

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA

THUC DY DANG NGUYEN,

*Petitioner-Plaintiff,*

v.

LADEON FRANCIS, in his official capacity as Field Office Director, Atlanta Field Office, U.S. Immigration and Customs Enforcement; JASON STREEVAL, in his official capacity as Warden, Stewart Detention Center; TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; and PAMELA BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

*Respondents-Defendants.*

Case No. \_\_\_\_\_

**Verified Petition for Writ of Habeas  
Corpus and Complaint for  
Declaratory and Injunctive Relief**

**INTRODUCTION**

1. This case challenges the Government's sudden and unlawful re-detention of Thuc Dy Dang Nguyen<sup>1</sup> on October 16, 2025. Like thousands of other Vietnamese nationals with final orders of removal, Mr. Nguyen had been living in his community under supervised release for over a decade before Immigration and Customs Enforcement (ICE) abruptly revoked his release and arrested him. Mr. Nguyen currently remains detained at Stewart Detention Center in Lumpkin, Georgia – hundreds of miles away from his pregnant wife and three young children, all of whom are U.S. citizens.

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<sup>1</sup> Mr. Nguyen's first name may appear incorrectly as "Dy Thuc" in various DHS or EOIR documents.

2. Mr. Nguyen has lived in the United States for 27 years; 12 of those years have been under supervised release from ICE because Vietnam will not accept him for repatriation.

3. Under supervised release, Mr. Nguyen has built a quiet and purposeful life for himself in Lawrenceville, Georgia. He is a husband, a working father, and an active member of his local church, where he serves as a deacon and Sunday school teacher.

4. By ICE's own determination, Mr. Nguyen presents neither a danger to the community nor a flight risk. Moreover, Mr. Nguyen has, for many years now, continued to comply with all the conditions of his supervised release, including attending regularly scheduled check-ins with ICE.

5. On October 16, 2025, ICE re-detained Mr. Nguyen without any notice or opportunity to be heard; without making any of the findings required to justify revocation of his release; and without evidence that Vietnam has or will issue him a travel document. Upon information and belief, the ICE official who revoked Mr. Nguyen's release lacked authority to do so.

6. Mr. Nguyen's arrest at the ICE Field Office in Atlanta when he reported on October 16, 2025, constitutes the third time ICE has detained Mr. Nguyen and the second time it has improperly revoked his Order of Supervision. The previous time ICE revoked Mr. Nguyen's release – in November of 2017 – it detained him for nearly six months before releasing him again on an Order of Supervision because it still could not obtain the necessary travel documents to deport him to Vietnam.

7. ICE's arrest and detention of Mr. Nguyen without notice, an opportunity to be heard, or specific findings by an authorized decisionmaker justifying revocation of release violate Mr. Nguyen's rights to due process under the Fifth Amendment, as well as ICE's own rules and

regulations.

8. Because Mr. Nguyen does not pose a risk of flight or danger to the community and is unlikely to be deported in the foreseeable future, his detention serves no legitimate governmental purpose. Immigration detention that does not serve a valid, non-punitive purpose violates 8 U.S.C. § 1231(a)(6) and the Fifth Amendment.

9. Accordingly, this Court should order Mr. Nguyen's immediate release and enjoin Respondents from re-detaining him without due process or individualized evidence that his removal is reasonably foreseeable.

### PARTIES

10. Petitioner-Plaintiff (Petitioner) Thuc Dy Dang Nguyen is a Vietnamese national who has lived in the United States for 27 years. He resides with his wife and children in Lawrenceville, Georgia and is currently detained at Stewart Detention Center in Lumpkin, Georgia.

11. Respondent-Defendant (Respondent) LaDeon Francis is sued in his official capacity as the Director of the Atlanta Field Office for Immigration and Customs Enforcement (ICE) within the United States Department of Homeland Security (DHS). In this capacity, Respondent-Defendant Francis has legal custody over Mr. Nguyen and is authorized to order his release.

12. Respondent-Defendant Jason Streeval is sued in his official capacity as Warden of Stewart Detention Center (Stewart) in Lumpkin, Georgia, where Mr. Nguyen is currently detained. As Warden, he is responsible for the operations of Stewart, including overseeing the people in the facility's custody and, as such, is Mr. Nguyen's immediate custodian.

13. Respondent-Defendant Todd Lyons is sued in his official capacity as the Acting

Director of ICE. In this role, he is responsible for ICE's policies, practices, and procedures, including those related to the detention of immigrants.

14. Respondent-Defendant Kristi Noem is sued in her official capacity as the Secretary of DHS. In this capacity, she is responsible for the administration and enforcement of immigration laws under Section 103(a) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1103(a) and oversees ICE.

