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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

THO PHUOC NGUYEN,	§	
	§	Case No. 4:25-cv-05876
Petitioner,	§	
	§	
v.	§	
	§	
RANDALL TATE[1], Warden, *et al.*,	§	
	§	
Respondents.	§	
	§	

PETITIONER'S RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

[1] Petitioner uses the caption and style employed by the Court in these proceedings but agrees with Respondents that the Federal Government makes the custody decisions regarding detained noncitizens and that the Federal Respondents are the real parties in interest here. *See* ECF No. 9 at 1, n.1.

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I. Introduction

Petitioner, Tho Phuoc Nguyen, submits this response and opposition to Respondents' motion for summary judgment. ECF No. 9. Respondents' motion argues that Petitioner should be denied his requested relief because Immigration and Customs Enforcement ("ICE") has the discretion to revoke his order of supervision without prior notice, he has not been detained for a sufficient length of time, the Court lacks jurisdiction to address his claims regarding third country removal, and that his removal is likely in the near future. None of these arguments are convincing nor does the record in this matter support Respondents' arguments. Petitioner's detention violates the law, and this Court should deny Respondents' motion and the writ of habeas corpus should issue.

II. Nature and Stage of the Proceedings

This matter involves a petition for habeas corpus filed by a noncitizen detainee, re-detained after residing in the U.S. under an order of supervision for over 21 years, being held in custody well after the expiration of the statutory removal period and with no reasonable likelihood of removal in the foreseeable future. Petitioner, a native of Vietnam, was admitted to the United States as a lawful permanent resident on December 19, 1989. ECF No. 9-1 ¶ 7, 9. Petitioner was issued an order of removal on April 5, 2004 and said order was final as of the date of issuance as all parties waived appeal. Exhibit 1—Final Order of Removal; ECF No. 1-1 at 6-7. Following the issuance of his removal order, Petitioner was detained for 99 days before being released on an order of supervision ("OSupp") by Immigration & Customs Enforcement ("ICE"). ECF No. 9-1 ¶ 12-13.

Petitioner has resided in the United States under his OSupp and in full compliance therewith since July 13, 2004. ECF No. 1-1 at 3 ¶ 7. On November 6, 2025, Petitioner attended his

regular ICE check-in where he was arrested without warning. Id. at ¶ 9-11. On December 8, 2025, still in the custody of Respondents, Petitioner sought habeas corpus relief before this Court. ECF No. 1. Respondents have since submitted a motion for summary judgement and Petitioner now makes this reply.

III. Issues Before the Court

The issues before the Court are (1) whether Petitioner's detention is unlawful and unconstitutional as it has extended beyond the statutory removal period and his removal is unlikely in the reasonably foreseeable future; (2) whether Petitioner's due process rights were violated in the revocation of his OSupp and his re-detention without warning; and (3) whether this Court may order relief preventing Respondents from removing him to a third country without warning and a reasonable opportunity to seek protection from removal.

IV. Argument

The Court should deny Respondents' motion for summary judgment as there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future and Respondents have failed to rebut his initial showing that removal is unlikely. Moreover, Petitioner is not required to be detained for six months before he may challenge his re-detention because the six-month period of presumptively reasonable detention passed years ago and, in any event, detention beyond the statutory removal period is no longer authorized when removal is merely a remote possibility. Petitioner's due process rights were violated in the revocation of his OSupp and his re-detention and Respondents have failed to fully brief or address the entirety of Petitioner's arguments regarding the due process violations. Finally, Petitioner is at risk of removal to a third country in the event that his removal to Vietnam cannot be accomplished and this Court does have jurisdiction to enter an order that he be afforded due process in the initiation of and carrying out

of any potential third country removal. Respondents' motion for summary judgment should be denied and Petitioner should be granted the relief requested in his petition.

