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9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 Hau Bao Tran,

12 Petitioner-Plaintiff,

13 v.

14 David R Rivas, et al.,

15 Respondents-Defendants.
16
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No.: CV-25-04220-PHX-DJH (DMF)

PETITIONER'S TRAVERSE

1 Petitioner respectfully traverses the Government's Response and reiterates that his
2 continued detention violates constitutional and statutory rights. The Government fails to
3 rebut the core arguments: (1) ICE's procedural noncompliance with its own regulations
4 under *Accardi v. Shaughnessy*, 347 U.S. 260 (1954); and (2) the absence of "special
5 circumstances" justifying prolonged detention under *Zadvydas v. Davis*, 533 U.S. 678
6 (2001). Recent district court precedent uniformly orders release where ICE disregards
7 procedural safeguards (*Rios v. Noem*, 2025 U.S. Dist. LEXIS 221626, at *10-12 (S.D. Cal. Nov.
8 10, 2025); *Touch v. Noem*, 2025 U.S. Dist. LEXIS 232828, at *15-18 (S.D. Cal. Nov. 26, 2025);
9 *Rokhfirooz v. Larose*, 2025 U.S. Dist. LEXIS 180605, at *10-12 (S.D. Cal. Sep. 15, 2025)).

11 **A. *Accardi* Violation: Primary Ground for Relief; ICE redetained Petitioner**
12 **in procedural noncompliance with its own regulations**

13 8 C.F.R. §§ 241.4(l) and 241.13(i) contain provisions governing the revocation of
14 release. Under section 241.4(l), release may be revoked when a noncitizen violates the
15 conditions of their release or "in the exercise of discretion when, in the opinion of the
16 revoking official":

- 17 (i) The purposes of release have been served;
18 (ii) The [noncitizen] violates any condition of release;
19 (iii) It is appropriate to enforce a removal order or to commence removal proceedings
20 against a [noncitizen]; or
(iv) The conduct of the [noncitizen], or any other circumstance, indicates that release
would no longer be appropriate.

21 8 C.F.R. § 241.4(l)(1), (2). Under section 241.13(i), release may be revoked if a noncitizen
22 violates the conditions of their release or "if, on account of changed circumstances, the
23 [government] determines that there is a significant likelihood that the [noncitizen] may be
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1 removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(1), (2). Both sections
2 establish certain required process for the revocation of release. Upon revocation of release, the
3 noncitizen (1) “will be notified of the reasons for revocation of his or her release” and (2) will be
4 given “an initial informal interview promptly after his or her return to [] custody to afford the
5 [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.” 8
6 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). If the noncitizen continues to be detained after the informal
7 interview, they shall be scheduled for the “normal review process,” which begins with
8 notification of a records review and scheduling of an interview, “which will ordinarily be
9 expected to occur within approximately three months after release is revoked.” 8 C.F.R. §
10 241.4(l)(3); 241.13(i)(2) (“[I]f the [noncitizen] is not released from custody following the
11 informal interview . . . the provisions of § 241.4 shall govern the alien’s continued detention
12 pending removal.”). “In simpler terms, in order to revoke release, the government must notify
13 the noncitizen of the reason for the revocation and give them both an informal and formal
14 interview.” *Delkash v. Noem*, 5:25-cv-01675-HDV-AGR, 2025, at *4 (C.D. Cal. Aug. 28, 2025).

15
16 Section 241.13 therefore governs Mr. Tran’s release and its revocation. Under that
17 section, release can be revoked if a noncitizen violates the conditions or “if, on account of
18 changed circumstances, the [government] determines that there is a significant likelihood
19 that the [noncitizen] may be removed in the reasonably foreseeable future.” 8 C.F.R. §
20 241.13(i)(1), (2). Here, there is no allegation that Mr. Tran violated any of his conditions of
21 release. See Dkt. No. 6-1 Ruiz Decl. ¶ 11 (“On June 5, 2025, ERO arrested Tran to be taken into
22 custody so that ERO could effectuate the outstanding removal order”) and ¶ 17 (“Based on my
23 review, Petitioner was previously in DHS custody and was previously released from custody.
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1 The ICE ERO San Diego Field Office does not currently have information or access to the
2 details of that previous detention and release.”).