15. Respondent-Defendant Pamela Bondi is Respondent Pamela Bondi is named in her official capacity as Attorney General of the United States. In this capacity, she is responsible for the administration of immigration laws under Section 103(a) of the INA, 8 U.S.C. § 1103(g).

#### **JURISDICTION AND VENUE**

16. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as defendant), 28 U.S.C. § 2241 (habeas jurisdiction), 28 U.S.C. § 1651 (All Writs Act), Article I, Section 9, clause 2 of the U.S. Constitution (the Suspension Clause), and the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

17. Venue is proper in the Middle District of Georgia under 28 U.S.C. § 1391 because Respondents Lyons, Noem, and Bondi are federal officers sued in their official capacity; Respondent Streeval resides in this District; Mr. Nguyen is currently detained in this District; and a substantial part of the events or omissions giving rise to this action occurred in this District. Venue is also proper under 28 U.S.C. § 2241 because Mr. Nguyen is currently detained in this District.

#### **LEGAL FRAMEWORK**

18. Following a final order of removal, ICE is directed by statute to detain an individual for 90 days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This 90-day period, also known as “the removal period,” generally commences as soon as a removal order becomes administratively final. *Id.* § 1231(a)(1)(A), § 1231(a)(1)(B).

19. If ICE fails to remove an individual during the 90-day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. *Id.* § 1231(a)(3) (“If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision.”). Limited exceptions to this rule exist. Specifically, ICE “may” detain an individual beyond 90 days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. *Id.* § 1231(a)(6). However, ICE’s authority to detain an individual beyond the removal period under such circumstances is not boundless. Rather, it is constrained by the constitutional requirement that detention “bear a reasonable relationship to the purpose for which the individual [was] committed.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citations omitted). Because the principal purpose of the post-final-order detention statute is to effectuate removal, detention bears no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

20. The United States Supreme Court has accordingly construed Section 1231(a)(6) as authorizing post-final order detention only for a “period reasonably necessary to secure removal,” a period that the Court determined to be presumptively six months. *Id.* at 699-701. After this six-month period, if a detainee provides “good reason” to believe that his or her removal is not significantly likely in the reasonably foreseeable future, “the Government must respond with evidence sufficient to rebut that showing.” *Id.* at 701. If the government cannot do so, the individual must be released.

21. However, detainees are entitled to release even before six months of detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after 90 days where removal not reasonably foreseeable). Moreover, as the period of post-final-order detention grows, what counts as “reasonably foreseeable” must conversely shrink. *Zadvydas*, 533 U.S. at 701.

22. Even where detention meets the *Zadvydas* standard for reasonable foreseeability, detention violates the Due Process Clause unless it is “reasonably related” to the government’s purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 (“[I]f removal is reasonably foreseeable, the habeas court should consider the risk of the alien’s committing further crimes as a factor *potentially* justifying confinement within that reasonable removal period”) (emphasis added); *id.* at 699 (purpose of detention is “assuring the alien’s presence at the moment of removal”); *id.* at 690-91 (discussing twin justifications of detention as preventing flight and protecting the community).

23. Two regulations, 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13, govern release and re-detention following a final order of removal.

24. 8 C.F.R. § 241.4 sets forth a mandatory custody review process for noncitizens detained beyond the 90-day removal period known as the post-order custody review. During post-order custody reviews, ICE must consider release of individuals who pose no danger or flight risk, 8 C.F.R. § 241.4(e)-(f). Among the factors considered during these custody determinations are “ties to the United States such as the number of close relatives residing here lawfully”; whether the noncitizen “is a significant flight risk”; and “any other information that is probative of whether” the noncitizen is likely to “adjust to life in a community,” “engage in future acts of violence,” “engage in future criminal activity,” pose a danger to themselves or others, or “violate the

conditions of his or her release from immigration custody pending removal from the United States.” § 241.4(f). Before releasing a noncitizen under this process, ICE *must* conclude that the noncitizen is “not likely to pose a threat to the community following release” and “does not pose a significant flight risk if released.” 8 C.F.R. §§ 241.4(e), (6).

25. 8 C.F.R. § 241.13 creates “special review procedures” for noncitizens who demonstrate “good reason to believe” that their removal is not significantly likely in the reasonably foreseeable future. 8 C.F.R. § 241.13(a). If ICE determines at the conclusion of these procedures that there is no significant likelihood of removing the noncitizen in the reasonably foreseeable future, the noncitizen is entitled to prompt release, absent any “special circumstances justifying continued detention.” 8 C.F.R. § 241.13(g)(1). If, on the other hand, removal is reasonably foreseeable, section 241.4 will continue to govern post-order detention. 8 C.F.R. § 241.13(g)(2).

