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

15 **Truong Tuyen Nguyen,**

16 *Petitioner,*

17 v.

18 **Jesus Rocha, in his official capacity as Acting**  
19 **Field Office Director, San Diego Field Office,**  
20 **U.S. Immigration and Customs Enforcement,**

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

23 **United States Department of Homeland**  
24 **Security,**

25 **United States Immigration and Customs**  
26 **Enforcement,**

27 *Respondents.*

Case No.

**PETITION FOR A WRIT OF HABEAS  
CORPUS AND INJUNCTIVE RELIEF**

28 **INTRODUCTION**

1. This case challenges the unlawful re-detention of Truong Tuyen Nguyen (“Petitioner” or “Mr. Nguyen”), who is currently in the custody of United States Immigration and Customs Enforcement (“ICE”), at the San Luis Regional Detention Center in Somerton, Arizona.





1 19. However, on September 14, 2000, ICE released Mr. Nguyen on an OSUP as  
2 Vietnam's policy was not to accept the repatriation of Vietnamese nationals from the United  
3 States.

4 20. For the last twenty-five years, Mr. Nguyen has reported to ICE for all requested  
5 appointments and check-ins.  
6

7 21. Beginning in 2003 and until his re-detention on May 16, 2025, Mr. Nguyen  
8 worked as an In-Home Supportive Services caregiver for his eighty-five-year-old elderly mother.

9 22. In 2005, Mr. Nguyen also began operating his own small landscaping business to  
10 earn additional income to support his family, including his three nieces, whom are all U.S. citizens.  
11

12 23. Mr. Nguyen's sister and his three nieces live in close proximity, and the family are  
13 extremely close and grieving due to Mr. Nguyen's absence.

14 24. Mr. Nguyen's mother has witnessed a sharp decline in her health due to her  
15 concern for her son.

16 25. She worries Mr. Nguyen will be hurt, sent to the country he fled from as a refugee,  
17 or sent to a third country where he will be at risk of harm or death.  
18

19 26. On May 16, 2025, ICE detained Mr. Nguyen at a check-in, without prior notice,  
20 and without revoking his OSUP.

21 27. ICE previously provided Mr. Nguyen with notice that the agency would offer him  
22 an opportunity to prepare for an orderly departure from the United States if Vietnam agreed to his  
23 return.  
24

25 28. There are no circumstances indicating that Mr. Nguyen now poses a flight risk or  
26 danger to the community.  
27  
28

1           29. Following his unannounced arrest, ICE transferred Mr. Nguyen to the Otay Mesa  
2 Detention Center in Jamul, California, where he was detained for three months.

3           30. On August 9, 2025, ICE transferred Mr. Nguyen to the San Luis Regional  
4 Detention Center.

5           31. On August 25, 2025, ICE denied Mr. Nguyen's Form I-246 *Application for Stay*  
6 *of Removal*, which had been filed on August 8, 2025.

7           32. Despite their denial, ICE never revoked Mr. Nguyen's OSUP or obtained travel  
8 documents allowing for his return to Vietnam.

9           33. There is no evidence that ICE had taken any measures to obtain a travel document  
10 from Vietnam.

### 11           **B. Repatriation To Vietnam**

12           34. Before a Vietnamese immigrant can be repatriated, the country must issue a  
13 passport or other travel documents in response to a request from ICE. *See Trinh v. Homan*, 466  
14 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020).

15           35. Between the end of the Vietnam War and 2008, Vietnam refused to repatriate any  
16 Vietnamese immigrant who had been ordered removed from the U.S. *See id.*

17           36. In 2008, Vietnam agreed to consider repatriation requests for Vietnamese  
18 immigrants who had arrived in the U.S. after July 12, 1995, but not those who arrived before July  
19 12, 1995. *See id.*

20           37. Between 2017 and 2019, ICE requested travel documents for pre-1995 Vietnamese  
21 immigrants 251 times; Vietnam granted those requests only 18 times. *Id.* at 1087-88.

22           38. In November 2020, the U.S. and Vietnam signed a Memorandum of  
23 Understanding ("MOU") that created a process for deporting pre-1995 immigrants.