A. Petitioner's Length of Detention and Likelihood of Removal

Respondents argue that Petitioner's detention is premature as he has not been detained for six months since his re-detention on November 9, 2025. ECF No. 9 at 4. Further, they argue that Petitioner must show that there is no significant likelihood of removal in the reasonably foreseeable future and that he has failed to meet this burden. Id. at 3-4. Respondents err in their assessment of how long Petitioner has been detained for purposes of meeting the *Zadvydas* standard, their assumption that he *must* be detained for six months before he may challenge his detention, and their understanding of the relative burdens in these proceedings.

i. The Removal Period and *Zavydas* Period Have Expired

The 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) expired on July 4, 2004 in Petitioner's case. That is because, the removal period is triggered by only three events under the statute: (1) the date an order of removal becomes administratively final; (2) the date of a court's final order if a court has issued a stay pending judicial review of the removal order; or (3) the date a noncitizen is released from detention or confinement that is not part of an immigration process. 8 U.S.C. § 1231(a)(1)(B). Petitioner's removal order was administratively final on the date of issuance as appeal was waived by all parties. Exhibit 1. The removal period thus began and ended under the plain language of the statute 90 days later on July 4, 2004. Petitioner was detained for entirety of the post-removal period. ECF No. 9-1 at 3 ¶ 12-13. There are no provisions to restart the statutory removal period and therefore no question that it has expired in this case. *Sagastizado Sanchez v.* Noem, No. 5:25-CV-00104, 2025 WL 3760317, at *7 (S.D. Tex. Nov. 14, 2025)(noting that "once the 90-day removal period has run the only thing that would reset it to the beginning is

a new administratively final removal order"). Accordingly, the inquiry here concerns only the presumptively reasonable period of post-removal period detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

8 U.S.C. §1231(a)(6) allows for continued detention past the 90-day removal period in certain circumstances, but it does not *require* it and Respondents do not have unlimited discretion to detain indefinitely under the statute. 8 U.S.C. § 1231(a)(6); *Zadvydas*, 533 U.S. at 697 ("[W]hile 'may' suggests discretion, it does not necessarily suggest unlimited discretion."). The *Zadvydas* court found the provisions of the statute implicitly limited detention to a period reasonably necessary to carry out removal and that detention of up to six months was presumptively reasonable. *Zadvydas*, 533 U.S. at 689, 701. Notably, even during the presumptive six-month period, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

Here, Respondents maintain that Petitioner has been detained for approximately two months and such detention is insufficiently prolonged under *Zadvydas*, thus rendering his petition premature and precluding relief. ECF No. 9 at 1, 4. But "the Court in *Zadvydas* expressly rejected the idea that 'a federal habeas court would have to accept the Government's view about whether the implicit statutory limitation is satisfied in a particular case, conducting little or no independent review of the matter.'" *Sagastizado Sanchez*, 2025 WL 3760317, at *6 (citing *Zadvydas*, 533 U.S. at 699). Upon independent review, this Court should find that the presumptively reasonable period of detention has long expired.

While Respondents cite to a few out-of-district cases holding that the six-month presumption restarts each time a noncitizen is detained, that question is far from settled and Respondents ignore voluminous authority (including cases within the Southern District and other

districts in the Fifth Circuit) holding exactly the opposite. ECF No. 9 at 5. The *Zadvydas* Court did not answer this question as the petitioners there had been continuously detained since their removal was ordered and removal efforts were ongoing. *See Zavvar v. Scott,* 2025 WL 2592543 at *4 (D. Md. Sept. 8, 2025); *see also Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *3 (W.D. Tex. Oct. 22, 2025)(noting that "it is unclear whether Zadvydas's six-month period begins immediately when the removal period ends or when the challenging party is physically detained."). Other courts looking specifically at the issue of persons who have been re-detained following a period of supervised release have found unequivocally that the six-month presumption is inapplicable. *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025)(collecting cases and noting that the "government's contention that it may avoid the holding of *Zadvydas* and re-start the six-month presumptively constitutional detention clock by simply releasing and then re-detaining a noncitizen has no basis in either the statutes, the regulations, or *Zadvydas* itself."); *see also Abuelhawa v. Noem,* No. 4:25-CV-04128, 2025 WL 2937692, at *4 (S.D. Tex. Oct. 16, 2025)(collecting cases).