26. Individuals with final orders who are released after a post-order custody review or after a determination that their removal is not reasonably foreseeable are subject to orders of supervision. 8 C.F.R. § 241.4(j) and § 241.13(h)(1). After an individual has been released on an order of supervision, ICE cannot revoke such an order without cause or adequate legal process.

27. Under the regulations, ICE has no cause to re-detain a person whose release was based on an unlikelihood of removal unless the person violates conditions of release or unless ICE determines, based on a change in circumstances, that removal is now reasonably foreseeable. 8 C.F.R. § 241.13(i).

28. For noncitizens released after a post-order custody review, the regulations set forth specific reasons that an order of supervision may be revoked. 8 C.F.R. § 241.4(l)(2) (authorizing revocation of release where the purposes of release have been served; the noncitizen violates any condition of release; it is appropriate to enforce a removal order; or the conduct of the

noncitizen, or any other circumstance, indicates that release would no longer be appropriate) However, because “[r]egulations cannot circumvent the plain text of the statute[,]” courts question whether these regulations are ultra vires of statutory authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

29. Only certain ICE officials have the authority to revoke an order of supervision under 8 C.F.R. § 241.4—specifically: the ICE Executive Associate Director, a field office director, or an official “delegated the function or authority . . . for a particular geographic district, region, or area.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intends to revoke an order of supervision, they must first make findings that “revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay*, 781 F. Supp. 3d at 161 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not include the power to revoke release” insufficient to grant authority to revoke an order of supervision).

30. Upon revocation of an order of supervision, ICE must notify the noncitizen of the reasons for revocation and facilitate a prompt interview to afford the noncitizen an opportunity to respond to the stated reasons for revocation. 8 C.F.R. §§ 241.4(l)(1) and 241.13(i)(3).

**STATEMENT OF FACTS AND PROCEDURAL HISTORY**

*Repatriation of Vietnamese Nationals*

31. In 2008, after ten years of negotiation, Vietnam and the United States executed a repatriation agreement to govern the repatriation of certain Vietnamese immigrants with final orders of removal to Vietnam. Before this agreement was negotiated, Vietnam refused to repatriate the overwhelming majority of Vietnamese immigrants ordered removed from the United States.

32. The repatriation agreement officially opened the door for repatriation of Vietnamese immigrants who arrived to the United States on or after July 12, 1995. However, Vietnam continues to accept only a limited number of persons for repatriation each year and still regularly refuses to issue travel documents.

33. Before a Vietnamese immigrant without a passport or other travel document can be repatriated, Vietnam must issue a passport or other travel document in response to a request from ICE. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020).

34. The process for requesting a travel document from Vietnam requires the submission of a document package, including documents pertaining to the person's biography, citizenship, and criminal history. Upon request, the Vietnamese government may also interview individuals considered for repatriation about their Vietnamese citizenship, biographical data, and last place of residence.

35. Moreover, the repatriation agreement states that Vietnam will consider each person for repatriation on a case-by-case basis, after determining nationality and taking into account "the humanitarian aspect, family unity[,] and circumstances of each person in each individual case."

36. Upon information and belief, the Vietnamese government's process for determining whether to issue a travel document can be complex and lengthy and may include

outreach to members of the person's family to verify the person's past or present ties to Vietnam.

37. Because of the Vietnamese government's overall lack of cooperation, the United States government has been unable to carry out most orders of removal to Vietnam. Consequently, ICE has for years routinely released Vietnamese immigrants with final orders of removal from immigration custody upon or even before expiration of the 90-day removal period. Thousands of Vietnamese returned to their families, their jobs, and their communities and built productive, peaceful lives following completion of their removal proceedings.

#### *ICE's Unlawful Re-Detention Practices*

38. Signed in January 2025, Executive Order 14165 announced a massive expansion of immigration detention. Exec. Order No. 14165, 90 Fed. Reg. 8467 (Jan. 20, 2025). The order directed the Secretary of Homeland Security to detain all noncitizens found to be in violation of immigration law until their successful removal from the United States "to the fullest extent permitted by law." *Id.* §5.

39. In February 2025, ICE circulated an internal memorandum to its Enforcement and Removal Operations (ERO) officers issuing guidance on how to carry out the order's immigration detention directives.<sup>2</sup> The memo encourages ERO officers to re-detain immigrants previously released due to ICE's inability to deport them in consideration of "significant gains" made with historically uncooperative countries and the potential for third country removals.

40. Consistent with this memo, ICE's aggressive efforts to increase immigration detention over the last eleven months have included the sudden re-arrest of immigrants living peaceably under supervised release. Some of these arrests have occurred when individuals report for their check-ins with ICE. In many cases, ICE has not provided the individuals arrested with

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<sup>2</sup> Nick Miroff and Maria Sacchetti, *Trump Seeks to Fast-Track Deportations of Hundreds of Thousands*, The Washington Post (Feb. 28, 2025) (citing Feb. 18, 2025 memorandum, available at <https://perma.cc/VKT4-ZB2G>).

notice or a prompt opportunity to be heard, as required by their own regulations.

