ICE could cure the regulatory violations through re-detention, the present re-detention fell short in at least one, crucial respect: Mr. Tran's informal interview did not end in "a determination whether the facts as determined warrant revocation and further denial of release." 8 C.F.R. § 241.13(i)(3). To the contrary, Officer Mejia made clear that the revocation decision was made before ICE ever heard from Mr. Tran.

Section 241.13(i)(3) lays out a simple procedure for giving re-detained immigrants basic notice and an opportunity to be heard. "Upon revocation, the [re-detained person] will be notified of the reasons for revocation of his or her release." 8 C.F.R. § 241.13(i)(3). ICE must then "conduct an initial informal interview promptly after his or her return to . . . custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.*

Finally, and most importantly for purposes of this petition, "[t]he 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." *Id.* In other words, at the end of the interview process, ICE must find relevant facts—including information adduced during the interview—and make a final revocation decision based on all the facts. *Id.*

That did not happen here. Instead, ICE made a final decision about whether to revoke release before letting Mr. Tran have his say. Exh. A at ¶¶ 17-18. In Officer

1 Mejia’s words, “it [was] already done” by the time the interview took place. *Id.* at
2 ¶ 18. The supposed informal interview therefore was not a real custody evaluation
3 under 8 C.F.R. § 241.13(i), where a decisionmaker evaluated contested facts and
4 determined whether the facts warranted revocation. It was an empty formality,
5 carried out only after the decision had already been made.

6 This is no technical failing. “The fundamental requirement of due process is
7 the opportunity to be heard at a meaningful time and in a meaningful manner.”
8 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (cleaned up). Due process therefore
9 “is not present where the state has gone through the mechanics of providing a
10 hearing, but the hearing is totally devoid of a meaningful opportunity to be heard.”
11 *Matthews v. Harney Cnty., Or., Sch. Dist. No. 4*, 819 F.2d 889, 893–94 (9th Cir.
12 1987) (cleaned up) (quoting *Washington v. Kirksey*, 811 F.2d 561, 564 (11th
13 Cir.1987)). An opportunity to be heard is not meaningful when the hearing is a
14 “mere formality,” because the decisionmaker “ha[s] made up her mind . . . before
15 the meeting and would have disregarded any evidence . . . presented in mitigation
16 or rebuttal.” *Brady v. Gebbie*, 859 F.2d 1543, 1554–55 (9th Cir. 1988); *accord*
17 *Bakalis v. Golemeski*, 35 F.3d 318, 326 (7th Cir. 1994) (“Certainly, a body that has
18 prejudged the outcome cannot render a decision that comports with due process.”).
19 That’s exactly what happened here.

20 Though the government often argues otherwise, Mr. Nguyen need not show
21 prejudice in order to win release. “There are two types of regulations: (1) those that
22 protect fundamental due process rights, and (2) and those that do not.” *Martinez v.*
23 *Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). “A violation of the first
24 type of regulation . . . implicates due process concerns even without a prejudice
25 inquiry.” *Id.* (cleaned up).

26 Here, “[t]here can be little argument that ICE’s requirement that noncitizens
27 be afforded an informal interview—arguably the most bare-bones form of an
28 opportunity to be heard—derives from the fundamental constitutional guarantee of

1 due process.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y.
2 2025). Indeed, “[w]hen the INS published 8 C.F.R. § 241.4 on December 21, 2000,
3 it explained that the regulation was intended to provide aliens procedural due
4 process, stating that § 241.4 ‘has the procedural mechanisms that . . . courts have
5 sustained against due process challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d
6 626, 641 (D. Mass. 2018) (quoting *Detention of Aliens Ordered Removed*, 65 FR
7 80281-01). And “[s]ection 241.13(i) includes provisions modeled on § 241.4(*I*) to
8 govern determinations to take an alien back into custody,” *Continued Detention of*
9 *Aliens Subject to Final Orders of Removal*, 66 FR 56967-01, meaning that it
10 addresses the same due process concerns as 241.4(*I*). Thus, these regulations fall
11 squarely into the first category requiring no prejudice showing.

