

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

THO PHUOC NGUYEN,)	
)	Case No. 25-cv-05876
Petitioner,)	
)	PETITION FOR WRIT OF
v.)	HABEAS CORPUS
)	
RANDALL TATE Warden, Montgomery)	
Processing Center, BRET BRADFORD,)	
Houston Field Office Director, TODD)	
LYONS, Director U.S. Immigrations and)	
Customs Enforcement, and KRISTI)	
NOEM, U.S. Secretary of Homeland)	
Security,)	
)	
Respondents.)	
_____)	

INTRODUCTION

1. Petitioner Tho Phuoc Nguyen is a national of Vietnam with a final order of removal and, until recently, was residing in the United States lawfully pursuant to his Order of Supervision (“OSUP”). On information and belief, he was unlawfully detained by federal immigration agents on November 6, 2025.
2. Petitioner’s final order of removal was entered on April 5, 2004 and is administratively final. The 90-day removal period provided by 8 U.S.C. § 1231(a) has long passed. Petitioner has been subject to an OSUP and regularly

reporting to Immigration & Customs Enforcement (“ICE”) for approximately 21 years.

3. Petitioner has complied in all respects with his order of supervision and the revocation of that order as well as Petitioner’s detention were in violation of the law.
4. Accordingly, to vindicate Petitioner’s constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.
5. Petitioner asks this Court to find that he was unlawfully detained and order his release.

JURISDICTION

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).
7. Venue is proper because Petitioner was arrested and detained in Houston, Texas, and on information and belief continues to be held in Conroe, Texas, which is located in the Southern District of Texas.

THE PARTIES

8. The Petitioner, Tho Phuoc Nguyen, resides in Houston, Texas.
9. Respondent Bret Bradford is the Houston Field Office Director for U.S. Immigration and Customs Enforcement and is Petitioner’s legal custodian.
10. Respondent Todd Lyons is the Director for U.S. Immigration and Customs

Enforcement.

11. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security.
12. Respondent Randall Tate is the Warden of the Montgomery Processing Center and is petitioner's immediate physical custodian.
13. All respondents are named in their official capacities.

RELEVANT LEGAL CONTEXT

Removal to Vietnam

14. Whether a noncitizen from Vietnam is likely to be removed to Vietnam has long come down to one simple question: did the noncitizen enter the United States before July 12, 1995? If the answer to that question is “yes”, then they are unlikely to be removed to Vietnam. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020) (providing a historical overview of removals to Vietnam and the issues surrounding repatriation from those who entered the U.S. prior to July 1995).
15. On January 22, 2008, following almost ten years of diplomatic negotiations, the United States and Vietnam reached an agreement which created the first framework for Vietnam to start considering repatriation requests for certain Vietnamese immigrants.” Exhibit 4—2008 Repatriation Agreement (“2008 MOU”). Specifically, it established a process for the repatriation of

Vietnamese nationals who had arrived in the United States on or after July 12, 1995. *Trinh*, 466 F. Supp. 3d at 1081-84. The selection of this date was not arbitrary; it marks the day the U.S. and Vietnam formally re-established diplomatic relations after decades of hostility following the Vietnam War. *Id.*

16. The agreement includes a provision that states: “Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995.” *Id.* Relying on this provision, Vietnam continued its policy of non-repatriation for pre-1995 Vietnamese immigrants after 2008.
17. The written terms of the 2008 MOU were matched by a consistent course of conduct by both governments for nearly a decade. The administrations of both President George W. Bush, who signed the agreement, and President Barack Obama recognized and honored the protection for pre-1995 refugees. In line with the agreement, the government of Vietnam consistently refused to issue the necessary travel documents for any pre-1995 individual whom the U.S. sought to remove. *Id.*
18. Recognizing the legal and practical impossibility of effectuating these removals, ICE maintained a consistent, nationwide policy of releasing pre-1995 Vietnamese nationals from custody within the 90-day removal period and placing them on an OSUP. *Trinh*, 466 F. Supp. 3d at 1083. This practice acknowledged the legal constraints on detention authority established by

Zadvydas. Because removal was not reasonably foreseeable, prolonged detention was not legally permissible.