41. ICE's practice of re-arresting immigrants, without notice, an opportunity to be heard, or evidence of an ability to effectuate their removal, has given rise to litigation challenging ICE's unlawful denial of due process.

42. The majority of district courts that have considered the issue have determined that where ICE fails to follow its own regulations in revoking release, detention is unlawful and the petitioner's release is warranted. *See Ceessay*, 781 F. Supp. 3d at 164-66 (finding ICE's failure to provide an informal interview upon revocation, as required by its own regulations, violated due process); *Mbonga v. Raycraft*, No. 4:25-CV-2315, 2025 WL 3122829, at \*4 (N.D. Ohio Nov. 7, 2025) (ordering release in part because of finding that government violated its own regulations by failing to provide notice and an opportunity to respond to reasons for revocation); *Phan v. Noem*, No. 3:25-CV-02422-RBM-MSB, 2025 WL 2898977, at \*4 (S.D. Cal. Oct. 10, 2025) (similar); *Liu v. Carter*, Case No. 25-03036-JWL, 2025 WL 1696526, at \*2 (D. Kan. Jun. 17, 2025) (similar); *see Sarail A. v. Bondi*, No. 25-cv-2144-ECT-JFD, 2025 WL 2533673, at \*2, 10 (D. Minn. Sep. 3, 2025) (recommending release based on government's failure to provide reasons for revocation of release, as required by regulation); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at \*6 (E.D. Cal. Aug. 20, 2025) (similar); *see K.E.O. v. Woosley*, 2025 WL 2553394, at \*6-7 (W. D. Ky. Sep. 4, 2025) (ordering release for ICE's violations of petitioner's due process rights by failing to follow its own regulations); *Orellana v. Baker*, 2025 WL 2444087 (D. Md. Aug. 24, 2025) (lack of any written notice or opportunity to be heard constitute stark violation of due process); *Zhu v. Genalo*, 2025 WL 2452352 at \*9 (S.D.N.Y. Aug. 26, 2025) (failure to provide notice or an interview violated due process).

*Mr. Nguyen's Background and History*

43. Mr. Nguyen is a 39-year-old citizen of Vietnam who came to the United States as a refugee over 27 years ago with his mother and older brother. Though Mr. Nguyen was 12 years old when he ultimately resettled in the United States, his family's journey to seek safety and freedom began much earlier – he was only three years old when his family fled post-war Vietnam by boat.

44. Though Mr. Nguyen and his family safely escaped Vietnam, they languished in a refugee camp in Malaysia for seven years before the refugee camp eventually closed, and they were sent back to Vietnam. In 1998, Mr. Nguyen, along with his mother and brother, were finally accepted into the United States under the Resettlement Opportunities for Vietnamese Returnees (ROVR) Program, which enabled thousands of Vietnamese refugees to apply for resettlement in America. Mr. Nguyen has resided continuously in this country since and became a lawful permanent resident in 2006.

45. Mr. Nguyen's early years in the U.S. were unfortunately mottled with more struggle and upheaval. He lived in a single parent household, moved between states, and was convicted of theft-related offenses, for which he served five years in prison. But in prison, Mr. Nguyen began to turn his life around, earning his GED and deepening his spiritual faith.

46. Mr. Nguyen completed his five-year prison term in 2013, at which time he was immediately transferred to ICE custody and placed in removal proceedings. Ex. 1, Notice to Appear. An immigration judge ordered his removal on July 15, 2013. Ex. 2, Order of Removal. Because Mr. Nguyen waived appeal of his removal order, it became administratively final the same day.

47. After his order became final, Mr. Nguyen remained in ICE custody for 61 days,

or approximately two months. Because Vietnam would not accept Mr. Nguyen for repatriation, ICE released him on September 13, 2013, under an order of supervision. Along with the order of supervision, ICE provided Mr. Nguyen with a release notification that promised him an “opportunity to prepare for an orderly departure” should ICE later secure a travel document that would enable his removal to Vietnam. Ex. 3, Release Notification 2013.

48. Since his release from ICE custody in 2013, Mr. Nguyen has settled into a quiet and meaningful life. With his work authorization, he has been able to maintain steady employment, most recently as a general manager at a pharmacy. United States Citizenship and Immigration Services (USCIS), which is part of DHS, approved Mr. Nguyen’s application for work authorization (employment authorization document) several times under the (c)(18) category, in which USCIS considers whether the noncitizen can be removed in a timely manner. 8 CFR § 241.5(c)(1). He got married in 2016 and a year later, became a father. He is part of a robust faith community and serves as a deacon and Sunday school teacher at his church. He and his wife purchased a home together in Lawrenceville, Georgia, where they live with their three young children.