1           39. Section 4 of the MOU obliges the U.S. and Vietnam to consider specific factors  
2 prior to deciding to remove a Vietnamese citizen, and prior to deciding to accept for repatriation  
3 a Vietnamese citizen.

4           40. These factors are not publicly known, because the U.S. government redacted them  
5 in Freedom of Information Act (“FOIA”) disclosures of the MOU; yet they appear to dictate  
6 which categories of people may be deported to Vietnam.

7           41. Under Section 8 of the MOU, if a person meets the designated criteria, ICE is  
8 expected to put together a documentation package for Vietnam to include, inter alia, a self-  
9 declaration form from the individual to be removed (using a form attached to the MOU), copies  
10 of identity and citizenship documents, and copies of the final order of removal and any criminal  
11 records.

12           42. Between September 2021 to September 2023, Vietnam issued travel documents to  
13 only four pre-1995 Vietnamese immigrants whom ICE sought to deport.

14           43. The process to secure a travel document for a pre-1995 immigrant is multilayered  
15 and lengthy, requiring interviews and verification by authorities in Vietnam. The only known  
16 change has been ICE’s policy and practice of deporting individuals to third countries.

17           44. On June 23 and July 3, 2025, the Supreme Court issued a stay of a national class-  
18 wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV  
19 25-10676-BEM, 2025 WL 1142968, at \*1, 3 (D. Mass. Apr. 18, 2025), pending appeal, which  
20 requires ICE to follow the statutory and constitutional requirements before removing an  
21 individual to a third country. *U.S. Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025)  
22 (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).

23           45. On July 9, 2025, ICE issued a new memo to staff, instructing that ICE may deport  
24 a person to a third country not designated on the removal order, without any procedures for notice  
25 or an opportunity to be heard, if the State Department confirms that it has received diplomatic  
26 assurances that individuals will not be persecuted or tortured.  
27  
28

1 46. If no diplomatic assurances are received, the memo instructs officers to serve on  
2 the individual a Notice of Removal that includes the intended country of removal.

3 47. It tells officers not to ask whether the individual is afraid of removal to that country,  
4 and states that officers should “generally wait at least 24 hours following service of the Notice of  
5 Removal before effectuating removal.”

6 48. But states that “[i]n exigent circumstances, [ICE] may execute a removal order six  
7 (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided  
8 reasonable means and opportunity to speak with an attorney prior to removal.”

9 49. The memo further instructs that if the noncitizen “does not affirmatively state a  
10 fear of persecution or torture if removed to the country of removal listed on the Notice of Removal  
11 within 24 hours, [ICE] may proceed with removal to the country identified on the notice.” If the  
12 noncitizen “does affirmatively state a fear if removed to the country of removal,” then ICE will  
13 refer the case to U.S. Citizenship and Immigration Services (“USCIS”) for a screening for  
14 eligibility for withholding of removal and protection under the Convention Against Torture.  
15

16 50. “USCIS will generally screen within 24 hours.” *Id.*

17 51. If USCIS determines that the [noncitizen] does not meet the standard, the  
18 individual will be removed. *Id.* If USCIS determines that they have met the standard, then the  
19 policy directs ICE to either move to reopen removal proceedings “for the sole purpose of  
20 determining eligibility for [withholding of removal protection] and [Convention Against Torture  
21 (‘CAT’)] or designate another country for removal.” *Id.*

## 22 LEGAL BACKGROUND

### 23 **A. Due Process Governs Decisions to Revoke an Order of Supervision**

24 52. “The Due Process Clause applies to all persons within the United States, including  
25 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v.*  
26 *Davis*, 533 U.S. 678, 693 (2001) (citation modified).  
27

1 53. “Freedom from imprisonment—from government custody, detention, or other  
2 forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.* at 690 (2001).

3 54. Under substantive due process doctrine, revocation of a noncitizen’s order of  
4 supervision is a restraint on liberty that is permissible only permissible if it serves a “legitimate  
5 nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997).