19. Beginning in 2017, the Trump administration initiated a concerted effort to pressure Vietnam to begin accepting the repatriation of pre-1995 arrivals. Exhibit 5—2020 Memorandum of Understanding Advisory (discussing impact of changes during the first Trump administration). This effort was predicated on a new, unilateral reinterpretation of the 2008 MOU by the U.S. government.
20. As a result, ICE abruptly abandoned its longstanding practice of releasing pre-1995 individuals within 90 days. *Trinh*, 466 F.Supp.3d at 1084. Instead, it began subjecting this population to prolonged and often indefinite detention, with some individuals being held for many months and, in some cases, over a year. *Id.* at 1081-84.
21. This dramatic shift in policy led to a class-action lawsuit filed in a California district court, *Hoang Trinh, et al v. Thomas D. Homan, et al*, 466 F.Supp.3d 1077 (C.D. Cal. 2020), which challenged the legality of ICE's detention of noncitizens from Vietnam who entered the U.S. prior to 1995. The plaintiffs contended that the prolonged detention of this class of immigrants violated the immigration statute and the Due Process Clause of the Constitution, and argued that the removal of this class of individuals was not reasonably

foreseeable based on the 2008 MOU's language and Vietnam's consistent policy of refusing to issue travel documents. *Id.*

22. During the course of the litigation, the government admitted that it was "generally unable to deport pre-1995 immigrants" and agreed to revert to its prior policy of releasing them from custody within 90 days of their removal orders becoming final. *Id.* at 1088. As part of the litigation, ICE agreed to provide quarterly reports containing data surrounding pre-1995 Vietnamese immigrants who had been detained and the status of their travel documents. *See* Exhibit 6—Declaration of Dr. Thao Ha at ¶ 18-19 (discussing *Trinh* reports).

23. After renewed discussions with Vietnam, ICE reversed its position again and acknowledged that the removal of pre-1995 immigrants to Vietnam was not likely. *Trinh*, 466 F.Supp.3d at 1083. In October 2018, ICE instructed field offices to resume the practice of releasing pre-1995 Vietnamese immigrants within 90 days of a final order of removal.

24. In November 2020, the Trump administration succeeded in securing a new Memorandum of Understanding with Vietnam that, for the first time, created a specific process for the removal of pre-1995 arrivals. Exhibit 5—2020

Memorandum of Understanding Advisory (“2020 MOU”).¹

25. Section 4 of the 2020 MOU obliges the U.S. and Vietnam to consider specific factors prior to deciding to remove a Vietnamese citizen and prior to deciding to accept repatriation of Vietnamese citizens. *Id.* These factors are not publicly known because the U.S. government redacted them in Freedom of Information Act (FOIA) disclosures yet they appear to dictate which categories of people may be deported to Vietnam. *Id.*

26. Under Section 8 of the MOU, if a person meets the designated criteria, ICE is expected to put together a documentation package for Vietnam to include, *inter alia*, a self-declaration form of the individual to be removed (using a form attached to the MOU), copies of identity and citizenship documents, and copies of the final order of removal and any criminal records. *Id.* The MOU states that Vietnam intends to issue the travel document within 30 calendar days of receiving the information package when the individual meets the eligibility criteria.

27. While the 2020 MOU created a process to obtain travel documents, the reality is that pre-1995 individuals are still not reasonably likely to be removed to Vietnam. Indeed, ICE’s own reports indicate the 2020 MOU has had a

¹ While this exhibit is an advisory regarding the 2020 MOU, it contains a redacted copy of the MOU that was obtained through the Freedom of Information Act.

statistically negligible effect on the actual removal of pre-1995 Vietnamese nationals. Exhibit 6—Declaration of Dr. Thao Ha at ¶¶ 19-20. The reports reveal that from September 2021 to September 2023 the government of Vietnam issued travel documents for, and ICE subsequently deported, a total of only four individuals who had arrived in the United States before 1995. Exhibit 8—Asian Law Caucus Guide: Resources on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995.

