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

12 CHUNY TOUCH,

13 Petitioner,

14 v.

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

24 Respondents.

Civil Case No.: 25-cv-3118-RBM-AHG

**Traverse in  
Support of  
Petition for Writ of  
Habeas Corpus**

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1 INTRODUCTION

2 Having received the government’s Return and exhibits, this Court may  
3 grant Mr. Touch’s petition on Claim One without reaching Claims Two and  
4 Three. If it does not grant relief on Claim One, the Court should defer ruling on  
5 Claims Two and Three until after December 3, 2025, to see whether Respondents  
6 are able to effectuate Mr. Touch’s removal to Cambodia.

7 First, this Court should grant the petition on Claim One because the  
8 government has not complied with its own regulations. For persons like  
9 Mr. Touch, those regulations permit re-detention only if ICE:

10 (1) “determines that there is a significant likelihood that the alien may be removed  
11 in the reasonably foreseeable future,” *id.* § 241.13(i)(2); (2) makes that finding  
12 “on account of changed circumstances,” *id.*; (3) provides “an initial informal  
13 interview promptly,” *id.* §§ 241.4(l)(1), 241.13(i)(3); and (4) “affords the [person]  
14 an opportunity to respond to the reasons for revocation,” *id.*

15 Yet ICE did not comply with these regulations when it re-detained  
16 Mr. Touch on October 21, 2025. Although it provided a Notice of Revocation of  
17 Release that vaguely claimed there were “changed circumstances,” Dkt. 10-4,  
18 Exhibit 4, that Notice did not explain what those changed circumstances were.  
19 And while Respondents claim that they told Mr. Touch they had obtained a travel  
20 document and he gave a purported response, this is not the same as providing a  
21 mandatory interview where he had a meaningful “opportunity to respond to the  
22 reasons for revocation.” 8 C.F.R. § 241.13(i)(3). Though ICE claims to have  
23 received a travel document for Mr. Touch, other judges in this district have  
24 granted relief and ordered the petitioner released due to the regulatory violations  
25 of 8 C.F.R. § 241.4 even *after* ICE obtained a travel document. *See, e.g., Truong*  
26 *v. Noem*, 25-cv-2597-JES-MMP, Dkt. 13 (S.D. Cal. Oct. 22, 2025) (granting  
27 habeas because “the Government failed to follow its own regulations” even  
28 though ICE had obtained travel document); *Khambounheuang v. Noem*, 25-cv-

1 2575-JO-SBC, Dkt. 17 (S.D. Cal. Oct. 23, 2025) (same); *Ngo v. Noem*, 25-cv-  
2 2739-TWR-MMP, Dkt. 11 (S.D. Cal. Oct. 23, 2025) (same); *Sphabmixay v.*  
3 *Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025) (same); *Thammavongsa v.*  
4 *Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Oct. 30, 2025) (same).

5 Second, if this Court does not grant the petition or TRO on the Claim One  
6 regulatory grounds, it may defer ruling on Claims Two and Three until after  
7 December 3, 2025, to determine whether Mr. Touch is actually removed to  
8 Cambodia. Although Respondents claim to have booked a flight to Cambodia for  
9 Mr. Touch on that date, the agency has failed to successfully remove individuals  
10 on commercial flights in other cases. If the agency is similarly unsuccessful in  
11 Mr. Touch’s case, the Court may then revisit the *Zadvydas* claim. Given that  
12 Respondents do not assert an intent to remove Mr. Touch to a third country, the  
13 Court may also defer ruling on Mr. Touch’s third-country removal claim until that  
14 time.

15 **ARGUMENT**

16 **I. Mr. Touch’s first claim succeeds on the merits.**

17 ICE’s regulatory violations alone are sufficient to grant the habeas petition  
18 or TRO. First, ICE did not provide Mr. Touch sufficient notice under 8 C.F.R.  
19 § 241.13 of the reasons for the revocation of his release. The Notice of  
20 Revocation of Release simply states that this revocation was “based on a review  
21 of your official alien file and a determination that there are changed circumstances  
22 in your case.” Dkt. 10-4, Exhibit 4. But “[s]imply to say that circumstances had  
23 changed or there was a significant likelihood of removal in the foreseeable future  
24 is not enough.” *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at \*3 (D.  
25 Minn. Sept. 3, 2025). Rather, the Notice must inform a petitioner “*what*  
26 circumstances had changed or *why* there was now a significant likelihood of  
27 removal” so that the individual may “meaningfully respond to the reasons and  
28 submit evidence in opposition, as allowed under § 241.13(i)(3).” *Id.* By

1 “identif[ying] the category—‘changed circumstances’—but fail[ing] to notify  
2 [Petitioner] of the reason—the circumstances that changed and created a  
3 significant likelihood of removal in the reasonably foreseeable future—[ICE]  
4 failed to follow the relevant regulation.” *Id.*