6 55. The Supreme Court has only recognized two legitimate objectives of immigration  
7 detention; preventing danger to the community or preventing flight prior to removal. *See*  
8 *Zadvydas*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

9 56. “Procedural due process imposes constraints on governmental decisions which  
10 deprive individuals of liberty,” like the decision to revoke a non-citizen’s order of supervision.  
11 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental  
12 requirement of [procedural] due process is the opportunity to be heard at a meaningful time and  
13 in a meaningful manner.” *Id.* at 333 (citation modified).

14  
15  
16  
17 **B. Procedure for Revoking an Order of Supervision And Removal To Third  
Countries Without Due Process**

18 57. A noncitizen with a final order of removal “who is not removed within the [90-  
19 day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed  
20 by the Attorney General.” 8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day period”).

21 58. A noncitizen may only be detained past the 90-day removal period following a  
22 removal order if found to be “a risk to the community or unlikely to comply with the order of  
23 removal” or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).

24 59. But even where initial detention past the 90-day removal period is authorized, if  
25 “removal is not reasonably foreseeable, the court should hold continued detention unreasonable  
26 and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and  
27  
28  
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1 should be conditioned on any of the various forms of supervised release that are appropriate in  
2 the circumstances . . . .” *Zadvydas*, 533 U.S. at 699-700.

3 60. Regulations provide the following additional circumstances, beyond those listed  
4 at § 1231(a)(6), that allow for the revocation of an order of supervision and re-detention of a non:  
5 “(1) the purposes of release have been served; (2) the alien violates any condition of release; (3)  
6 “(1) the purposes of release have been served; (2) the alien violates any condition of release; (3)  
7 it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other  
8 circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2); *see*  
9 *also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen  
10 “violates any of the conditions of release”).

11 61. Because “[r]egulations cannot circumvent the plain text of the statute[,]” these  
12 regulations are *ultra vires* of statutory authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d 451,  
13 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention  
14 past the removal period only if person is a risk to the community, unlikely to comply with the  
15 order of removal, or was ordered removed on specified grounds).

16 62. The governing regulations permit only certain officials to revoke an order of  
17 supervision: the ICE Executive Associate Director, a field office director, or an official “delegated  
18 the function or authority . . . for a particular geographic district, region, or area.” *Ceesay v.*  
19 *Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and  
20 explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4).  
21 If the field office director or a delegated official intends to revoke an order of supervision, they  
22 must first make findings that “revocation is in the public interest and circumstances do not  
23 reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. §  
24 241.4(l)(2). For a delegated official to have authority to revoke an order of supervision, the

1 delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161  
2 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not  
3 include the power to revoke release” insufficient to grant authority to revoke an order of  
4 supervision).

5  
6 63. Upon revocation of an order of supervision, ICE must give a noncitizen notice of  
7 the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

8 **C. Removal To Third Countries Without Due Process**

9  
10 64. To remove a foreign national to a third country, the INA requires that the Attorney  
11 General—by an through a delegate, such as an immigration judge—first determine that it is  
12 “impracticable, inadvisable, or impossible” to remove Petitioner to Vietnam and that the  
13 designated third country “will accept [Petitioner] into that country.” 8 U.S.C. §  
14 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. §  
15 1231(b)(E)(vii) “indisputably requires the Attorney General to prove that the proposed country  
16 of removal is willing to accept the alien”); *see also Jama v. Immigr. & Customs Enf’t*, 543 U.S.  
17 335, 344 (2005).

18  
19 65. The statute delegates the authority to the Attorney General, not DHS. 8 U.S.C. §  
20 1231(b)(2)(E)(vii) (“the Attorney General shall remove the alien to. . .”); *see also* 8 C.F.R. §  
21 1240.10(f) (in removal proceedings the immigration judge “shall. . . identify for the record a  
22 country, or countries in the alternative, to which the alien’s removal may be made”).

23  
24 66. To remove a foreign national to a third country, the Attorney General would need  
25 to move to reopen removal proceedings to designate a third country for removal under the  
26 statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014)  
27 (unpublished) (holding that should a new country of removal be designated, “the agency must  
28

1 provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of  
2 his claim of withholding of removal from” the third country); *Aden v. Nielsen*, 409 F. Supp. 3d  
3 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings “shall be reopened and a  
4 hearing shall be held before the immigration judge so that petitioner may apply for relief from  
5 removal” as to a country not designated in prior proceedings).