"The reasoning of *Zadvydas* explains why the 180-day period—and therefore the presumption of reasonable detention—does not reset simply because a noncitizen is re-detained." *Sagastizado Sanchez,* 2025 WL 3760317, at *8. That is because "*Zadvydas* appears to have sought to balance the length of time a noncitizen would be held in detention against the need to afford the Government some time immediately following the issuance of the removal order to make and execute arrangements for removal. Because some if not most of those arrangements, such as securing approval from a foreign country to remove an individual to that nation, can likely be pursued even while the noncitizen is on release, that balance may well differ in circumstances where, before the period of detention began, the Government had a period of time…to make the

arrangements for removal. Thus, there is, at a minimum, a reasonable argument that the six-month period runs continuously from the beginning of the removal period, even if the noncitizen is not detained throughout that period." *Zavvar*, 2025 WL 2592543, at *4; *Sagastizado Sanchez,* 2025 WL 3760317 at *8 (citing same).

In Petitioner's case, the six-month presumption should be found to have expired as he was initially detained for the entirety of the removal period and more than 21 years have passed while he has remained under ICE's supervision. His petition is thus not submitted prior to the expiration of the presumptively reasonable period as his re-detention did not reset that period. Alternatively, and should the Court find that the time period begins upon re-detention, he may still challenge his detention because "the presumption of constitutionality during that six-month period is rebuttable. *Villanueva*, 2025 WL 2774610, at *10 (citing to *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020) for the proposition that the "six-month presumption is not a bright line" and *Zadvydas* "did not require a detainee to remain in detention for six months...before a habeas court could find that the detention is unconstitutional"). Indeed, "[w]hether a set of particular circumstances amounts to detention within, or beyond, a period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority" and it is the province of federal courts to answer that question." *Sagastizado Sanchez*, 2025 WL 3760317, at *6 (citing *Zadvydas*, 533 U.S. at 699). Here, because Petitioner's removal is unlikely in the foreseeable future, his detention is unlawful regardless of whether his petition was filed less than six months after his re-detention.

ii. Petitioner Has Met His Burden & Respondents Offer No Rebuttal

Petitioner has the initial burden of proof in these proceedings and notes that "because the habeas proceeding is civil in nature," he "must satisfy his burden of proof by a preponderance of

the evidence." *Villanueva*, 2025 WL 2774610, at *4 (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)). However, what he must prove to carry that burden in part depends on whether the Court finds he is currently detained within the six-month period of presumptively reasonable detention or whether his detention is now outside the period. "To make out a *Zadvydas* claim after the six months have run, a detained noncitizen need only 'provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future' and 'the Government must respond with evidence sufficient to rebut that showing.'" *Puertas-Mendoza*, 2025 WL 3142089, at *2 (citing *Zadvydas*, 533 U.S. at 701). Prior to the expiration of the six-month period "a Petitioner must do something more. They must prove "that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* (citations omitted). Additionally, courts have found that, "[i]mposing the burden of proof on the alien each time he is re-detained would lead to an unjust result and serious due process implications." *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025). The court in *Escalante* went further in finding that "upon revocation of supervised release, it is the Service's burden to show a significant likelihood that the alien may be removed." *Id.* The Court should find similarly here.

Respondents argue that Petitioner has "offered no evidence that any real, nonspeculative barriers to his removal exist" but rather has "simply conclude[d] that the Government is incapable of removing him in the near future because it has not yet done so in the month that he has been in detention." ECF No. 9 at 3-4. Devoting a mere paragraph to this crucial issue, Respondents fail to account for the actual evidence submitted or the facts of this matter. In rebuttal to the evidence and arguments included in and with the petition in this matter, they point only to the affidavit of Deportation Officer Ellen Henry ("DO Henry") for the proposition that there is a significant

likelihood of removal because ICE is "actively pursuing removal by requesting a [travel document] to Vietnam." Id. at 4 (citing ECF No. 9-1 ¶ 15-16). Respondents have misapprehended or mischaracterized Petitioner's arguments, failed to engage with the evidence, and offered nothing more than vague statements in rebuttal. On this record, Petitioner has met his burden.

