UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Chuong Hong NGUYEN Petitioner, Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Sylvester Ortega, San Antonio Field Office Director; Bobby Thompson, Warden of South Texas Immigration Processing Center Respondents.	**Civil Case No. 5:25-cv-1763**

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Petitioner, Chuong Hong Nguyen, is in immigration custody in violation of his Fifth Amendment rights. He is a 47-year-old citizen of Vietnam and arrived in the United States as a 7-year-old child and lawful permanent resident more than 40 years ago. He was ordered deported from the U.S. in 2000, more than 25 years ago, based on crimes that he committed when he was only 17 years old. Since that time, he has rehabilitated and established his life in the U.S., and he has been married to a U.S. citizen for the last five years.

2. From August 20, 2000 until May 7, 2001, the former Immigration and Naturalization Service (INS) detained Mr. Nguyen following the entry of his deportation order. After **more than six months** of detention, INS was unable to carry out his removal to Vietnam, and on April 30, 2001, the INS Executive Associate Commissioner approved his release based on his good behavior while in custody, his family ties, and employment upon release, specifically finding that he was

"not a flight risk." INS released the Petitioner on May 7, 2001, under an order of supervision (OSUP), which he has complied with without incident for over the last 24 years. See Ex. A-B.

3. Despite no change in circumstances, Respondents re-detained the Petitioner without bail, in violation of his OSUP and the law. His current detention is unlawful because his removal to Vietnam remains not reasonably foreseeable, particularly because he entered the U.S. before 1995. Moreover, Respondents' revocation of Petitioner's OSUP without meaningful notice and opportunity to respond violates his due process rights.

4. This case exemplifies exactly the type of unlawful government action the Fifth Amendment's Due Process Clause was designed to prevent. Petitioner was ordered deported on August 20, 2000. His order became administratively final that same day, and the 90-day removal period under 8 U.S.C. § 1231(a) and 180-day period under *Zadvydas v. Davis*, 533 U.S. 678 (2001) began and concluded decades ago, prior to his release from custody on May 7, 2001.

5. Additionally, any attempt to arrange Petitioner's deportation to a third country if removal to Vietnam is not feasible without notice about what country Respondents intend to deport him and inadequate process of law for him to challenge removal to such a third country would also be in violation of the due process clause of the Fifth Amendment.

6. As courts have repeatedly recognized, even individuals subject to final removal orders retain constitutional rights. *See, e.g.*, *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y. 2025) ("Noncitizens, even those subject to a final removal order, have constitutional rights . . . [a]nd while [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process.").

7. The Petitioner seeks a writ of habeas corpus for his immediate release from custody since his removal to Vietnam is not reasonably foreseeable. Alternatively, he seeks an order from this

Court mandating the U.S. Department of Homeland Security (DHS) to provide notice about the third country it intends to remove him and provide him an opportunity to contest removal based on persecution and/or torture.

II. PARTIES

8. Petitioner Chuong Hong Nguyen is a noncitizen who is currently detained in immigration detention at the South Texas ICE Processing Center in Pearsall, Texas.

9. Respondent Kristi Noem is the Secretary of Homeland Security and is charged with implementing the immigration laws of the United States. Secretary Noem is being sued in her official capacity.

10. Respondent Todd M. Lyons is the Acting Director of ICE, as sub-agency of Homeland Security. It is under ICE's authority that the Petitioner is being held without bond. Acting Director Lyons is being sued in his official capacity.

11. Respondent Sylvester Ortega is the San Antonio ICE Field Office Director. It is under Respondent Sylvester Ortega's order that the Petitioner is in immigration custody. Respondent Ortega is being sued in his official capacity.

12. Respondent Bobby Thompson is the Warden and/or immediate custodian at the South Texas ICE Processing Center in Pearsall, Texas. Respondent Thompson is being sued in his official capacity.

III. JURISDICTION

13. This Court has subject matter jurisdiction over Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction) inasmuch as the case is a civil action arising under the laws of the United States.

14. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, *see* 8 U.S.C. §§ 1252(a)(l), (a)(5), (b), district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g.*, *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 U.S. Dist. LEXIS 74197, at *14–15 (D. Mass. April 18, 2025) (citing *J.D.F.M. v. Lynh*, 837 F.3d 1026 (9th Cir. 2016)).

15. Venue is proper in this district because the Petitioner is detained within this district, and a substantial amount of the events giving rise to this claim occurred within this district. 8 U.S.C. § 1391(e)(1).

IV. STATUTORY AND REGULATORY FRAMEWORK GOVERNING RE-DETENTION

16. When an individual is ordered removed, 8 U.S.C. § 1231(a) authorizes the government to detain the individual during the "removal period," defined as the 90-day period during which "the Attorney General shall remove the [noncitizen] from the United States." 8 U.S.C. §1231(a)(1)(A). The removal period begins on the latest of the following:

(1) the date the order of removal becomes administratively final;

(2) if the removal order is judicially reviewed and the court orders a stay, the date of the court's final order; and

(3) if the noncitizen is released from non-immigration detention or confinement, the date of that release.

8 U.S.C. § 1231(a)(1)(B)(i-iii). In this case, only 8 U.S.C. §1231(a)(1)(A)(1) is applicable. Critically, § 1231 "contains no provisions for pausing, reinitiating, or refreshing the removal period after the 90-day clock runs to zero." Transcript of Motions Hearing at 32, *Cordon-Salguero v. Noem, et al.*, 1:25-cv-01626-GLR (D. Md. June 18, 2025).

17. Once the removal period has expired, the government "may" detain a noncitizen only if they fall into one of the four categories under § 1231(a)(6): (1) individuals who are inadmissible; (2) individuals who are removable on specified grounds; (3) individuals determined to be a danger to the community; or (4) individuals determined to be unlikely to comply with the order of removal. However, under § 1231(a)(6) "[o]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute," and the noncitizen must be released. *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court held that six months is a presumptively reasonable for post-order detention. *Id.* "After *Zadvydas*, the immigration regulations were revised to implement administrative review procedures for those aliens detained beyond the removal period, including those who are re-detained upon revocation of their supervised release." *Escalante v. Noem,* No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025).

18. Upon release, a noncitizen subject to a final order of removal is typically placed under an order of supervision with conditions. 8 U.S.C. § 1231(a)(3), (6). Revocation of such release is governed by 8 C.F.R. § 241.13(i). The regulation purports to allow ICE to revoke supervised released only if the noncitizen "violates any of the conditions of release" or if "on account of changed circumstances," there is a "significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(1)–(2); *see also* 8 C.F.R. § 241.4(b)(4). As numerous courts have recognized, once a noncitizen has been released from custody, he or she retains a liberty interest in remaining free from detention. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) ("We see, therefore, that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee and often on others."); *Nguyen v. Bondi*, No. EP-25-CV-323-KC, 2025 WL

3120516 (W.D. Tex. Nov. 7, 2025) ("Parolees thus have a protected liberty interest in their "continued liberty."); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) ("Just as people on pre-parole, parole, and probation status have a liberty interest, so too does Ortega have a liberty interest in remaining out of custody on bond.").

19. "These regulations clearly indicate, upon revocation of supervised release, it is the Service's burden to show a significant likelihood that the [noncitizen] may be removed." *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 U.S. Dist. LEXIS 148899 (E.D. Tex. Aug. 2, 2025) (citing *Nguyen v. Hyde*, No. 25-cv-11470, 2025 U.S. Dist. LEXIS 117495, 2025 WL 1725791 (D. Mass. June 20, 2025) ("finding *Zadvydas* 6-month presumption not applicable where [noncitizen] is 're-detained' after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable") and *Tadros v. Noem*, No. 25-cv-4108, 2025 U.S. Dist. LEXIS 113198, 2025 WL 1678501 (D. N.J. June 13, 2025) ("finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent's burden to show removal is now likely in the reasonably foreseeable future")).

20. Upon a determination of a change in circumstances, the regulations provide the following "procedures" that the Respondents must follow when they revoke a noncitizen's release:

> [T]he [noncitizen] 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 [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).