3 The government did not comply with the process laid out in 8 C.F.R. § 241.13(i)(2), (3).
4 *Accardi* mandates that agencies adhere to their own regulations. Violations constitute due
5 process breaches warranting habeas relief (*Accardi*, 347 U.S. at 265). ICE revoked Petitioner’s
6 supervised release without:

- 7 1. **Written notice** of the reasons for revocation (8 C.F.R. § 241.4(I)) (*Rios*, 2025 U.S. Dist.
8 LEXIS 221626, at *10-12).
- 9 2. **An informal interview** to assess “changed circumstances” (8 C.F.R. § 241.13(i)) (*Touch*,
10 2025 U.S. Dist. LEXIS 231963, at *11-17).

11 The Government concedes this failure in Footnote 4 of its Response. This mirrors violations
12 in *Rios v. Noem*, where the court held that procedural lapses invalidate detention and ordered
13 release (*Rios*, 2025 U.S. Dist. LEXIS 221626, at *10-12).

14 First, Mr. Tran was never notified of the reasons for revocation of his release. He was
15 given no notice that he would be detained and never informed or presented with evidence of a
16 violation of his conditions of release. Dkt. No. 1. ¶ 3. The government has also failed to even
17 provide a “Notice of Revocation of Release” that the government was required to serve him—
18 after they re-detained him.

19 Second, there is no evidence that Mr. Tran has been afforded a meaningful informal or
20 formal interview. Although Ruiz declares that “On June 5, 2025, ERO arrested Tran to be taken
21 into custody so that ERO could effectuate the outstanding removal order,” Ruiz Decl. ¶ 11, that
22 is not the “initial informal interview” contemplated by section 241.14(i)(3), at which the
23 noncitizen is supposed to have “an opportunity to respond to the reasons for revocation stated in
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1 the notification.” 8 C.F.R. § 241.13(i)(3). Mr. Tran maintains that he was never given an
2 opportunity to respond to or be heard about any reasons for revocation. Dkt. No. 1, ¶ 6.

3 These failures by the government violate the requirements of 8 C.F.R. § 241.13(i)(3). A
4 growing number of courts have unequivocally found that the government’s failure to follow its
5 release revocation procedures renders the re-detention unlawful and requires release. *See*
6 *Delkash*, 2025 WL 2683988, at *5–6 (collecting cases); *Hoac*, 2025 WL 1993771, at *4. And to
7 the extent another layer of analysis is required, the Court should follow its sister courts in
8 finding that the failure to follow these procedural requirements violates the due process clause.
9 *See Hoang*, No. 5:25-cv-02766-JGB-JCx (C.D. Cal. Oct. 28, 2025) [Dkt. 10] at 3–6; *Bui*, 2025
10 WL 2988356, at *2–5 (S.D. Cal. Oct. 23, 2025); *Deli Chen and Huijuan Chen v. Chestnut*, No.
11 1:25-cv-01338-EPG-HC (E.C. Cal. Dec. 5, 2025) (**Decision issued today**).

12
13 *Touch* granted habeas relief where ICE failed to conduct an informal interview,
14 emphasizing that regulatory violations “constitute irreparable harm per se” (*Touch*, 2025 U.S.
15 Dist. LEXIS 232828, at *15-18).

16 “Courts have determined that where ICE fails to follow its own regulations in revoking
17 release, the detention is unlawful and the petitioner’s release must be ordered. . . . This Court
18 reaches the same conclusion.” (*Rokhfirooz v. Larose*, 2025 U.S. Dist. LEXIS 180605, at *10-12
19 (S.D. Cal. Sep. 15, 2025)).

