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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13 **PHOENIX DIVISION**
14

15 **Dong Van Nguyen,**

16 *Petitioner,*

17 v.

18 **Gregory J. Archambeault, et. al.,**

19 *Respondents.*

Case No. CV-25-04107-PHX-SHD (ASB)

**PETITIONER'S REPLY TO
RESPONDENTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR A
TEMPORARY RESTRAINING ORDER**

20
21 **I. RESPONDENTS DO NOT DISPUTE THAT ICE UNLAWFULLY
22 DETAINED PETITIONER**

23 “The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e]’ any
24 ‘person ... of ... liberty ... without due process of law.’ Freedom from imprisonment—from
25 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty
26 that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491 (2001). At its core,
27 Respondents’ position is that ICE unlawfully deprived Petitioner, Dong Van Nguyen (“Mr.
28 Nguyen” or “Petitioner”), of his liberty on June 24, 2025, but that: (1) Mr. Nguyen should not be
released, because ICE subsequently provided him with a vague, blanket notice of revocation on
November 7, 2025, and (2) the government might remove Mr. Nguyen, if Vietnam issues a travel
document in the future. Docs. 7, 7-1, 7-2.

1 Because Respondents do not dispute that ICE failed to comply with both 8 C.F.R. § 241.4
2 and 8 C.F.R. § 241.13 at the time of Mr. Nguyen’s detention, *id.*, this Court should order
3 Respondents to immediately release Mr. Nguyen from custody, subject to the terms and
4 conditions of his preexisting Order of Supervision and provide him with notice and an opportunity
5 to be heard should it attempt to revoke the OSUP at any point in the future.

6 As previously stated, this Court should follow the reasoning of its two recent decisions
7 which ordered the immediate release of detained Vietnamese nationals who had been unlawfully
8 re-detained, like Mr. Nguyen. Doc. 2-1 (October 28, 2025 Order, *Bui v. Archambeault et al*, CV-
9 25-03774-PHX-KML (JFM), Exhibit D (October 20, 2025 Order, *Ho v. Archambeault et al*, CV-
10 25-03753-PHX-JJT (JZB)). Courts outside the district have nearly universally agreed to grant
11 habeas petitions in similar situations. On October 10, 2025, the United States District Court for
12 the Southern District of California, *Minh Nhat Phan v. Noem*, 3:25-cv-02422-RBM-MSB, 2025
13 U.S. Dist. LEXIS 201411, *13-14 (S.D. Cal. Oct. 10, 2025), joined the district courts to grant
14 habeas petitions and order the immediate release of Vietnamese nationals detained while under
15 an order of supervised release. “The Court’s research indicate[d] that every district court, except
16 one,¹ 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.

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22
23
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.

1 Sept. 15, 2025) (and *citing Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017)
2 (ordering the petitioner released where, “[b]ased on ICE's violations of its own regulations, the
3 Court concludes [the petitioner's] detention was unlawful”); *K.E.O. v. Woosley*, Civil Action No.
4 4:25-cv-74-RGJ, 2025 U.S. Dist. LEXIS 172361, 2025 WL 2553394, at *7 (W.D. Ky. Sept. 4,
5 2025) (noting “courts across the country have ordered the release of individuals” in ICE custody
6 where ICE “violated their own regulations”); *Grigorian v. Bondi*, CASE NO. 25-cv-22914-RAR,
7 2025 U.S. Dist. LEXIS 175489, 2025 WL 2604573, at *10 (S.D. Fla. Sept. 9, 2025) (“The failure
8 to provide [the petitioner] with an informal interview promptly after his detention or to otherwise
9 provide a meaningful opportunity to contest the reasons for revocation violates both ICE's own
10 regulations and the Fifth Amendment Due Process Clause. This compels [the petitioner's]
11 release.”).