Third Country Removal

28. Since January 2025, Respondents have developed and implemented a policy and practice of removing individuals to third countries, without first following the procedures in the Immigration & Nationality Act for designation and removal to a third country and without providing fair notice and an opportunity to contest the removal in immigration court.

29. Respondents reportedly have negotiated with at least 58 countries to accept deportees from other nations. On June 25, 2025, the New York Times reported that seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are not their own citizens.² Since then, ICE has carried out highly publicized third country

² Edward Wong, et. al., “Inside the Global Deal-Making Behind Trump’s Mass Deportations,” N.Y. Times (June 25, 2025).

deportations to South Sudan and Eswatini, and those removals included pre-Vietnamese nationals with pre-1995 entries to the United States.³ The deportees faced dangerous country conditions and imprisonment.

30. Federal law places restrictions on removal of aliens to countries to which they have no connection, or a country to where their “life or freedom would be threatened.” 8 U.S.C. § 1231(b)(3)(A); *see also Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 348 (2005).

31. Likewise, the Convention Against Torture (“CAT”), as implemented in U.S. law through the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), prohibits Respondents from removing an individual to any country where such individual is more likely than not to face torture by or at the acquiescence of the government. *See* Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note); 8 C.F.R. § 1208.16(c); 8 C.F.R. § 1208.18.

32. The CAT also prohibits refoulement, which includes chain refoulement—where an individual will be sent to a country which will, in turn, send him to another country where he is more likely than not to be tortured.

³ “US Completes Deportation of 8 Men to South Sudan After Weeks of Legal Wrangling”, Associated Press, July 5, 2025, <https://apnews.com/article/trump-south-sudan-djibouti-deport-supreme-court-50f9162cff680b5c8729873e11d514e9> (last visited Dec 8, 2025); Rachel Savage, “Lawyers Say Men Deported by US to Eswatini are Being Imprisoned Illegally,” The Guardian, September 3, 2025, <https://www.theguardian.com/us-news/2025/sep/02/lawyers-say-men-deported-by-us-to-eswatini-are-being-imprisoned-illegally> (last visited Dec 8, 2025).

33. The Trump Administration has hand selected countries known for human rights abuses and instability for these third country deportation agreements to frighten people in the United States into self-deporting or to accept removal to their home countries. Indeed, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first.

34. On July 9, 2025, ICE issued a new memo⁴ to staff instructing that when seeking to remove an individual to a country not designated on that person's removal order, ICE may deport that person without any procedures for notice or an opportunity to be heard if the State Department confirms that it has received diplomatic assurances that individuals will not be persecuted or tortured. If no diplomatic assurances are received, the ICE memo instructs officers to serve on the individual a Notice of Removal that includes the intended country of removal. It instructs officers not to ask whether the individual is afraid of removal to that country. It states that officers should "generally wait at least 24 hours following service of the Notice of Removal before effectuating removal" but that "[i]n exigent circumstances, [ICE] may

⁴ While that memo is not widely available, it was submitted as an exhibit in recent litigation and can be found here: <https://immigrationlitigation.org/wp-content/uploads/2025/04/43-1-Exh-A-Guidance.pdf>.

execute a removal order six (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided reasonable means and opportunity to speak with an attorney prior to removal.”

35. The memo further instructs that if the noncitizen “does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, [ICE] may proceed with removal to the country identified on the notice.” If the noncitizen “does affirmatively state a fear if removed to the country of removal” then ICE will refer the case to U.S. Citizenship and Immigration Services (“USCIS”) for a screening for eligibility for withholding of removal and protection under the Convention Against Torture (“CAT”). “USCIS will generally screen within 24 hours.” If USCIS determines that the noncitizen does not meet the standard, the individual will be removed. If USCIS determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal proceedings “for the sole purpose of determining eligibility for [withholding of removal protection] and CAT” or designate another country for removal.