20 Instead, Respondents argue that “Petitioner’[sic] detention is statutorily authorized and
21 constitutionally permission [sic] because he has failed to meet his burden to establish that his
22 removal is not likely to occur in the reasonably foreseeable future.” Dkt. No. 6 at 1. “However,
23 the burden-shifting framework from *Zadvydas* does not apply” to Petitioner’s claim regarding
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1 Respondents' failure to comply with 8 C.F.R. § 241.4(l) and 241.13(i) and "ICE's authority to
2 re-detain [Petitioners] after [they] w[ere] issued a final order of removal, detained, and
3 subsequently released on" orders of supervision. *Yan-Ling X.*, 2025 WL 3123793, at *3
4 (alterations added) (*quoting Nguyen v. Hyde*, 788 F. Supp. 3d 144, 149 (D. Mass. 2025)).
5 "[T]his is not your typical first round detainment of an alien awaiting removal. . . . *Zadvydas*,
6 relied upon by Respondents, dealt with the initial detainment of an alien awaiting removal."
7 *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2,
8 2025). Thus, the "regulations at 8 C.F.R. §§ 241.13(i) and 241.4(l) apply to non-citizens in
9 [Petitioners'] situation and outline the process to be followed," including that "when ICE
10 revokes release to effectuate removal, 'it is [ICE's] burden to show a significant likelihood that
11 the alien may be removed.'" *Yan-Ling X.*, 2025 WL 3123793, at *3, 4 (second alteration in
12 original) (*quoting Escalante*, 2025 WL 2206113, at *3) (*citing Roble v. Bondi*, No. 25-CV-3196
13 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) ("[T]he regulations at issue in

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15 ***B. Zadvydas and Clark v. Martinez*, 543 U.S. 371 (2005): Constitutional Violations**

16 Detention beyond six months is presumptively unconstitutional unless Respondents shows:

- 17 1. "Special circumstances" (e.g., extraordinary dangerousness) (*Zadvydas*, 533 U.S. at
18 691)
19 2. Reasonably foreseeable removal (*Zadvydas*, 533 U.S. at 699)

20 ***Zadvydas* "Special Circumstances" Standard - Controlling Majority Authority**

21 The *Zadvydas* majority explicitly held that "in cases in which preventive detention is of
22 potentially indefinite duration, we have also demanded that the dangerousness rationale be
23 accompanied by some other special circumstance, such as mental illness, that helps to create the
24 danger" (*Zadvydas*, 533 U.S. at 691 (2001)). This controlling precedent requires:

- 1 1. **Extraordinary Dangerousness:** Beyond typical flight risk or criminal history.
- 2 2. **Additional Special Circumstances:** Such as harm-threatening mental illness or unique
3 security threats.
- 4 3. **Narrow Application:** Limited to “specially dangerous individuals” with strong
5 procedural safeguards.

6 Here, Petitioner has no new criminal conduct, complied with supervision for 12 years, and
7 poses no documented danger. Petitioner’s aggravated felony conviction alone is insufficient.
8 The *Zadvydas* majority requires “egregious” factors like mental illness or imminent danger—
9 none exist here (*Zadvydas*, 533 U.S. at 691).

10 **Reasonably foreseeable removal**

11 As to the reasonably foreseeable removal, the majority’s language reinforces *Zadvydas*’s six-
12 month presumption as a constitutional minimum, not a flexible ceiling.