a. Petitioner's Evidence

Petitioner's detention is outside the *Zadvydas* period and he is only required to provide good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. *Puertas-Mendoza, supra.* However, even if held to the higher standard, Petitioner can prove the same. Petitioner has no travel document that would allow him to be repatriated to Vietnam and has not been asked to complete an application for such. ECF No. 1-1 at 4 ¶ 14. Petitioner has twice requested travel documents directly from the Vietnamese consulate but has never received one. Exhibit 2—2004 Letter From Vietnamese Consulate; Exhibit 3—2009 Travel Document Request. ICE released him in 2004 because they were unable to remove him and released him from participation in a more intensive supervision program in 2010 with the comment that they were "unable to remove in the foreseeable future." ECF No. 1-1 at 3 ¶ 5; Exhibit 4—2010 Release from ATD Program.

Petitioner submitted the declaration and curriculum vitae of Dr. Thao Ha, who provided her professional opinion that "the timeline for securing travel documents" to Vietnam "remains unpredictable and highly dependent on the individual's ability to produce documentation from Vietnam." ECF No. 1-1 at 45 ¶ 12. Dr. Ha further stated that travel document application processing times may exceed 3-6 months and that, although the Vietnamese government has agreed to accept repatriated citizens who—like Petitioner—arrived in the U.S. before 1995, the actual issuance of travel documents remains prolonged and unpredictable. Id at 45-46 ¶ 14, 17.

Finally, Petitioner submitted a resource from the Asian Law Caucus, discussing the history of removals to Vietnam as well as the 2020 repatriation agreement ("2020 MOU"), and noting that following the 2020 MOU Vietnam still does not always issue a travel document when ICE requests one and that between September 2021 and September 2023 only four immigrants who entered the U.S. before 1995 were given travel documents and deported. ECF No. 1-1 at 54-58.

b. Respondents' Rebuttal Evidence

In rebuttal to the arguments and evidence put forward by Petitioner to show his removal is not likely in the foreseeable future, Respondents rely on the declaration of DO Henry. They do not specifically point to the 2020 MOU but appear to invoke it by implication. *See e.g.* ECF No. 9 at 4 ("Moreover, the state of foreign affairs is inherently dynamic, and thus any unsuccessful removal efforts in 2004 are minimally probative of renewed efforts now."); ECF No. 9-1 at 5 ¶ 16 ("Vietnam is currently accepting the return of their citizens."). The alleged submission of a TD (presumed to be a "travel document" request) and Vietnam's "acceptance of repatriation" are deemed sufficient to conclude "there is a significant likelihood in the reasonably foreseeable future, that DO [sic] will be removed to Vietnam." Id. Respondents' submission falls well short of rebutting Petitioner's showing.

First, there is no evidence that a travel document request has been submitted to the government of Vietnam. Rather, the declaration of DO Henry states only that "a travel document application was emailed to the Removal and International Operations desk officer in DC Headquarters (HQ)." ECF No. 9-1 at 4-5 ¶ 15. Said application is purportedly supported by "required documents". Id. There are immediately evident issues with the declaration provided by Respondents. Let us begin with whether or not a travel document request has actually been submitted. The declaration does not explain what agency operates the "Removal and International

Operations" desk (presumably ICE but that is uncertain) or what they will do with the application and how long that will take. Notably, there is no indication that any application has been submitted to the government of Vietnam. The reference to "required documents" does not indicate what those documents consist of or whether they are compliant with the documents outlined in the 2020 MOU. *See* ECF No. 1-1 at 37 ¶ 2. This is significant because an incomplete application will be deemed insufficient, requiring notice to DHS and additional time to provide responsive documents. Id at 37 ¶ 2-4. The Court should also note that the MOU is redacted, specifically the fourth listed criteria which must be met to be eligible for acceptance of return. Id. at 35-36 ¶ 4. Simply put, there is no way to know if Petitioner is even eligible to be issued a travel document because the full criteria are unknown. Finally, the declaration appears to contain the name of a completely different noncitizen (referred to as "DO") which indicates that rather than this affidavit being based on a particularized assessment of the likelihood of Petitioner's removal it is instead reused and adapted from other Vietnamese cases and the assessment is predicated on nothing more than Vietnam's general "acceptance of repatriation." ECF No. 9-1 at 5 ¶ 16. This does not meet the requirement of "individualized evidence to rebut any showing by the alien 'that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Abuelhawa*, 2025 WL 2937692, at *5 (citing *Zadvydas*, 533 U.S. at 701).