Revocation of Supervised Release and Arrest

36. Following the initial removal period, a noncitizen who is unlikely to be removed may be released under certain conditions pursuant to an OSUP. 8 C.F.R. §1231(a)(3), (6)

37. Where an individual with a final removal order has been released on supervision, 8 C.F.R. § 241.4(1)(2) provides that only the Executive Associate Commissioner or a district director may revoke supervised release, and the district director may do so only “when, in the district director’s opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner.” That regulation also requires that an individual whose supervised release is revoked be informed as to the reasons why and be given a prompt post-deprivation opportunity to be heard as to why his supervised release should be restored.
38. The revocation of supervised release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen’s release for purposes of removal. Specifically, “ICE’s decision to re-detain a noncitizen like [Petitioner] who has been granted supervised release is governed by ICE’s own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.” *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2)).
39. When ICE makes a determination to re-detain a noncitizen, “the alien will be notified of the reason for revocation of his or her release. [ICE] will conduct an initial informal interview promptly after his or her return to [ICE] custody

to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.” 8 C.F.R. § 241.13(i)(3).

40. The decision to re-detain ICE’s decision to re-detain is governed by the factors laid out in 8 C.F.R. § 241.13(f), including “the history of the [noncitizen’s] efforts to comply with the order of removal, the history of [ICE’s] efforts to remove [noncitizens] to the country in question or to third countries, including the ongoing nature of [ICE’s] efforts to remove [the noncitizen] and the [noncitizen’s] assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of [noncitizens] to the country or countries in question.” *See also Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025).

41. A court may not make this determination in the first instance but may review it for compliance with the regulation. *See Id.; Nguyen v. Hyde*, No. 25-cv-

11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

Detention Beyond Removal Period

42. An order of removal becomes final when the Board of Immigration Appeals completes their review or the time to seek review has expired. *Johnson v. Guzman Chavez*, 594 U.S. 523, 534–35 (2021).

43. Under 8 U.S.C. § 1231(a), the government may detain a noncitizen for removal during the 90-day “removal period,” which begins when the removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(A)-(B)(i).

44. This period may be extended if the noncitizen fails or refuses to make timely application in good faith for travel or other documents necessary to effectuate their departure or conspires or acts to prevent their removal. 8 U.S.C. § 1231(a)(1)(C). It may also be extended if the noncitizen is removable for certain criminal offenses or a determination is made that they are a risk to the community or unlikely to comply with the order of removal. 8 U.S.C. § 1231(a)(6).

45. Even for those who “may” be detained beyond the initial removal period, the regulations call for a custody review both prior to the expiration of the removal period and periodically thereafter. 8 C.F.R. §§ 241.4(k)

46. Beyond that point, the Government may in some situations continue detaining

them for as long as is “reasonably necessary” to secure their removal. *Id.*; 8 U.S.C. § 1231(a)(6). But, under *Zadvydas*, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized.” 533 U.S. at 699.

47. The Supreme Court has recognized a constitutional limitation on post-removal- period detention: such detention is permissible only when there is a “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

48. Although *Zadvydas* contemplated a presumptive six-month period in which post-order detention might be constitutionally permissible, that presumption is subject to rebuttal. *Id.* at 699; *see also Villanueva v. Tate*, 2025 WL 2774610, at *10 (S.D. Tex. Sept. 26, 2025) (“[T]he presumption of constitutionality during that six-month period is rebuttable.”).

49. Even during the presumptively reasonable six-month period, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized.” *Zadvydas*, 533 U.S. at 699.

Habeas Corpus

50. A petitioner is entitled to habeas relief if they demonstrate that their detention violates the United States Constitution or federal law. 28 U.S.C. § 2241; *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“The essence of habeas

corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.”); *Villanueva*, 2025 WL 2774610, at *4 (a habeas petitioner must show they are “in custody in violation of the Constitution or laws or treaties of the United States.”)(quoting 28 U.S.C. § 2241(c)(3)).