13 Petitioner was ordered removed on August 20, 2012 (Dkt. No. 6-1 Ruiz Decl. ¶ 9) at
14 which point the 90-day removal period began. The government continued to detain him for
15 almost eight months and attempted to remove him until April 8, 2013 (Ruiz Decl. ¶ 10), and
16 then released him on an order of supervision. Petitioner was already subject to mandatory
17 detention for 90 days after his removal order became final in August 2012. Then Petitioner was
18 subject to discretionary detention under § 1231(a)(6) and was detained for an additional five
19 months, and after his redetention, for an additional five months. The presumptive six-month
20 limit of detention has been reached. *See Zamani-Zadeh v. Figueroa*, 2:25-cv-03578, (D. Ariz.);
21 *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018)
22 (collecting cases) (“[T]he six-month period does not reset when the government detains a []
23 [noncitizen] . . . , releases him from detention, and then re-detains him again.”); *Chen v. Holder*,

1 No. CV 6:14-2530, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015) (“Surely, under the
2 reasoning of *Zadvydas*, a series of releases and re-detentions by the government . . . while
3 technically not in violation of the presumptively reasonable jurisprudential six month removal
4 period, in essence results in an indefinite period of detention, albeit executed in successive six
5 month intervals.”).

6 Petitioner was released because the government determined that there was no significant
7 likelihood that he would be removed in the reasonably foreseeable future. The government
8 cannot demonstrate, and has not shown that, “on account of changed circumstances,” there is
9 now a “significant likelihood” that Mr. Tran will be removed to Vietnam “in the reasonably
10 foreseeable future.” Petitioner’s removal to Vietnam is not reasonably foreseeable because, to
11 date, five months after detaining him, Respondents have not yet even requested his travel
12 documents and over two months after detaining him, has merely taken his passport photos “for
13 the Travel Document request” (Dkt. No. 6-1 Ruiz Decl. ¶ 11 (“On September 8, 2025, Tran’s
14 passport photos were taken for the Travel Document request. As of November 17, 2025, ERO
15 has prepared documents for the Travel Documents Request and will submit the TD request once
16 a removal date has been determined”).

18 Respondents’ only evidence and argument as to the likelihood of Petitioner’s reasonably
19 foreseeable removal is that it has prepared documents for the Travel Documents Request and
20 will submit the TD request once a removal date has been determined. *Id.* The government goes
21 on to claim, “ICE has removed Vietnamese citizens to Vietnam as recently as November 2025”
22 (*Id.* at ¶ 14) and “ICE routinely has flights to Vietnam.” (*Id.* at ¶ 15). This is plainly insufficient
23 to rebut Petitioner’s showing that he will unlikely be removed in the reasonably foreseeable
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1 future. *See, Navaie v. Rivas*, 2:25-cv-03002, (D. Ariz.) (“In their initial response to the Petition,
2 Respondents indicated ICE has “started the process of preparing a travel document request by
3 obtaining a copy of the original removal order”; “submitted a travel document request packet to
4 the Detention and Deportation Officer (DDO) assigned to Iranian cases within ERO
5 Headquarters, Removal and International Operations (RIO) for review”; and “inquired with RIO
6 as to the status of the Petitioner’s travel documents.” (Doc. 13 at 7.) Thereafter, on September
7 10, 2025, ICE sent another inquiry as to the status of the Petitioner’s travel documents. (*Id.*) The
8 Court indicated “[i]f the Government has not received a positive response to its most recent
9 inquiry, the Court is inclined to find there is no significant likelihood of removal in the
10 reasonably foreseeable future and must order Petitioner’s release.” (Doc. 27 at 3.)” *Id.*, Dkt. No.
11 30, at 1-2 (Order granting Petition for Writ of Habeas).

13 Vietnam’s 2020 MOU grants it “total discretion” to reject repatriation, and ICE has not
14 submitted Petitioner’s travel document request. *Clark* extended *Zadvydus* to inadmissible aliens,
15 barring indefinite detention where removal is impracticable (*Clark*, 543 U.S. at 383). *And*
16 *Bunthoeun Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023), held that this is an
17 individualized inquiry: “ICE’s decision to re-detain a noncitizen like Kong who has been granted
18 supervised release is governed by ICE’s own regulation requiring (1) an individualized
19 determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become
20 significantly likely in the reasonably foreseeable future.” The anecdotal evidence of travel
21 authorization following orders in the cited cases (*Long Phi Do, Bui, Ho, Quan*) is unreported
22 and factually distinct.