21. The prevailing statute 8 U.S.C. § 1231(a)(6), unlike the regulation, contains no such allowance for re-detention upon a finding of changed circumstances.

22. Although 8 U.S.C. § 1231(a) was implemented in 1996 pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996) (codified as amended in scattered sections of 8 U.S.C.), the legal framework still applies to noncitizens ordered excluded pre-IIRIRA. *See* IIRIRA § 309(d)(2) ("[A]ny reference in law to an order of removal shall be deemed to include a reference to an order of exclusion and deportation or an order of deportation."); *see also Cardoso v. Reno*, 216 F.3d 512, 515 n.3 (5th Cir. 2000).

23. In the absence of any evidence that Petitioner's OSUP was revoked for a legally permissible reason under 8 C.F.R. § 241.13(i)—and that ICE provided the required interview and meaningful opportunity to contest the revocation—Respondents have failed to demonstrate that Petitioner received the procedural due process the Fifth Amendment requires before depriving him of his liberty interest. Numerous courts that have considered the issue have determined that ICE's actions do not comport with procedural due process. *See, e.g.*, *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610 (S.D. Tex. Sept. 26, 2025); *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 3033732 (S.D. Tex. Oct. 29, 2025); *Vinh Duong v. Charles et al.*, No. 1:25-CV-01375-SKO, 2025 WL 3187313 (E.D. Cal. Nov. 14, 2025); *Phan v. Noem*, No. 3:25-CV-02422-RBM-MSB, 2025 WL 2898977 (S.D. Cal. Oct. 10, 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017); *K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394 (W.D. Ky. Sept. 4, 2025). The Court should similarly find that ICE's actions in this case violate the Fifth Amendment's Due Process Clause.

V. PROCEDURES GOVERNING DEPORTATION TO DESIGNATED COUNTRIES

24. In 1995, Petitioner was referred to the Immigration Court under former 8 U.S.C. 1252(b) (1994). At the time, 8 U.S.C. § 1253(a) (1993) set out a three-step process for designating a country of deportation. *See Ogorodnikov v. United States INS*, No. 92-7150, 1993 U.S. App. LEXIS 13353, *14-13 (4th Cir. June 7, 1993). First, the noncitizen could promptly designate a country. *Id.* If the noncitizen waived this right, the U.S. Immigration and Naturalization Service (INS) could deport the noncitizen to a country where he is a subject, national, or citizen. *Id.* If deportation cannot be executed under this step, the INS could deport the noncitizen to one of seven categories of countries outlined in 8 U.S.C. § 1253(a)(1)-(7):

> (1) to the country from which such alien last entered the United States;
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> (2) to the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory;
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> (3) to the country in which he was born;
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> (4) to the country in which the place of his birth is situated at the time he is ordered deported;
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> (5) to any country in which he resided prior to entering the country from which he entered the United States;
>
> (6) to the country which had sovereignty over the birthplace of the alien at the time of his birth; or
>
> (7) if deportation to any of the foregoing places or countries is impracticable, inadvisable, or impossible, then to any country which is willing to accept such alien into its territory.

8 U.S.C. § 1253(a)(1)-(7).

25. Asylum and withholding were available forms of relief in deportation proceedings. The Attorney General could grant asylum in discretion to "refugees." 8 U.S.C. § 1158(a). A "refugee" is defined by statute as one who is unable or unwilling to return to his or her country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42).

26. Under 8 U.S.C. § 1253(h) (1993), "[t]he Attorney General shall not deport or return any [noncitizen] . . . . to a country" where his "life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion." Applicants for withholding of deportation must show a "'clear probability' they will face persecution in the country to which they will be deported." *Behzadpour v. United States*, 946 F.2d 1351, 1354 (8th Cir. 1991) (citations omitted).

27. Asylum and withholding of deportation are distinct forms of relief for noncitizens facing persecution in their country of origin. Asylum is discretionary, *see* 8 U.S.C. § 1158(a), and can lead to lawful permanent resident status, while withholding of deportation is mandatory when deportation to a particular country would threaten the noncitizen's life or freedom on account of race, religion, nationality, membership in a particular social group, or political opinion, *see* 8 U.S.C. § 1253(h)(1). Withholding of deportation is "country-specific," meaning that a deportation to a "hospitable" country that agrees to accept the noncitizen is permitted. *See Mosquera-Perez v. INS*, 3 F.3d 553, 554 n. 3 (1st Cir. 1993) (citing *Matter of Salim*, 18 I. & N. Dec. 311, 315 (1982); *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 428 n.6 (1987)).