12 Here, Respondents offer no reason that would compel a different result, and do not even
13 address the recent orders from the Court. Doc. 7-1. In fact, Respondents concede their error in re-
14 detaining Mr. Nguyen, but argue that “any error was harmless, because the lapse in procedure
15 was subsequently rectified and even if this court were to order Petitioner to be released on this
16 basis, ICE could detain him again immediately. . . . [i]f it ‘determines that there is a significant
17 likelihood that the alien may be removed in the reasonably foreseeable future.’” Doc. 7 at page 7.
18 Respondents’ argument ignores the irreparable, ongoing harm facing Mr. Nguyen, who has been
19 deprived of his liberty without due process and in violation of law. Doc. 2-1, Exhibit A ¶¶1-2, 17-
20 29. Respondents’ claim ignores the due process and regulatory protections which apply prior to
21 the arrest and detention of a non-citizen, not after. Doc. 7-2. Moreover, Respondents’ position is
22 inconsistent with the memorandum of understanding with the government of Vietnam that
23 ensures any repatriated Vietnamese nationals will have time to prepare for their deportation,
24 including time spent with family. Doc. 2-1, Exhibit E. Accordingly, Mr. Nguyen respectfully
25 requests this Court to grant the habeas petition and order his immediate release. *M.S.L. v. Bostock*,
26 No. 6:25-CV-01204-AA, 2025 U.S. Dist. LEXIS 162519, 2025 WL 2430267, at *11 (D. Or. Aug.

1 21, 2025) (“ICE’s failure to provide Petitioner with a timely Notice of Revocation or conduct an
2 informal interview until nearly a month after taking her into custody is a grave violation of
3 Petitioner’s due process rights in that they deprived her both of meaningful notice and an
4 opportunity to be heard.”).

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

7 Mr. Nguyen’s detention since June 24, 2025, is unlawful, and the constitutional
8 deprivation of his liberty has been anything but “harmless” or non-prejudicial. Doc. 7 at page 7.

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

10 Release of a foreign national following a removal order may be revoked under 8 C.F.R. §
11 241.4, when the Executive Associate Commissioner or a district director believes revocation “is
12 appropriate to enforce a removal order or to commence removal proceedings against [a
13 noncitizen].” 8 C.F.R. § 241.4(l)(2)(iii). “Upon revocation,” the noncitizen “will be notified of
14 the reasons for revocation of his or her release or parole” and “will be afforded an initial informal
15 interview promptly after his or her return” to be given “an opportunity to respond to the reasons
16 for revocation stated in the notification.” § 241.4(l)(1).

17 At the time of his re-detention, ICE provided Mr. Nguyen with no notice, no basis of his
18 re-detention, and no interview or opportunity to respond to the reasons for the revocation of his
19 supervised release. Doc. 2-1, Exhibit A at ¶¶17-29. ICE admits that it detained Mr. Nguyen
20 without first having revoked his supervised release. Doc. 7-2. At no point from the time of Mr.
21 Nguyen’s detention on June 24, 2025, until he filed his petition for habeas corpus on November
22 4, 2025, did ICE revoke his order of supervised release, provide Mr. Nguyen with the required
23 notice, or provide him with an interview to be given an opportunity to respond. *Id.*; Docs. 7-1, 7-
24 2.

25 Respondents assert, without citing any supporting authority, that 8 C.F.R. § 241.4(l)(1)
26 does not apply where, as here, ICE allegedly revoked the OSUP under 8 C.F.R. § 241.13(i)(3).
27

1 Doc. 7 at pages 7-8. However, this assertion only proves that ICE had never provided Mr. Nguyen
2 with adequate notice including the underlying basis for his re-detention at the time of his re-
3 detention. *Id.* This Court should not credit Respondents *post-hoc* attempts to rationalize violations
4 of the regulations that govern the re-detention and revocation of a person's supervised release.
5 *See M.S.L.*, 2025 U.S. Dist. LEXIS 162519, 2025 WL 2430267, at *11 ("Courts have found that
6 when ICE fails to follow its own regulations in revoking release, the detention is unlawful, and
7 the petitioner's release must be ordered."). Mr. Nguyen's re-detention was unlawful, and the
8 remedy for the unlawful detention is his immediate release. *See M.S.L.*, 2025 U.S. Dist. LEXIS
9 162519, 2025 WL 2430267, at *11 (finding an informal interview given 27 days after petitioner
10 was taken into ICE custody "cannot reasonably be construed as . . . prompt" and granting habeas
11 petition); *Quoc Chi Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 U.S. Dist. LEXIS
12 136002, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (finding petitioner likely to succeed
13 on his claim that his detention was unlawful "[b]ecause there is no indication that an informal
14 interview was provided"); *Wing Nuen Liu v. Carter*, Case No. 25-03036-JWL, 2025 U.S. Dist.
15 LEXIS 115275, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025) (finding "that officials did not
16 properly revoke petitioner's release" because "most obviously . . . petitioner was not granted the
17 required interview upon the revocation of his release").
18