7 67. Adherence to that process is necessary to ensure the foreign national has a statutory  
8 right to claim protection in immigration court against removal to a third country where he may  
9 be persecuted or tortured, a form of protection known as withholding of removal, 8 U.S.C.  
10 § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of  
11 removal under CAT. *See* 28 C.F.R. § 200.1 (“A removal order. . . shall not be executed in  
12 circumstances that would violate [the CAT]”); 8 C.F.R. §§ 208.17-18, 1208.17-1208.18.

14 68. At a minimum, Due Process guarantees the noncitizen meaningful notice of the  
15 third country designated for removal and an opportunity to respond. *See D.V.D.*, 145 S. Ct. at  
16 2163 (Sotomayor, J., dissenting) (“[t]he Fifth Amendment unambiguously guarantees that right”  
17 to notice of a third country removal so that a noncitizen “learn[s] about it in time to seek an  
18 immigration judge’s review”). Notice cannot be “last minute” because that would deprive an  
19 individual of a meaningful opportunity to apply for fear-based protection from removal.  
20 *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

23 69. Individuals must have time to prepare and present relevant arguments and  
24 evidence, and to seek reopening of their removal case. “[W]ritten notice of the country being  
25 designated” is required and “the statutory basis for the designation, i.e., the applicable subsection  
26 of § 1231(b)(2)” must be specified. *Aden*, 409 F. Supp. 3d at 1019; *see also D.V.D. v. U.S. Dep’t*  
27 *of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May 21, 2025)

1 (“All removals to third countries, *i.e.*, removal to a country other than the country or countries  
2 designated during immigration proceedings as the country of removal on the non-citizen’s order  
3 of removal, must be preceded by written notice to both the non-citizen and the non-citizen’s  
4 counsel in a language the non-citizen can understand.” (internal citation omitted)); *Andriasian*,  
5 180 F.3d at 1041 (due process requires notice to the noncitizen of the right to apply for asylum  
6 and withholding to the country where they will be removed).  
7

8 70. Due process also demands that the government “ask the noncitizen whether he or  
9 she fears persecution or harm upon removal to the designated country and memorialize in writing  
10 the noncitizen’s response. This requirement ensures DHS will obtain the necessary information  
11 from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and  
12 noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019.  
13

14 71. Any unannounced attempt at a third country removal would violate these statutory  
15 and constitutional procedural protections.  
16

17 72. According to ICE’s memo issued July 9th, individuals can be removed to third  
18 countries “without the need for further procedures,” so long as “the [U.S.] has received diplomatic  
19 assurances.”  
20

21 73. The policy instructs officers to violate their statutory and constitutional obligations  
22 to noncitizens.  
23

24 74. The same is true of the minimal procedures ICE offers when no diplomatic  
25 assurances are present that a noncitizen will not be tortured upon arrival in a third country.  
26

27 75. The policy provides no meaningful notice (6-24 hours), instructs officers *not* to  
28 ask about fear, and provides no actual opportunity for noncitizens to seek counsel and prepare a  
fear-based claim (6-24 hours), let alone reopen removal proceedings.

1           76. In sum, the policy directs ICE officers to violate the rights of noncitizens whom  
2 they seek to subject to the third country removal program.

3           77. Several courts have recently ordered the government not to remove a noncitizen  
4 to a third countries under similar circumstances. *See generally J.R. v. Bostock*, 25-cv-01161-JNW,  
5 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025) (immediately enjoining removal to “Cuba, Libya,  
6 or any third country in the world absent prior approval from this Court”); *Phan*, 2025 WL  
7 1993735, at \*7 (enjoining Respondents from “re-detaining or removing Petitioner to a third  
8 country without notice and an opportunity to be heard”); *Hoac*, 2025 WL 1993771, at \*7 (same);  
9 *Vaskanyan v. Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025);  
10 *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025).

11  
12  
13           **D. The APA Sets Minimum Standards for Final Agency Action**

14           78. The Administrative Procedure Act authorizes judicial review of final agency  
15 action. 5 U.S.C. § 704.