51. In a habeas proceeding the petitioner “bears the burden of proving that he is being held contrary to law; and because the habeas proceeding is civil in nature, the petitioner must satisfy his burden of proof by a preponderance of the evidence.” *Id.* (quoting *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011); also citing *Bruce v. Estelle*, 536 F.2d 1051, 1058 (5th Cir. 1976)).

52. The writ of habeas corpus is “available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004)(citing U.S. Const., Art I, § 9, cl. 2).

53. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 20 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

Due Process

54. The Due Process Clause of the Fifth Amendment guarantees that no person

in the United States shall be deprived of liberty without due process. U.S. Const. amend. V. These substantive and procedural due process protections apply to all people, including noncitizens, regardless of their immigration status. *Trump v. J.G.G.*, 604 U. S. ---145 S. Ct. 1003, 1006 (2025) (*per curiam*) (“It is well established that the Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings.” (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993))).

55. The Due Process Clause also provides heightened protection against government interference with certain fundamental rights—and freedom from detention lies at the heart of the Due Process Clause’s protections. *Zadvydas*, 533 U.S. at 690.

56. Under substantive due process doctrine, a restraint on liberty like revocation of a noncitizen’s OSUP is only permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997) The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *Zadvydas*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

57. “Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty,” like the decision to revoke a non-

citizen's order of supervision. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333.

58. An agency's failure to follow their own regulations may also constitute a denial of due process. *Francois v. Garland*, 120 F.4th 459, 465 (5th Cir. 2024); *Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *4 (W.D. Tex. Oct. 22, 2025)(citing same).

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

FACTS

60. Petitioner is a national of Vietnam who was ordered removed from the United States on April 5, 2004. Exhibit 2—Removal Order Information.

61. No appeal was taken of the order of removal and it became administratively final approximately 30 days after its entry. *Id.*

62. Following the decision in his removal proceedings, Petitioner was held in ICE

custody for the duration of the 90-day removal period. Unable to secure a travel document or otherwise effectuate his removal, ICE released Petitioner on an OSUP. Exhibit 1—Sworn Declaration of Tho Phuoc Nguyen.

63. Petitioner has at all times complied with his order of supervision and any directives from ICE. *Id.* He has reported in-person to their office consistently for 21 years. *Id.* Further, he has not been arrested or charged with any criminal offense since his release from ICE custody. *Id.*

64. Petitioner's order of supervision was seemingly revoked and he was detained without cause by ICE agents on November 6, 2025. *Id.*

65. At no time was Petitioner informed as to the reasons for revoking his order of supervision nor was he given the required interview to demonstrate reasons why it should be restored. *Id.*

66. Petitioner is currently in custody in the Southern District of Texas, and one or more of the Respondents is his immediate legal custodian. Exhibit 3—Detention Information.

67. On information and belief, Petitioner's removal is not likely in the reasonable, foreseeable future.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

68. Petitioner re-alleges and incorporates by reference all preceding paragraphs.
69. On information and belief, Petitioner is currently being detained by federal agents without cause and in violation of his constitutional rights to due process of law.
70. Petitioner has been denied due process because his detention serves no legitimate, non-punitive purpose as he is not a danger to the community and has demonstrated through over 20 years of voluntary check-in appointments with ICE that he is not at risk of flight from removal.
71. Petitioner has further been denied due process as the decision to revoke his OSUP was made without him having had the opportunity to contest it and he was provided none of the process required by regulation.
72. Analysis of the *Mathews* factors here weighs in favor of Petitioner because (1) he has a strong private interest in remaining free from detention; (2) there is great risk of an erroneous deprivation of liberty since Respondents failed to follow the regulations before summarily revoking his OSUP; and (3) any government interest in ensuring his appearance for removal was already adequately protected by the OSUP whereas detaining him unlawfully has

cause not only the costs of his detention but also the burden of litigating this matter.