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

20 Section 241.13 provides "special review procedures" that apply where, among other
21 conditions, a noncitizen "has provided good reason to believe there is no significant likelihood of
22 removal to the country to which he or she was ordered removed, or to a third country, in the
23 reasonably foreseeable future." 8 C.F.R. § 241.13(a). "The Service may revoke [a noncitizen's]
24 release under this section and **return the [noncitizen] to custody** if, on account of changed
25 circumstances, the Service determines that there is a significant likelihood that the [noncitizen]
26 may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2) (emphasis added).
27 Contrary to Respondents' claim, 241.13(a) did not allow ICE to re-detain Mr. Nguyen without
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1 first revoking his order of supervised release. Doc. 7 at 7-8; Doc. 7-1, 7-2. At the time ICE
2 “return[ed]” Mr. Nguyen “to custody,” it admittedly failed to make the necessary determinations
3 in compliance with 8 C.F.R. §§ 241.13(a), (i)(2). Doc. 7-2. Respondents cannot admit to having
4 unlawfully re-detained Mr. Nguyen while also claiming that his continued detention is lawful,
5 (Doc. 7 at 9-1), because “this section has the same requirements as 8 C.F.R. § 241.4 in that,
6 ‘[u]pon revocation,’ the noncitizen ‘will be notified of the reasons for revocation of his or her
7 release’ and ‘will be afforded an initial informal interview promptly after his or her return’ to be
8 given ‘an opportunity to respond to the reasons for revocation stated in the notification.’ §
9 241.13(i)(3).” *Minh Nhat Phan*, 2025 U.S. Dist. LEXIS 201411, *10. “ICE’s failure to provide
10 [Mr. Nguyen with] an interview and opportunity to respond is reason enough to find [his]
11 detention unlawful.” *Id.* Respondents must follow the regulations, and did not do so at the time it
12 returned him to custody. Doc. 7-2.

13 In addition to the November 7, 2025 notice of revocation presented to this Court (Doc. 7-
14 2), Respondents have submitted the sworn declaration of Deportation Officer, San Diego Field
15 Office, Imperial Suboffice, Jose Ruiz. Doc. 7-1. Officer Ruiz admits that ICE did not revoke Mr.
16 Nguyen’s Order on Supervised Release prior to re-detaining him on June 24, 2025. *Id.* at ¶¶ 13,
17 16. Following Mr. Nguyen’s re-detention, Respondents have yet to formally contact the
18 Vietnamese government. Doc. 7-1 ¶¶3-7. Respondents had not completed Mr. Nguyen’s
19 application for a travel document until September 2025 and are currently awaiting necessary
20 translations before forwarding the request to Vietnam. Doc. 7-1 ¶15. Respondents do not dispute
21 that Mr. Nguyen had complied with his OSUP conditions of release which were set years ago.
22 Doc. 7, 7-1. Respondents also do not allege that Mr. Nguyen is a flight risk. *Id.*

23 Instead, Respondents assert a change in circumstances *following his return to custody and*
24 *filing of the habeas petition* show that there is now a significant likelihood that Mr. Nguyen will
25 be removed to Vietnam in the reasonably foreseeable future pursuant to 8 C.F.R. § 241.13(i)(2).
26 Doc. 7-1, 7-2. But, again, “ICE’s decision to re-detain a noncitizen like [Mr. Nguyen] who has
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1 been granted supervised release is governed by ICE's own regulation requiring (1) an
2 individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal
3 has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62
4 F.4th 608, 619-20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2)). This finding is a condition
5 precedent to re-detention. *Id.* The plain language of the regulation, however, does not allow a
6 Court in the first instance to make the required individualized finding, or allow Respondents to
7 arrest and detain a person first and present justifications only if the person seeks habeas relief. *Id.*
8 Respondents' actions to re-detain Mr. Nguyen in violation of law, and to keep him detained is a
9 violation of his rights to due process.