49. Mr. Nguyen’s wife and three children are all U.S. citizens – as is his brother and both of his parents.

50. Mr. Nguyen’s peaceful life was disrupted in November 2017 when ICE suddenly revoked his Order of Supervision, arresting him in his home while he was getting ready to go to work. He was transferred to Irwin Detention Center in Ocilla, Georgia without explanation.

51. Approximately five months into his detention, Mr. Nguyen filed a petition for writ of habeas corpus, challenging his indefinite detention. *See* Petition for a Writ of Habeas Corpus, *Nguyen v. Bickham*, No. 7:18-cv-57 (M.D. Ga April 11, 2018). In his petition, Mr. Nguyen

alleged that there had been no material change in Vietnam's willingness to accept him for repatriation to justify re-detention for the purpose of executing his removal. Nineteen days later, on April 30, 2018, ICE released Mr. Nguyen on an Order of Supervision. Ex. 4, Order of Supervision 2018. Among the factors considered for release on an order of supervision are ones that relate to the risk of flight and danger to the community. *See* 8 C.F.R. § 241.4(f).

52. Accompanying the Order of Supervision was a notice of release that again assured Mr. Nguyen that he would have "the opportunity to prepare for an orderly departure" if ICE secured a travel document authorizing his return to Vietnam. Ex. 5, Release Notification 2018.

53. Altogether, Mr. Nguyen remained in ICE custody at Irwin Detention Center for a total of 176 days—or nearly six months—from 2017 to 2018.

54. Upon his release in 2018, Mr. Nguyen began exploring legal pathways for Adjustment of Status. In May 2018, Mr. Nguyen's wife filed an I-130 Petition for Alien Relative to begin the process of Mr. Nguyen becoming a Lawful Permanent Resident again. USCIS approved the I-130 Petition on September 24, 2019. As Mr. Nguyen's wife is a U.S. citizen, the approval is for an immediate family category. 8 U.S.C. § 1151.

55. Despite being convicted of an "aggravated felony" for immigration purposes, Mr. Nguyen may be eligible to file a Motion to Reopen with the Executive Office for Immigration Review and apply for re-Adjustment of Status, along with a waiver. *Matter of N-V-G*, 28 I&N Dec. 380 (BIA 2021). If successful with a Motion to Reopen and an application for Adjustment of Status and waiver, Mr. Nguyen would become a Lawful Permanent Resident again.

56. Upon his release in 2018, Mr. Nguyen also returned to living and working peaceably in his community. He continued to periodically check in with ICE and comply with

all other conditions of his order of supervision.

57. No circumstances have changed since Mr. Nguyen's 2018 release on an Order of Supervision that make Mr. Nguyen a flight risk or danger to the community or likely to be removed in the foreseeable future.

58. But on October 16, 2025, ICE suddenly revoked Mr. Nguyen's Order of Supervision and arrested him at the Atlanta ICE Field Office.

59. Though Mr. Nguyen was not due for his annual check-in with ICE until November 19, 2025, he received a letter in the mail directing him to report to the Atlanta ICE Field Office for a "Case Review / update / annual reporting" ahead of schedule. While the letter instructed him to report on October 14, he did not receive the letter until October 15. Consequently, Mr. Nguyen promptly reported to the field office the following morning, October 16.

60. At the field office, ICE officers asked Mr. Nguyen a series of biographical questions about him and his family. They also took Mr. Nguyen's fingerprints and instructed him to complete a form containing 15 questions. During this interaction, Mr. Nguyen fully cooperated with ICE's questioning of him.

61. At no point did any of the arresting officers notify Mr. Nguyen of the reasons they were revoking his release and taking him back into custody. Nor has ICE, at any time since the arrest, informed Mr. Nguyen of the reason for his re-detention or afforded him an opportunity to respond. Though Mr. Nguyen's counsel requested his revocation of release, ICE has still not provided it to Mr. Nguyen or his attorneys.

62. Upon information and belief, the ICE official who revoked Mr. Nguyen's release did not refer the case to the ICE Executive Associate Director; did not find that revocation of Mr. Nguyen's release was in the public interest; did not find that referral to the Executive

Associate Director was not reasonably possible; and did not have delegated authority to revoke the order of supervision.

63. Upon information and belief, at the time that ICE revoked Mr. Nguyen's Order of Supervision, it had not secured travel documents necessary for Mr. Nguyen's removal from the United States.

64. After his arrest, ICE transferred Mr. Nguyen to Stewart in Lumpkin, Georgia, where he is currently detained.

65. At Stewart, Mr. Nguyen has been unable to receive adequate medical care. Mr. Nguyen has high blood pressure and Type II diabetes for which he takes a daily pill and a weekly injection, respectively. While Mr. Nguyen has been able to obtain blood pressure medication, he has been without treatment for his diabetes.