12 If Mr. Tran did need to show prejudice, however, he could. Even though
13 changed circumstances likely justify re-detention, that gives ICE only the *discretion*
14 to detain Mr. Tran. 8 C.F.R. § 241.13(i)(2) (stating that ICE “may” revoke release
15 due to changed circumstances bearing on the likelihood of removal). The whole
16 point of the informal interview process was to give Mr. Tran a chance to persuade
17 ICE not to re-detain him.²

18 He had a legitimate argument against re-detention. Not only was he a model
19 releasee, with strong family ties. He is also in the middle of trying to fix his
20 immigration status by pursuing post-conviction relief and a motion to reopen.

22 ² The government has sometimes claimed that a re-detained individual can contest
23 only whether there is a significant likelihood of removal in the reasonably
24 foreseeable future. But that limitation appears nowhere in the regulation. To the
25 contrary, the regulation provides an “opportunity to respond to the reasons for
26 revocation stated in the notification” and charges the interviewer with making “a
27 determination whether the facts as determined warrant revocation and further denial
28 of release.” 8 C.F.R. § 241.13(i)(3). A valid “respon[se] to the reasons for
revocation” is to ask for a discretionary reprieve from re-detention to pursue
immigration relief. *Id.* And an interviewer could validly “determine[e] [that] the
facts” do not “warrant revocation and further denial of release” on that basis. *Id.*

1 Release even for a few weeks would give him a few more weeks in the United
2 States, and that brief delay could help his attorneys complete that process and avoid
3 removal. If he does not succeed in fixing his status, ICE could still remove him
4 expeditiously, as flights to Vietnam are scheduled monthly. Doc. 9-1 at ¶ 13 (noting
5 ICE's monthly flights to Vietnam). There is therefore a "plausible scenario[]" in
6 which the outcome of the proceedings would have been different if a more elaborate
7 process were provided," *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th
8 Cir. 2007) (cleaned up): A reasonable interviewer might well have decided not to
9 detain a model releasee, for whom a few more weeks in the country could make a
10 world of difference.

11 Because ICE did not comply with 8 C.F.R. § 241.13 or Fifth Amendment
12 due process before re-detaining Mr. Tran, this Court should order his release.

13 **II. This Court should preserve its jurisdiction by enjoining removal**
14 **pending adjudication of this petition.**

15 This Court should stay removal pending a decision on the merits. In at least
16 two cases, other judges in this district have preserved their jurisdiction by
17 prohibiting ICE from removing petitioners pending decision, even though those
18 petitioners had travel documents. *Sphabmixay v. Noem*, 25-cv-02648-LL-VET,
19 Dkt. 14 at 1-2 (S.D. Cal. Oct. 24, 2025) ("In light of Respondents' Amended Notice
20 of Supplemental Information Regarding Travel Document [ECF No. 12] and
21 Petitioner's Response [ECF No. 13] filed on October 23, 2025, the Court finds it
22 necessary to order a limited stay pursuant to the All Writs Act, 28 U.S.C. § 1651,
23 to preserve the status quo until the Court can provide a reasoned decision on the
24 pending Motion for Temporary Restraining Order, in order to avoid any potential
25 jurisdictional problems if Petitioner is removed from this district."); *McSweeney v.*
26 *Warden*, 25-CV-2488-RBM-DEB (S.D. Cal. Oct. 3, 2025) (same, for client with
27 travel document). This Court should do the same. This stay will not unduly obstruct
28

1 removal if this court denies the motion, because according to Respondents, ICE has
2 scheduled monthly flights to Vietnam. Doc. 9-1 at ¶ 13.

3 **III. This Court must hold an evidentiary hearing on any disputed facts.**

4 Resolution of a prolonged-detention habeas petition may require an
5 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).
6 Mr. Tran hereby requests such a hearing on any material, disputed facts.

7 **IV. Prayer for relief**

8 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 9 1. Order Respondents to immediately release Petitioner from custody;
10 2. Enjoin Respondents from re-detaining Petitioner without first following
11 all procedures set forth in 8 C.F.R. § 241.13(i), and any other applicable
12 statutory and regulatory procedures;
13 3. Enjoin Respondents from removing Petitioner pending adjudication of
14 this habeas petition; and
15 4. Order all other relief that the Court deems just and proper.
16

17 Respectfully submitted,

18
19 Dated: November 1, 2025

s/ Katie Hurrelbrink
Katie Hurrelbrink
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Tran
Email: katie_hurrelbrink@fd.org