10 Even if the Court credits the Respondents last-minute attempt to paper over their unlawful
11 actions, the vague, unsupported assertions in Officer Ruiz's declaration and the Notice of
12 Revocation of Release do not provide evidence that ICE is significantly likely to secure a travel
13 document for Mr. Nguyen; it shows that Respondents could have complied with the law prior to
14 detaining him. *Kong*, 62 F.4th at 620 (citing 8 C.F.R. §§ 241.13(f), (i)(2)); Doc. 7-1, 7-2. It is
15 undisputed that ICE has not secured a travel document for Mr. Nguyen in the intervening twenty-
16 five-year period since he was first ordered removed. Doc. 2-1, Exhibit A ¶¶16-17. In support of
17 his motion for a temporary restraining order, Mr. Nguyen submitted a sworn declaration from
18 attorney, Tin Nguyen, who has personal knowledge of the government's lack of progress in
19 securing a travel document for Mr. Nguyen. Doc. 2-1, Exhibit B at ¶¶16-19.

21 Without refuting the testimony of Attorney Nguyen, Officer Ruiz states an application for
22 a travel document for Mr. Nguyen was prepared by an ICE deportation officer in September 2025.
23 Doc. 7-1 ¶14. In October 2025, Respondents submitted a subsequent request for the translation
24 of identity documents but have yet to receive any response. *Id.* ¶15. Beyond the testimony
25 provided by Attorney Nguyen, the government's argument lacks some "very pertinent
26 information[,]” including the total number of requests that were made to Vietnam, the number of
27 applications rejected, and the factors Vietnam considers in denying or approving a request. *See*

1 *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 U.S. Dist. LEXIS 117495, *14-15 2025 WL
2 1725791 (D. Mass. June 20, 2025).

3 In 2020, the United States and Vietnam signed a Memorandum of Understanding
4 (“MOU”) to create a process for deporting pre-1995 Vietnamese immigrants. *See generally Mong*
5 *Tuyen Thi Tran v. Scott*, 2:25-cv-01886-TMC-BAT, 2025 U.S. Dist. LEXIS 201561 *7, 2025 WL
6 2898638 (W.D. Wash. Oct. 12, 2025); Doc. 2-1, Exhibit E. “Under Section 4 of the MOU,
7 Vietnam affirmed that it ‘intends to issue travel documents where needed, and otherwise to accept
8 the removal of an individual subject to a final order of removal from the United States’ if the
9 individual meets four conditions” *Id.* “First, the individual must have Vietnamese citizenship (and
10 only Vietnamese citizenship).” *Id.* “Second, the individual must have violated U.S. law, been
11 ordered removed by a U.S. authority, and completed any sentence of imprisonment.” *Id.* “Third,
12 the individual must have resided in Vietnam prior to arriving in the United States and have no
13 right to reside in any other country or territory.” *Id.* The fourth condition has been redacted from
14 the publicly disclosed version of the MOU filed by Mr. Nguyen, and Respondents have not
15 explained what it might be. *See* Doc. 2-1, Exhibit E.

16
17 Although Officer Ruiz claims Mr. Nguyen’s re-detention was necessary to “effectuate
18 removal to Vietnam,” Mr. Nguyen has been released with an order of removal for the last twenty-
19 five years, and there is no evidence that Mr. Nguyen will fail to depart if the government secures
20 a travel document. Doc. 7-1 at ¶13; *Mong Tuyen Thi Tran*, 2025 U.S. Dist. LEXIS 201561 *15-
21 16, *citing Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 U.S. Dist. LEXIS 58082, 2012 WL
22 1432229, at *4 (W.D. Wash. Apr. 25, 2012) (“conflicting statements concerning removal”
23 indicate removal is unlikely); *Nguyen*, 2025 WL 1725791, at *4 (D. Mass. June 20, 2025) (lack
24 of data on recent removal rates of pre-1995 Vietnamese immigrants undermined argument that
25 removal was likely). On the current record, Mr. Nguyen has demonstrated that his detention is
26 necessary, and non-punitive.