66. ICE's detention of Mr. Nguyen has separated him from his community and family, including his three young children – ages eight, four, and one and a half – and wife, who is currently pregnant with their fourth child.

67. To date, the aggregate amount of time Mr. Nguyen has spent in post-order detention – including his periods of detention in 2013 and 2017 – is 279 days, or over nine months.

### **CLAIMS FOR RELIEF**

#### **Count One**

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

68. Mr. Nguyen incorporates by reference all preceding paragraphs as if fully set forth here.

69. The Fifth Amendment to the U.S. Constitution provides that “[n]o person . . . shall be . . . deprived of life, liberty, or property, without due process of law.” U.S. Const., amend.

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70. The Fifth Amendment’s due process protections extend to all individuals within the United States, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

71. ICE’s revocation of Mr. Nguyen’s order of supervision constitutes a deprivation of liberty under the Due Process Clause of the Fifth Amendment. “Freedom from imprisonment—from government custody, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.* at 690.

72. “The fundamental requirement of procedural due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Due process calls for “such procedural protections as the particular situation demands,” taking into account the governmental and private interests affected, as well as the risk of erroneous deprivation of a constitutionally protected interest. *Id.* at 334-35.

73. Mr. Nguyen has a strong private interest in remaining out of custody so that he can continue raising his three young children, financially supporting his family, taking care of his pregnant wife, and living the spiritually rich life he has built over the course of nearly three decades in the United States. He also has a strong interest in enjoying the “opportunity to prepare for an orderly departure” – which was explicitly guaranteed to him in his release notification – should ICE successfully procure a travel document for him. *See Ragbir v. Sessions*, 2018 WL 623557 (S.D. N.Y. January 29, 2018) (finding sudden re-detention of a noncitizen under supervised release for years with “no showing or even intimation that he would have fled or hidden to avoid leaving as directed” violated due process and was “unnecessarily cruel”); *Rombut v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (holding ICE violated the Due Process Clause by re-detaining

a noncitizen without allowing him time to prepare for an orderly departure).

74. Moreover, the risk of erroneous deprivation of Mr. Nguyen’s liberty interest is high because the “sole procedural protections” associated with detention are found in administrative proceedings, where the noncitizen bears the burden of proving he should be released. *See Zadvydas*, 533 U.S. at 692 (commenting that “[t]he Constitution demands greater procedural protection” than that provided by the regulations “even for property”).

75. The value of additional procedural safeguards – namely, a hearing before a neutral arbiter – would be significant, affording Mr. Nguyen the opportunity to rebut the government’s evidence, if any, that his re-detention is necessary. On the other hand, the government’s interest in re-detaining Mr. Nguyen without a hearing is weak, given that he has been living in the community without incident and reporting to ICE for over a decade.

76. Due process therefore demands that Mr. Nguyen be afforded notice and a hearing in front of a neutral adjudicator to determine whether his re-detention is warranted. The government’s failure to provide Mr. Nguyen notice or hearing before revocation of his release – or even to satisfy the minimal process required by ICE’s own regulations – violated Mr. Nguyen’s due process rights and entitles him to release.

**Count Two**  
**Violation of the Fifth Amendment of the U.S. Constitution**  
**Substantive Due Process**

77. Mr. Nguyen incorporates by reference all preceding paragraphs as if fully set forth here.

78. The Due Process Clause of the Fifth Amendment also requires detention to “bear a reasonable relationship” to the purpose for which an individual is detained. *Zadvydas v. Davis*, 533 U.S. at 690. Post-final-order detention bears no reasonable relation to its principal

purpose if removal cannot be effectuated. *Id.* at 697.

79. ICE's re-detention of Mr. Nguyen violates his right to substantive due process because ICE has not demonstrated that his removal is reasonably foreseeable. *See Zinermon v. Burch*, 494 U.S. 113, 125 (explaining that the Due Process Clause "bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them") (internal quotation marks and citation omitted); *Zadvydas*, 533 U.S. at 696 (finding a "serious question as to whether" indefinite detention is unconstitutional "irrespective of the procedures used").