16           79. Final agency actions are those (1) that “mark the consummation of the agency’s  
17 decision making process[,]” and (2) “by which rights or obligations have been determined, or  
18 from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation  
19 modified).  
20

21           80. ICE’s decision to re-detain Mr. Nguyen, without revoking his OSUP and without  
22 written notice, is a final agency action subject to this Court’s review.

23           81. Here, Mr. Nguyen’s re-detention marked the consummation of ICE’s decision  
24 making process regarding Mr. Nguyen’s custody.  
25  
26  
27  
28

1 82. Mr. Nguyen's re-detention was an action by which rights or obligations have been  
2 determined or from which legal consequences flowed, as ICE detained Mr. Nguyen in violation  
3 of his rights under the Constitution, statute, and regulations.

4 **E. Agencies Must Follow Lawful Rules And Policy**

5  
6 83. Under the *Accardi* doctrine, a foundational principle of administrative law,  
7 agencies must follow their own procedures, rules, and instructions. See *United States ex rel.*  
8 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where  
9 the Board of Immigration Appeals failed to follow procedures governing deportation  
10 proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals  
11 are affected, it is incumbent upon agencies to follow their own procedures . . . even where the  
12 internal procedures are possibly more rigorous than otherwise would be required.").

13  
14 84. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla*  
15 *v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of  
16 unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 235  
17 (affirming reversal of agency denial of public assistance made in violation of internal agency  
18 manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to  
19 admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

20  
21 85. Where a release notification issued alongside an order of supervision instructs that  
22 a noncitizen with a final order of removal will be given an opportunity to prepare for an "orderly  
23 departure," ICE's failure to follow that instruction is an *Accardi* violation. See *Ceesay*, 781 F.  
24 Supp. 3d at 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and*  
25 *remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019);  
26  
27  
28

1 *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an  
2 opportunity to prepare for orderly departure).

3 **CLAIMS FOR RELIEF**

4 **Count One**

5 **Violation of the Fifth Amendment of the U.S. Constitution**  
6 **Substantive Due Process**

7 86. Petitioner realleges all paragraphs above as if fully set forth here.

8 87. The Due Process Clause of the Fifth Amendment protects against punitive  
9 detention and similar restrictions on a person's liberty.

10 88. ICE found that Mr. Nguyen was neither a danger to the community nor a flight  
11 risk when ICE released him on an OSUP on September 14, 2000.

12 89. For the past twenty-five years, Mr. Nguyen has complied with all terms and  
13 conditions of his OSUP.

14 90. No change in circumstances warranted Mr. Nguyen's re-detention on May 16,  
15 2025.

16 91. Mr. Nguyen's arrest and re-detention, therefore, did not bear a reasonable  
17 relationship to the two recognized purposes of immigration detention: preventing danger to the  
18 community, or flight prior to removal.

19 92. Because Respondents had no legitimate, non-punitive objective in revoking Mr.  
20 Nguyen's order of supervision, his re-detention violates substantive due process under the Fifth  
21 Amendment of the U.S. Constitution.

22 **Count Two**

23 **Violation of the Fifth Amendment of the U.S. Constitution**  
24 **Procedural Due Process**

25 93. Petitioner realleges all paragraphs above as if fully set forth here.

1 94. The Supreme Court's decision in *Matthews*, 424 U.S. at 333, instructs courts to  
2 balance three factors to determine whether procedural due process is satisfied: (1) the private  
3 interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used,  
4 and the probable value, if any, of additional procedural safeguards; and (3) the government's  
5 interest, including fiscal and administrative burdens that additional or substitute procedural  
6 requirements entail.

8 95. All three factors demonstrate Respondents have violated Mr. Nguyen's rights to  
9 due process.

10 96. The first factor, the private interest at issue, favors Mr. Nguyen. "Freedom from  
11 imprisonment—from government custody, detention, or other forms of physical restraint—lies at  
12 the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects."  
13 *Zadvydas*, 533 U.S. at 690.

14 97. The second factor, the risk of erroneous deprivation of liberty and the probable  
15 value of procedural safeguards, favors Mr. Nguyen.