1 On June 24, 2025, Respondents unlawfully detained Mr. Nguyen. Doc. 2-1, Exhibit A.
2 On August 15, 2025, Mr. Nguyen was sent to Arizona, away from his family, with no notice and
3 no ability to arrange his affairs, which the MOU plainly anticipates Vietnamese nationals will
4 have prior to any accepted return. Doc. 2-1, Exhibit E. Respondents have held Mr. Nguyen in
5 detention without complying with the procedural regulations and they did not provide him with
6 requisite notice or a “prompt interview.” *Hoac*, 2025 U.S. Dist. LEXIS 13600, 2025 WL 1993771,
7 at *4 (finding “Respondents’ intent to eventually complete a travel document request for Petitioner
8 does not constitute a changed circumstance” such that “there is now a significant likelihood
9 Petitioner will be removed to Vietnam in the reasonably foreseeable future”). There is no excuse
10 for Respondents’ unlawful conduct, and Respondents have failed to otherwise demonstrate “a
11 significant likelihood” that Mr. Nguyen “may be removed in the reasonably foreseeable future”
12 on account of “changed circumstances.” *See* 8 C.F.R. § 241.13(i)(2).

13 Government agencies are required to follow their own regulations. *United States ex rel.*
14 *Accardi v. Shaughnessy*, 347 U.S. 260, 268, 74 S. Ct. 499, 98 L. Ed. 681 (1954); *United States v.*
15 *Ramos*, 623 F.3d 672, 683 (9th Cir. 2010) (“It is a well-known maxim that agencies must comply
16 with their own regulations.”) (*quoting Ramon-Sepulveda v. INS*, 743 F.2d 1307, 1310 (9th Cir.
17 1984)). ICE admitted to its own failure to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. §
18 241.13, and has violated Mr. Nguyen’s due process rights. Doc. 7-1, 7-2; *Minh Nhat Phan*, 2025
19 U.S. Dist. LEXIS 201411, *10 *See Diaz*, 2025 U.S. Dist. LEXIS 173666, 2025 WL 2581575, at
20 *7 (“DHS’s failure to follow its own procedural regulations may constitute a due process
21 violation.”); *M.S.L.*, 2025 U.S. Dist. LEXIS 136002, 2025 WL 2430267, at *11 (“ICE’s failure
22 to provide Petitioner with a timely Notice of Revocation or conduct an informal interview until
23 nearly a month after taking her into custody is a grave violation of Petitioner’s due process rights
24 in that they deprived her both of meaningful notice and an opportunity to be heard.”).

25 The protection against the deprivation of another individual’s liberty without due process
26 strikes at the heart of our inalienable rights protected under the Constitution: deprivation of one’s
27

1 liberty is never harmless. *M.S.L.*, 2025 U.S. Dist. LEXIS 136002, 2025 WL 2430267, at *11,
2 Respondents and all their officers, agents, employees, attorneys, and persons acting on their
3 behalf or in concert with them should be ORDERED to immediately release Mr. Nguyen from
4 custody under the conditions of his most recent order of supervision. Should they seek to remove
5 Mr. Nguyen to Vietnam or a third country, they must first afford him with notice and a meaningful
6 opportunity to respond and act in accordance with conditions of removal outlined in the MOU.

7
8 **III. CONCLUSION**

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

12 November 13, 2025

Respectfully Submitted,

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23
24 **CERTIFICATE OF SERVICE**

25 I, Jesse M. Bless, hereby certify that on November 13, 2025, I served the above and
26 foregoing, by causing a true and accurate copy of such papers to be filed and served on all
27 counsel of record via the CM/ECF electronic filing system.

28 */s/ Jesse M. Bless*

Jesse M. Bless