80. Having previously released Mr. Nguyen – twice – on an Order of Supervision, the government now bears the burden of showing that Mr. Nguyen's removal is significantly likely in the reasonably foreseeable future. *See Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113 at \*3 (E.D. Tex. Aug. 2, 2025) (finding that 8 C.F.R. §§ 241.4 and 241.13 clearly indicate that upon revocation of release, the government bears the burden of demonstrating that the noncitizen's removal is reasonably foreseeable). And to satisfy its burden, the government cannot simply rely on generalized evidence of the possibility of repatriation to Vietnam but must present particularized evidence that Mr. Nguyen's removal is reasonably foreseeable. *See Nguyen v. Hyde*, 788 F. Supp. 3d 144, 152 (D. Mass. 2025) (finding ICE failed to show it had made an individualized determination that the petitioner's removal was reasonably foreseeable because ICE neither had travel documents for petitioner nor any indication of approval from the Vietnamese government); *Nguyen v. Bondi*, No. EP-25-CV-323-KC, 2025 WL 3120516, at \*7 (W.D. Tex. Nov. 7, 2025) (finding no change in circumstances making the petitioner's removal likely where ICE simply presented evidence of removal of over 400 Vietnamese nationals to Vietnam in 2025 without more specifically assessing the petitioner's particular circumstances).

81. The government cannot and has not met its burden. ICE has for over a decade

been unable to secure travel documents necessary to remove Mr. Nguyen. Upon information and belief, Vietnam still has not issued Mr. Nguyen these travel documents, and the government has presented no individualized evidence that it will do so in the reasonably foreseeable future.

82. Nor does Mr. Nguyen's re-detention—after twelve years of supervised release—bear any relationship to the governmental purposes of preventing flight and protecting the community. Since his initial release on an order of supervision in 2013, Mr. Nguyen has been an upstanding member of his community. He has not been arrested or convicted of any further crimes. He has fully complied with every condition of his orders of supervision, including regularly checking in with ICE. He has maintained steady employment and reintegrated fully into his community.

83. ICE's previous re-detention of Mr. Nguyen in November 2017 shows a pattern of impermissible government conduct and underscores the arbitrariness of Mr. Nguyen's current detention. At that time, Mr. Nguyen was re-arrested as part of ICE's mass detention campaign targeting Vietnamese immigrants. ICE then kept Mr. Nguyen in detention for nearly six months, releasing him only after he filed a petition for writ of habeas corpus and without ever showing the court cause for his detention.

84. Now, as then, Mr. Nguyen's removal is not practically attainable, and he poses no danger or flight risk. Consequently, his re-detention is punitive in effect and violates the Due Process Clause. He is therefore entitled to immediate release under an order of supervision.

**Count Three**  
**Violation of the Immigration and Nationality Act, 8 U.S.C. 1231(a)**

85. Mr. Nguyen incorporates by reference all preceding paragraphs as if fully set forth here.

86. Post-final removal order detention also violates Section 1231 where removal is

not significantly likely to occur in the reasonably foreseeable future. *Zadvydas*. 533 U.S. at 678.

87. Mr. Nguyen's has demonstrated "good reason to believe" that his removal is not reasonably foreseeable because ICE has for twelve years failed to secure from Vietnam the necessary travel documents to effectuate removal. *Id.* at 701. The burden has thus shifted to Respondents to produce individualized evidence to rebut Mr. Nguyen's showing. *Id.* at 681.

88. Moreover, because of the significant cumulative length of Mr. Nguyen's post-final order detention—over nine months—the government bears a heightened burden to show a compelling justification for the severe deprivation of Mr. Nguyen's liberty. *See Zadvydas*, 533 U.S. at 701 (holding that as the length of detention under 8 U.S.C. § 1231 grows, so too does the government's burden to demonstrate that removal is "reasonably foreseeable").

89. Where there is no significant likelihood of his removal in the reasonably foreseeable, Mr. Nguyen's continued detention is indefinite and violates Section 1231. He is entitled under the law to immediate release on an order of supervision.

#### **Count Four**

##### **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). (B) Contrary to Law and Constitutional Right**

90. Mr. Nguyen incorporates by reference all preceding paragraphs as if fully set forth herein.

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

92. Respondents' re-detention of Mr. Nguyen is not in accordance with law because it runs afoul of the Due Process Clause, the Immigration and Nationality Act, and implementing regulations governing revocation of release, 8 C.F.R. § 241.4 and § 241.13.

93. Before revoking Mr. Nguyen's release, Respondents did not make findings that Mr. Nguyen is dangerous or unlikely to comply with a removal order. Nor was the revocation of release justified by any findings, based on particular and individualized evidence, that Mr. Nguyen's removal is reasonably foreseeable.

94. Respondents likewise did not make any findings that satisfy additional justifications for revocation of release under 8 C.F.R. § 241.4 and § 241.13.

95. To the extent that Respondents revoked Mr. Nguyen's order of supervision pursuant to 8 C.F.R. § 241.4, the revocation was not executed by the ICE Executive Associate Director or another official vested with authority under the regulation. Courts have repeatedly found revocations by unauthorized officials to be unlawful. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D.N.Y. 2025) (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386–89); *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025).