1 Courts require individualized evidence of imminent removal, not generalized trends. In
2 *Nhut Tran v. Noem*, 2025 LX 596067 (E.D. Cal. Nov. 24, 2025), the court rejected similar
3 arguments, holding that "generalized statistics about removals are insufficient to justify
4 continued custody. The government admits it has not even submitted Petitioner's travel
5 document request (Ruiz Decl. ¶ 13). In *Vu Thanh Tran v. Bondi*, 2025 LX 578365 (W.D. Wash.
6 Nov. 10, 2025), the court found that a two-month delay in submitting travel documents rendered
7 detention unlawful. Here, the delay exceeds five months.

8 Moreover, numerous courts have found that the 2020 MOU—which gives Vietnam total
9 discretion whether to accept particular non-citizens—is not by itself sufficient to show a
10 changed circumstance or a significant likelihood of removal. *See Hoac v. Becerra*, No. 2:25-
11 CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, 788 F.
12 Supp. 3d 144, 151 (D. Mass. 2025). Respondents' reliance on Ruiz' general assertions that "ICE
13 routinely has flights to Vietnam" and "ICE has removed Vietnamese citizens to Vietnam as
14 recently as November 2025" is "hardly persuasive" to demonstrate changed circumstances.
15 *Hoac*, 2025 WL 1993771, at *5; *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D.
16 Kan. June 17, 2025).

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18 The government has not established changed circumstances such that Petitioner will be
19 removed to Vietnam in the reasonably foreseeable future. *See Hoac*, 2025 WL 1993771, at *5
20 (involving a Vietnamese national who entered the U.S. as a child pre-1995, became a lawful
21 permanent resident, but was ordered removed in 2023 after being convicted of and serving
22 sentence for murder); *Hoang v. Santa Cruz*, No. 5:25-cv-02766-JGB-JCx (C.D. Cal. Oct. 28,
23 2025) [Dkt. 10] at 5 ("[T]he Court agrees with Petitioner"— also a Vietnamese national, who
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1 entered the U.S. as a child pre-1995, became a lawful permanent resident, was then ordered
2 removed, and had been released on an order of supervision since 2001—“that the government
3 has not established that it is any more likely to acquire those travel documents than it has since it
4 issued Petitioner’s removal order in 2000.”); *Lam Dat Quan v. Warden, et al.*, No. 5:25-cv-
5 02546-HDV-PVC (C.D. Cal. Nov. 14, 2025).

6 **C. *Matter of Sugay*: Limited but Supportive**

7 Lastly, *Matter of Sugay* is limited but supportive here. *Sugay* requires pre-deprivation
8 notice and a hearing before revoking supervised release, with the Government bearing the
9 burden of proof by clear and convincing evidence (*Matter of Sugay*, 17 I&N Dec. 637, 639 (BIA
10 1981)). Here, ICE’s failure to provide notice or a hearing violates *Sugay*. Courts like *Y.M.M. v.*
11 *Wamsley*, 2025 U.S. Dist. LEXIS 219064, at *7-9 (W.D. Wash. Nov. 6, 2025), ordered release
12 on similar grounds. Petitioner acknowledges that *Sugay* is a BIA decision and not binding. If the
13 Court rejects it, relief rests on *Accardi* and *Zadvydas*.

14 **D. Conclusion**

15
16 Petitioner’s detention is unlawful. ICE’s regulatory violations under *Accardi* and the
17 absence of *Zadvydas* exceptions mandate immediate release. The Government’s Response fails
18 to address these fatal deficiencies. For these reasons, Petitioner asks the Court to grant the writ
19 of habeas corpus and order his release under prior supervision conditions.

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1 Dated: December 5, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the District of Arizona by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: December 5, 2025

/s/ Bashir Ghazialam
Bashir Ghazialam

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