COUNT TWO
Unlawful Arrest in Violation of Federal Regulations

73. Petitioner re-alleges and incorporates by reference all preceding paragraphs

74. When ICE arrested Petitioner on November 6, 2025, they flagrantly violated federal regulations.

75. Petitioner was under a valid Order of Supervision following his 2004 release from ICE custody. He had fully complied with all requirements.

76. Respondents violated 8 C.F.R. § 241.4(I)(1), which requires that upon revocation of supervised release, “the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.”

77. Respondents provided Petitioner with no written notification of revocation, no explanation of the reasons for revocation, and no opportunity to contest the revocation.

78. Respondents further violated 8 C.F.R. § 241.4(1)(2), which provides that only the Executive Associate Commissioner or a district director may revoke supervised release, and the district director may do so only “when, in the

district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." Upon information and belief, no such determination was made by the Executive Associate Commissioner or district director, and no exigent circumstances existed that would have prevented referral to the proper authority.

79. These regulations were promulgated to safeguard due process rights of noncitizens, and Respondents' violations severely prejudiced Petitioner. Had these regulations been followed, Petitioner would have had a meaningful opportunity to contest the revocation of his supervised release, demonstrate his compliance with the Order of Supervision, and prevent his unlawful detention.

80. Under the well-established *Accardi* doctrine, when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)).

81. This Court must not permit Respondents to benefit from their flagrant regulatory violations.

82. As relief, Petitioner asks the Court to immediately order Respondents to release him from custody and restore his Order of Supervision on the same conditions as before his November 2025 arrest.

COUNT THREE
Unlawful Detention Beyond Removal Period

83. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

84. Under 8 U.S.C. § 1231(a), the government may detain a noncitizen for removal only during the 90-day “removal period,” which begins when the removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(A)-(B)(i). This period may be extended only if the noncitizen “fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s removal.” 8 U.S.C. § 1231(a)(1)(C).

85. The Supreme Court has recognized a constitutional limitation on post-removal- period detention: such detention is permissible only when there is a “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). After six months of detention—the “presumptively reasonable period”—the government bears the burden of proving this likelihood if the noncitizen provides “good reason to believe” that removal is not reasonably foreseeable. *Id.*

86. Petitioner’s removal order became final in May 5, 2004 after the time to seek review of the order expired. His 90-day removal period ended on August 3, 2004 and he was in fact detained during the removal period. His 180-day *Zadvydas* presumptively reasonable period expired November 1, 2004.

87. More than 21 years later, Petitioner remains unremovable to Vietnam due to lacking a travel document or agreement from Vietnam for him to be repatriated. As of the filing of this petition, Respondents have not designated any other country for his removal.

88. Even if Respondents were to designate a third country, Petitioner would be entitled to apply for withholding of removal or protection from refoulement under, among other things, the Convention Against Torture with respect to that country, and those proceedings would further delay any potential removal.

89. Petitioner has established far more than a “good reason to believe” that there is no significant likelihood of his removal in the reasonably foreseeable future as (1) he cannot be removed to Vietnam without a travel document and obtaining a travel document is unlikely; (2) no other country has agreed to accept him; and (3) even if such a country were identified, Petitioner would be entitled to apply for protection from removal to that country, a process that would take many months if not years to complete.

90. As relief, Petitioner requests an order from this Court immediately releasing him from Respondents’ custody and placing him under an order of supervision pursuant to 8 U.S.C. § 1231(a)(3) and under the same terms as before.

COUNT FOUR
Violation of the Administrative Procedure Act

91. Petitioner re-alleges and incorporates by reference all the paragraphs above.
92. Under the APA, a court shall “hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious.” 5 U.S.C. § 706(2)(A).
93. Respondents’ revocation of Petitioner’s OSUP was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.
94. An agency decision that “runs counter to the evidence before the agency” is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins.*, 463 U.S. 29, 43 (1983).
95. Respondents’ decision to revoke Petitioner’s OSUP ran counter to the evidence before the agency that he would comply with a demand to appear for removal without detention. Petitioner has never violated his OSUP and no new facts or changed circumstances suggest he would.
96. The revocation also “failed to consider important aspects of the problem” before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep’t of Homeland Sec. v. Regents of the Univ. of Calif.*, 140 S.Ct. 1891, 1910 (2020)
97. First, Respondents failed to consider the serious constitutional concerns raised by revoking Petitioner’s OSUP without notice and opportunity to respond.

98. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the OSUP of Petitioner, who is neither a flight risk nor a danger to the community, and for whom the agency does not have travel documents needed to effectuate removal, including financial and administrative costs incurred by the agency due to unnecessary detention.

99. Third, Respondents failed to consider reasonable alternatives to revoking Petitioner's OSUP that were before the agency, like simply continuing release under the order of supervision and scheduling a future time and date to appear for removal. This alternative would vindicate the government's interest in effectuating a removal order and save it the expense of detention not needed to guarantee Mr. Nguyen's appearance.

100. Fourth, Respondents failed to consider Petitioner's substantial reliance interest, created by its instruction on Petitioner's release notification, the agency would give an opportunity to arrange for an orderly departure once it obtained travel documents.

101. For these and other reasons, Respondents' revocation of Petitioner's OSUP was arbitrary and capricious and should be held unlawful and set aside

COUNT FOUR
Third Country Removal

102. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

103. The Convention Against Torture, as implemented in U.S. law, prohibits Respondents from removing an individual to any country where such individual is more likely than not to face torture by or at the acquiescence of the government. *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note); 8 C.F.R. §§ 1208.16(c), 1208.18. This prohibition extends to chain refoulement—the practice of deporting someone to a country which will in turn deport that person to be tortured elsewhere. *See* 8 C.F.R. § 1208.18(a)(1).
104. Petitioner could face persecution or torture if removed directly to various other countries, including but not limited to countries with notorious human rights abuses like Libya, South Sudan, and Eritrea.
105. As relief, Petitioner request an order from this Court that Respondents may not remove Petitioner from the continental United States without first providing him and his counsel with written notice of the specific country they intend to remove him to, and a reasonable period of time—which Petitioner respectfully suggests is at least fifteen days—to file an application for relief under, among other things, the withholding of removal statute and the Convention Against Torture with respect to such country.
106. Additionally, as access to counsel is critical to preparing any potential

application for relief, Petitioner asks that such order be further narrowed to prohibiting Respondents from removing him or relocating him to a detention facility outside the Southern District of Texas.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the Southern District of Texas;
- (3) Issue an order that Petitioner be provided notice and an opportunity to request protection from removal to any third country that the Respondents may identify.
- (4) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days and setting an immediate hearing.
- (5) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.
- (6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

- (7) Issue an order that Petitioner's Order of Supervision be restored and that he continue supervision under the same terms as in place prior to November 6, 2025.
- (8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Date: December 8, 2025

/s/ Amanda Waterhouse
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Attorney for Petitioner

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

THO PHUOC NGUYEN,)	
)	Case No. 25-cv-05876
Petitioner,)	
)	PETITION FOR WRIT OF
v.)	HABEAS CORPUS
)	
RANDALL TATE Warden, Montgomery)	
Processing Center, BRET BRADFORD,)	
Houston Field Office Director, TODD)	
LYONS, Director U.S. Immigrations and)	
Customs Enforcement, and KRISTI)	
NOEM, U.S. Secretary of Homeland)	
Security,)	
)	
Respondents.)	
_____)	

INDEX OF EXHIBITS

Exhibit 1—Sworn Declaration of Tho Phuoc Nguyen

Exhibit 2—Removal Order Information

Exhibit 3—Detention Information

Exhibit 4—2008 Repatriation Agreement

Exhibit 5—2020 Memorandum of Understanding Advisory

Exhibit 6—Declaration of Dr. Thao Ha

Exhibit 7—Curriculum Vitae of Dr. Thao Ha

Exhibit 8—Asian Law Caucus Guide: Resources on Deportation of Vietnamese
Immigrants Who Entered the U.S. Before 1995