Finally, the mere existence of a repatriation agreement with Vietnam—the 2020 MOU—does not mean that ICE will automatically receive a travel document for Petitioner or that his removal will happen any time in the foreseeable future. Numerous courts have rejected this theory of reasonably foreseeable removal, even in light of the Government's attestations that they are able to remove Vietnamese nationals with pre-1995 entries or that they have successfully done so in some cases. *See e.g., Nguyen v. Bondi*, No. EP-25-CV-323-KC, 2025 WL 3120516, at *7 (W.D.

Tex. Nov. 7, 2025)("While it may be that Nguyen's removal to Vietnam is now possible, where it was previously impossible, Respondents have not shown that his removal is significantly likely to occur in the reasonably foreseeable future."); *Nguyen v. Noem,* No. 3:25-CV-03404-CAB-VET, 2025 WL 3640999, at *2 (S.D. Cal. Dec. 16, 2025)("Respondents urge the Court to accept any evidence of attention to Petitioner's removal, combined with evidence of removal of others to Vietnam, as sufficient to create a significant likelihood of removal in the reasonably foreseeable future. The Court disagrees."); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, *4 (D. Mass. June 20, 2025)(finding the processing of a travel document insufficient because the government had "not identified what concrete steps ICE has taken to process" the document nor whether the request was submitted to the removal country).

This Court, in addressing a similar circumstance for a Bosnian national, found that the Government's showing was insufficient because "travel documents ha[d], at most, only been requested, and Petitioner's home country ha[d] not indicated a willingness to accept him or issue travel documents in the immediate future" and the request for travel documents had not even been submitted until a week after the noncitizen had been re-detained. *Avdulovic v. Tate*, No. 4:25-cv-05873, ECF No. 8 at 2 (S.D. Tex. Dec. 22, 2025)(attached as Exhibit 9). Here the Court should find the same: that Respondents have made no effort to show that *Petitioner's* removal is significantly likely in the reasonably foreseeable future.

B. Respondents Have Violated Petitioner's Due Process Rights

Respondents posit that Petitioner has failed to show a due process violation because the revocation of his OSupp was under 8 C.F.R. § 241.4(l)(2) which allows discretionary revocation and requires no pre-revocation hearing. ECF No. 9 at 5-6. They do not address Petitioner's contentions regarding 8 C.F.R. § 241.13 or the due process factors under *Mathews*, thus waiving

or conceding those points. In spite of their failure to respond to Petitioner's arguments, it is clear that Respondents violated Petitioner's due process rights both in violating their own regulations and in depriving him of liberty without adequate justification or due process of law.

i. Respondents' Regulatory Violations

Petitioner specifically alleged a violation of 8 C.F.R. § 241.4(l)(2) in his initial petition. ECF No. 1 ¶ 78-79. Additionally, Respondents violated 8 C.F.R. § 241.13 in making the determination regarding the likelihood of removability that would be required to support revocation under § 241.4(l)(2).

8 C.F.R. § 241.4(l)(2) provides that the decision to revoke release is entrusted to the discretion of only the Executive Associate Commissioner or by a district director "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. Documents obtained through the Freedom of Information Act ("FOIA") seem to indicate that an unknown deportation officer made the decision to detain Petitioner and revoke his OSupp. The "Record of Deportable/Inadmissible Alien" that was seemingly prepared prior to or at the time of Petitioner's detention is signed by an "Officer" whose name is redacted but is presumably not the District Director. Exhibit 8—Record of Deportable/Inadmissible Alien. The "Warrant of Removal/Deportation" has in illegible signature signed "for" the Field Office Director and the "Warning to Alien Ordered Removed or Deported" is signed by a Deportation Officer whose signature is redacted under FOIA. Exhibit 5—Warrant of Removal/Deportation; Exhibit 6—Warning to Alien Ordered Removed. Finally, the warrant for Petitioner's arrest was signed by an

SDDO which is a supervisory deportation officer. Exhibit 7—Warrant for Arrest of Alien. While these officers may have had the authority to sign these individual documents, none of them had the authority to revoke Petitioner's release pursuant to 8 C.F.R. § 241.4(l)(2).