16 98. To safeguard against erroneous deprivations of liberty, the statute specifies the  
17 limited number of reasons that an order of supervision can be revoked. Regulations specify who  
18 may lawfully revoke the order, and the procedures that must be followed when doing so, including  
19 giving notice and an opportunity to be heard. 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(l)(2); *see*  
20 *also id.* § 241.13(i).

21 99. Here, Respondents unlawfully detained Mr. Nguyen in violation of his procedural  
22 due process protections under the statute, regulations, and the Fifth Amendment. The failure to  
23 follow the requisite procedural safeguards has led to the deprivation of Mr. Nguyen's liberty.

24 100. Respondents unlawfully re-detained Mr. Nguyen without notice in violation of law.

1 101. The third factor, the government's interest, also favors Mr. Nguyen.

2 102. When the government ignores law that ensures notice and an opportunity to  
3 respond to a person at risk of revocation of an order of supervision, it is more likely to waste  
4 limited financial and administrative resources on unnecessary detention of people who are neither  
5 flight risks nor dangerous to the community, as is the case with Mr. Nguyen. Further, because the  
6 government must also allocate resources defending against a habeas corpus petition in federal  
7 court to compel Respondents to comply with law, requiring Respondents to instead provide notice  
8 and a meaningful opportunity to respond, prior to revoking an OSUP, reduces fiscal and  
9 administrative burdens on the government.  
10

11  
12 103. The re-detention of Mr. Nguyen, prior to the revocation of his OSUP and without  
13 providing him requisite notice and a meaningful opportunity to respond, violated his procedural  
14 due process rights under the Fifth Amendment of the U.S. Constitution.

15  
16 **Count Three**  
17 **Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)**  
18 **Contrary to Law and Constitutional Right**

19 104. Petitioner realleges all paragraphs above as if fully set forth here.

20 105. Under the APA, a court shall "hold unlawful and set aside agency action . . . found  
21 to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or  
22 immunity." 5 U.S.C. § 706(2)(A), (B).

23 106. The APA's reference to "law" in the phrase "not in accordance with law," "means,  
24 of course, *any* law, and not merely those laws that the agency itself is charged with administering."  
25 *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

26 107. ICE failed to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 at the time  
27 of Mr. Nguyen's re-detention.  
28

1 108. ICE never revoked Mr. Nguyen's OSUP prior to taking him into custody.

2 109. Respondents' re-detention of Mr. Nguyen was, therefore, arbitrary and capricious,  
3 because it violated statute, regulation, and the Constitution.

4 110. An agency decision that "runs counter to the evidence before the agency" is also  
5 arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29,  
6 43 (1983).

7  
8 111. Respondents' decision to arrest and re-detain Mr. Nguyen was not made in  
9 accordance with law and procedure, and thus must be set aside.

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11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioner requests that this Court:

- 13 A. Exercise jurisdiction over this matter;
- 14 B. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and  
15 the United States pending its adjudication of this petition;
- 16 C. Declare that Petitioner's detention violates the Due Process Clause of the Fifth  
17 Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;
- 18 D. Order Petitioner's immediate release;
- 19 E. Award Petitioner costs and reasonable attorney's fees; and
- 20 F. Grant such other relief as this Court may deem just and proper.

21  
22 November 7, 2025

Respectfully Submitted,

23  
24 /s/ Tin Thanh Nguyen  
25 Tin Thanh Nguyen  
26 NC State Bar # 37167  
27 Law Office of Tin Thanh Nguyen, PLLC  
28 6769 Albemarle Rd., Suite B  
Charlotte, NC 28212  
(704) 461-1527  
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1  
2 *Admitted Pro Hac Vice*  
3 Attorney for Petitioner

4  
5 **28 U.S.C. § 2242 VERIFICATION STATEMENT**

6 I am submitting this verification on behalf of the Petitioner because I am the Petitioner's  
7 attorney. On the basis of documents, discussions with Petitioner's immigration counsel, and  
8 Petitioner's family, I hereby verify that the statements made in this Petition and Complaint are  
9 true and correct to the best of my knowledge.

10  
11 */s/ Tin Thanh Nguyen*  
12 Tin Thanh Nguyen  
13 Law Office of Tin Thanh Nguyen, PLLC  
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