96. Furthermore, Respondents revoked Mr. Nguyen's Order of Supervision without notice of the particularized reasons for the revocation or an opportunity to be heard, as required by 8 C.F.R. §§ 241.4(l) and 241.13(i), as well as by due process. The revocation of Mr. Nguyen's release should be set aside as unlawful because it was contrary due process and not in accordance with the INA and implementing regulations.

**Count Five**  
**Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)**  
**Arbitrary and Capricious**

97. Mr. Nguyen incorporates by reference all preceding paragraphs as if fully set forth here.

98. The APA requires a court to "hold unlawful and set aside agency action,

findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

99. The APA requires that an agency provide “a satisfactory explanation for its action[,] including a rational connection between the facts and the choice made.” *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted). An agency decision is arbitrary and capricious if it “runs counter to the evidence,” *id.*, or “fail[s] to consider important aspects of the problem” before it. *Dep’t. of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 25 (2020).

100. Revocation of Mr. Nguyen’s release was arbitrary and capricious because the evidence before ICE evinced no permissible reason for his re-detention. Mr. Nguyen clearly poses no risk of flight or danger to the community. He has lived peaceably among his community since 2013 and has fully complied with all conditions of his Order of Supervision.

101. Nor can Respondents justify their revocation of Mr. Nguyen’s release based on facts that convincingly indicate that Mr. Nguyen’s removal is reasonably foreseeable. ICE has been unable to remove Mr. Nguyen to Vietnam for over a decade now and still does not have the necessary travel documents to effectuate his removal.

102. Because Respondents have failed to articulate a reasoned explanation for Mr. Nguyen’s re-detention in light of all available evidence, their decision to revoke Mr. Nguyen’s release is arbitrary and capricious. This court should accordingly set aside this decision as unlawful and order Mr. Nguyen’s immediate release.

**Count Seven**  
**Violation of the *Accardi* Doctrine**

103. Mr. Nguyen incorporates by reference all preceding paragraphs as if fully set forth here.

104. Under the *Accardi* doctrine, Mr. Nguyen has a right to set aside agency action that violated agency procedures, rules, or instructions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (“If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing”).

105. Respondents violated agency regulations governing who and upon what findings they may properly revoke an Order of Supervision. Specifically, Respondents did not find any change in circumstances that make Mr. Nguyen a flight risk or danger to the community or likely to be removed in the foreseeable future, as required under their regulations governing revocation of release. Moreover, upon information and belief, the official who revoked Mr. Nguyen’s release was unauthorized under 8 C.F.R. § 241.4 to make such decision.

106. Respondents also failed to follow their procedures and rules regarding what process is due to noncitizens upon revocation of release. They did not notify Mr. Nguyen of the reasons for re-detention or afford him an opportunity to respond.

107. Moreover, by revoking Mr. Nguyen’s release without any pre-detention notice, Respondents also violated agency instructions contained in Mr. Nguyen’s release notification to give him time to prepare for an orderly departure.

108. Under *Accardi*, Respondents’ revocation of the Order of Supervision and decision to ignore instructions in the release notification should be set aside for violating agency procedures, rules, or instructions.

**Count Eight**  
**Violation of the Administrative Procedure Act, 5 U.S.C. §**  
**706(2)(C) In Excess of Statutory Authority**

109. Mr. Nguyen incorporates by reference all preceding paragraphs as if fully set forth here.

110. Under the APA, a court shall “hold unlawful and set aside agency action . . . found to be in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

111. An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute.” *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).

112. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal “is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances. . . .” *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

113. Regulations that purport to give Respondents authority to revoke an order of supervision on grounds other than those listed § 1231(a)(6) are ultra vires and in excess of statutory authority because “[r]egulations cannot circumvent the plain text of the statute.” *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018).

114. To the extent that revocation of Mr. Nguyen’s order of supervision was based on ultra vires regulations, such revocation exceeded statutory authority and should accordingly be set aside as unlawful.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner requests that this Court:

- a. Exercise jurisdiction over this matter;
- b. Enjoin Petitioner's unlawful removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;
- c. Issue an order directing Respondents to show cause within three days;
- d. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- e. Declare that Respondents' revocation of Petitioner's order of supervised release was unlawful;
- f. Award Petitioner costs and reasonable attorneys' fees; and
- g. Order such other and further relief as this Court may deem just and proper.

Dated: November 26th, 2025

Respectfully submitted,

/s/ Matthew O. Boles

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*\*pro hac vice application forthcoming*

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

I am submitting this verification on behalf of the Petitioner-Plaintiff because I am the Petitioner-Plaintiff's attorney. I have discussed with the Petitioner-Plaintiff the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

Dated: November 26, 2025

/s/Phi Nguyen

*Attorney for Petitioner-Plaintiff*