When the decision is made to revoke release or an OSupp, there is a separate regulation at 8 C.F.R. § 241.13(i) that controls the process. Specifically, a noncitizen's release may be revoked "if, on account of changed circumstances," it is determined that "there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.'" *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025) (quoting 8 C.F.R. § 241.13(i)(2)). The regulations go on to proscribe the process for revocation based on a determination of changed circumstances as follows:

[T]he alien will be notified of the reasons for revocation of his or her release. The Service will conduct 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. The alien 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).

These regulations govern ICE's re-detention of individuals who have been released after a determination was made that they could not be removed. The first step in this process is necessarily a determination of changed circumstances. Then, once that determination is made, ICE is required to follow the interview and notice requirements of § 241.13(i)(3). The determination of changed circumstances requires "(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); *Phan,* 2025 WL 1993735, at *4–6 (E.D. Cal. July 16, 2025), *Hoac v. Beccerra, et al.,*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025), and *Nguyen*, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025); *Roble v. Bondi, et. al.,* No. 25-CV-3196, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025).

In Petitioner's case, there has obviously been no individualized assessment of changed circumstances but only general assertions that Vietnam is now accepting repatriations. The only available contemporaneous documentation reflects that he was arrested simply because he has a final order of removal predicated on a conviction for an aggravated felony. Exhibit 8—Record of Deportable/Inadmissible Alien (including the notation "Why: Final order/Agg Felon" and referring to Petitioner as "Who: (Target) reporting to District Office – NDU"). Finally, and tellingly, the decision to arrest Petitioner occurred 11 days before ICE had even received his file from the National Record Center. ECF No. 9-1 at 3 ¶ 14-15.

There is also scant evidence that Petitioner was afforded the notice or informal interview required under 8 C.F.R. § 241.13(i)(3) upon the revocation of his release. While the declaration of DO Henry states that Petitioner was interviewed and it was "explained to him that his supervision had been revoked, because ICE intends to execute his final removal order" there is nothing to indicate that Petitioner was afforded "an opportunity to respond to the reasons for revocation stated in the notification" and Petitioner received no notification other than the alleged verbal notice. 8 C.F.R. § 241.13(i)(3); ECF No. 9-1 at 3 ¶ 15. Further, there is no indication that he was allowed to present evidence or information nor that there was "an evaluation of any contested facts" or a determination as to "whether the facts as determined warrant revocation and further denial of release." Id. Rather, Petitioner was merely advised that his supervision was revoked because ICE intended to execute his removal order.

The record clearly shows that ICE violated their own regulations both in regard to the discretionary determination to revoke release and the procedures for making that determination and processing the revocation. "Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations." *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020); *see also Gulf States Mfrs., Inc. v. Nat'l Labor Relations Bd.*, 579 F.2d 1298, 1308 (5th Cir. 1978) ("It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid."). Multiple courts have recently held in cases similar to this one, when ICE fails to provide the interview and notice required by § 241.13(i), its decision to re-detain is invalid and release is the proper remedy. *Phan*, 2025 WL 1993735, at *4 ("Because there is no indication that an informal interview was provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that his re-detainment was unlawful."); *See also Wing Nuen Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. Jun. 17, 2025) (finding "that officials did not properly revoke petitioner's release pursuant to [§] 241.13" because "and most obviously ... petitioner was not granted the required interview upon the revocation of his release"); *See Nguyen*, 2025 WL 1725791, at 5; *Phan*, 2025 WL 1993735, at *3; *Hoac*, 2025 WL 1993771, at *3. As the court in *Nguyen* stated, "ICE, like any agency, has the duty to follow its own federal regulations... where an immigration regulation is promulgated to protect a fundamental right... and [ICE] fails to adhere to it, the challenged [action] is invalid." *Id.* (citations omitted). This Court should find similarly that Petitioner was deprived of due process and his arrest and re-detention are unlawful.