5 “When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it  
6 explained that the regulation was intended to provide aliens procedural due  
7 process, stating that § 241.4 ‘has the procedural mechanisms that . . . courts have  
8 sustained against due process challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d  
9 626, 641 (D. Mass. 2018) (quoting *Detention of Aliens Ordered Removed*, 65 FR  
10 80281-01). And “[s]ection 241.13(i) includes provisions modeled on § 241.4(*I*) to  
11 govern determinations to take an alien back into custody,” *Continued Detention of*  
12 *Aliens Subject to Final Orders of Removal*, 66 FR 56967-01, meaning that it  
13 addresses the same due process concerns as 241.4(*I*). “The procedures in § 241.4”  
14 and § 241.13 therefore “are not meant merely to facilitate internal agency  
15 housekeeping, but rather afford important and imperative procedural safeguards to  
16 detainees.” *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R.  
17 §§ 241.4, 241.13 are “intended to provide due process to individuals in [Mr.  
18 Touch’s] position,” *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025  
19 WL 2444087, \*6 (D. Md. Aug. 25, 2025), they are enforceable.

20 The fact that ICE claims to have received a travel document for Mr. Touch  
21 does not negate this regulatory violation. As noted, other judges in this district  
22 have ordered petitioners released due to regulatory violations even *after* ICE  
23 obtained a travel document. *See, e.g., Truong v. Noem*, 25-cv-2597-JES-MMP,  
24 Dkt. 13 (S.D. Cal. Oct. 22, 2025) (granting habeas because “the Government  
25 failed to follow its own regulations” even though ICE had obtained travel  
26 document); *Khambounheuang v. Noem*, 25-cv-2575-JO-SBC, Dkt. 17 (S.D. Cal.  
27 Oct. 23, 2025) (same); *Ngo v. Noem*, 25-cv-2739-TWR-MMP, Dkt. 11 (S.D. Cal.  
28 Oct. 23, 2025) (same); *Sphabmixay v. Noem*, 25-cv-2648-LL (S.D. Cal. Oct. 30,

1 2025) (same); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Oct. 30,  
2 2025) (same).

3 Next, the government suggests that it complied with the regulations  
4 requiring an informal interview because it provided one when it re-detained  
5 Mr. Touch on October 21, 2025. Dkt. 10 at 3. But the government provides no  
6 signed form establishing that this interview took place, as it has in other cases.  
7 And neither the government’s return nor the La Pierre declaration ever state that  
8 an interview actually took place. Dkt. 10 at 3–4; 10-6. Instead, they simply say  
9 that after ICE “informed him” he would be removed, Mr. Touch purportedly  
10 responded that “he is not opposed to being detained as long as his travel document  
11 is available and removal flight is coordinated.” Dkt. 10-6 at ¶ 15. Even assuming  
12 this is true, it is not an “interview”—it is merely an officer’s statement and  
13 Mr. Touch’s off-the-cuff response.

14 Section 241.13(i)(3) requires the agency to “afford the alien an opportunity  
15 to respond to the reasons for revocation *stated in the notification*.” (emphasis  
16 added). Here, the Notice of Revocation simply asserted that there were “changed  
17 circumstances,” which is “not enough” to comply with the regulations. *Sarail A.*  
18 *v. Bondi*, 2025 WL 2533673, at \*3. And by not telling Mr. Touch that this  
19 interview provided him an “opportunity to respond to the reasons for revocation,”  
20 the agency gave him no meaningful notice of his right to do so.

21 In sum, the agency committed two regulatory violations: 1) the Notice of  
22 Revocation did not explain the reasons for the revocation; and 2) simply telling  
23 Mr. Touch that he is going to be removed and recording his response is not the  
24 same as providing a mandatory interview where he is told that he has an  
25 “opportunity to respond to the reasons for revocation.” 8 C.F.R. § 241.13(i)(3).  
26 The Court should grant the habeas or the TRO on this basis alone and order  
27 Mr. Touch released.

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1 **II. This Court may defer ruling on Claims Two and Three.**

2 Should this Court grant the petition or TRO on the basis of Claim One and  
3 order Mr. Touch immediately released, it need not reach Claims Two and Three.  
4 And if it denies relief on Claim One, it should defer ruling on Claims Two and  
5 Three until after December 3, 2025, to determine whether Mr. Touch is actually  
6 removed to Cambodia. Although Respondents claim to have booked a flight to  
7 Cambodia for Mr. Touch on that date, the agency has failed to successfully  
8 remove individuals on commercial flights in other cases. If the agency is similarly  
9 unsuccessful in Mr. Touch's case, the Court may then revisit the *Zadvydas*  
10 argument in Claim Two. Given that Respondents do not assert an intent to remove  
11 Mr. Touch to a third country, the Court may also defer ruling on Mr. Touch's  
12 third-country removal claim until that time.

13 **Conclusion**

14 For all these reasons, this Court should grant the petition, or at least enter a  
15 temporary restraining order and injunction, and order Mr. Touch's immediate  
16 release.

17  
18 Respectfully submitted,

19 Dated: November 20, 2025

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