ii. The *Mathews* Factors Weigh in Petitioner's Favor

Petitioner has also asserted a due process violation under the Fifth Amendment. ECF No. 1 ¶ 68-72. Respondents did not discuss or address this claim in their motion. Briefly, courts employ the test from *Mathews v. Eldridge*, 424 U.S. 319 (1976) in determining whether a due process violation has occurred in a particular case. The factors to be considered are (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. *Mathews*, 424 U.S. at 333. Those factors weigh heavily in Petitioner's favor.

Petitioner clearly has a liberty interest in continuing to be free from detention under his OSupp. *Villanueva*, 2025 WL 2774610, at *11 ("Villanueva has a liberty interest in his continued release under his Order of Supervision. He has been free under that Order for over eight years. He has a job and a family. He has complied with all of the terms of his Order of Supervision. There is no principled reason to find that Villanueva does not have an overwhelming liberty interest in his continued release that may not be removed without due process."). Moreover, when assessing the private interest, courts consider the conditions of confinement, specifically, "whether a detainee is held in conditions indistinguishable from criminal incarceration." *Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154, at *7 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)). Petitioner is being held in conditions indistinguishable from criminal incarceration and "experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, . . . lack of privacy, and, most fundamentally, the lack of freedom of movement." *Id.* This factor clearly weighs in Petitioner's favor.

Under the second factor, courts must "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Id.* at *8. Petitioner was detained for no discernable reason other than a change in policy and his detention was in violation of federal regulations. "The regulations enacted by the government itself are intended to ensure that noncitizens who have been released to supervision do not arbitrarily have that supervision revoked." *Villanueva*, 2025 WL 2774610, at *11. Failure to follow those regulations indicates that "the risk of an arbitrary and erroneous deprivation under these circumstances is undeniably significant." *Id.* Alternate procedures, such as continuing to supervise Petitioner and for him to regularly report to ICE would ameliorate the risk of erroneously depriving Petitioner of his liberty. This *Matthews* factor weighs in favor of Petitioner as well.

Finally, Petitioner does not dispute that the government and the public have a strong interest in the enforcement of the immigration laws or that Respondents, having failed to articulate a particularized interest here, have a general interest in ensuring his presence at the moment of removal. However, that interest is adequately met where—as he has for the past 21 years—Petitioner is released under an OSupp and regularly reporting to ICE. This factor also weighs in Petitioner's favor. In reviewing all relevant factors, the due process violation is clear. Petitioner has been deprived of his liberty with no valid purpose and without adequate opportunity to contest that deprivation.

C. Petitioner's Relief From Third Country Removal

In their motion for summary judgment, Respondents aver that this Court does not have jurisdiction to provide relief from his potential removal to a third country without opportunity to seek protection from removal. ECF No. 9 at 6. This is incorrect as Petitioner does not seek review

of the decision to execute a removal order, commence or adjudicate removal proceedings, or for this Court to hear his claims for relief from removal. Rather, Petitioner challenges the current administrations procedures for implementing third country removals as they are likely to be applied for him if he is unable to be removed to Vietnam. This Court has jurisdiction to decide this issue and to grant appropriate relief. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 378 (D. Mass.), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1323697 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, 786 F. Supp. 3d 223 (D. Mass. 2025). Additionally, to the extent that Respondents believe the claim is not ripe as no third country has been identified, the current proceedings employed in third country removals make it unlikely that Petitioner will be informed of any potential third country until almost the moment of removal—the very problem he seeks to redress here. For these reasons, he may seek said relief and this Court has jurisdiction to grant it.

V. Conclusion

Based on the foregoing, Petitioner asks this Court to deny the Respondents' motion and issue an order for him to be released from custody immediately.

Respectfully submitted,

Date: January 10, 2026

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Reply was duly served upon opposing counsel electronically via the CM/ECF system on January 10, 2026.

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