28. Individuals who are ineligible for withholding of deportation are still entitled to receive protection under the Convention Against Torture (CAT), in the form of withholding or deferral of removal, upon demonstrating a likelihood of torture if removed to the designated country of removal. *See* Foreign Affairs Reform and Restructuring Act (FARRA) (codified as n.8 to U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1. The United States signed the CAT on April 18, 1998, and ratified it on October 27, 1990. *See Silva-Rengifo v. Att'y Gen.*, 473 F.3d 58, 63 (3rd. Cir. 2007) (citations omitted). The Convention became binding on the United States in November 1991. *Id.* The Foreign Affairs Reform and Restructuring Act of

1998 ("FARRA") implemented the Convention, which provides that "it shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture . . . ." Pub. L. No. 105-277, Div G, Subdiv B, Title XXII, Ch 3, Subch B, § 2242, 112 Stat. 2681- 822 (codified at 8 U.S.C. § 1231 note); *see also Li v. Ashcroft,* 312 F.3d 1094, 1103 (9th Cir. 2002).

29. Like withholding of deportation under 8 U.S.C. § 1253(h) (1993), CAT protection is mandatory. With respect to any individual granted deferral of removal under CAT, the IJ "shall also inform the [noncitizen] that removal has been deferred only to the country in which it has been determined that the [noncitizen] is likely to be tortured, and that the [noncitizen] may be removed at any time to another country where he or she is not likely to be tortured." 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

30. Although individuals granted CAT protection may be removed to a third country, the regulations provide that they may not be removed to a country where they are likely to be tortured. 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

A. DHS' Obligation to Provide Notice and Opportunity to Present a Fear-based Claim Before Deportation to a Third Country

31. Courts have repeatedly held that individuals cannot be deported to a country that was not properly designated if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (per curiam) (permitting designation of third country where individuals received "ample notice and an opportunity to be heard"). Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States'

obligations under international law. *See* 1951 United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, 19 U.S.T. 6259 (July 28, 1951); United Nations Protocol Relating to the Status of Refugees, 19 U.S.T. 6223, 606 U.N.T.S. 267 (Jan. 31, 1967); Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 "amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol"); *see also* United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (June 26, 1987); FARRA at 2681–82 (codified at n.8 under U.S.C. § 1231); U.N. Comm. Against Torture, Gen. Comment No. 4, Implementation of Article 3 by States Parties, U.N. Doc. CAT/C/GC/4 at ¶ 12 (2017) ("Furthermore, the person at risk [of torture] should never be deported to another State where he/she may subsequently face deportation to a third State in which there are substantial grounds for believing that he/she would be in danger of being subjected to torture.").

32. Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041; *Protsenko*, 149 F. App'x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Similarly, a "last minute" IJ designation of a country during removal proceedings that affords no meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process." *Andriasian*, 180 F.3d at 1041. The federal government has repeatedly acknowledged these obligations. In 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the Departments of Justice and Homeland Security asserted that "[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as

potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)]." Execution of Removal Orders; Countries to Which Aliens May Be Removed, 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. §§ 241, 1240, 1241). Furthermore, the agencies contemplated that, in cases where ICE sought removal to a country that was not designated in removal proceedings, namely, "removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv) or (b)(2)(E)(vii)]," DHS would join motions to reopen "[i]n appropriate circumstances" to allow the noncitizen to apply for protection. *Id.*

33. Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal for a time period sufficient to permit the filing of a motion to reopen removal proceedings so that a third country for removal may be designated and the noncitizen may present a fear-based claim. *Andriasian*, 180 F.3d at 1041; *Aden*, 409 F. Supp. 3d at 1009 ("A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation."). An opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened. *See Aden*, 409 F. Supp. 3d at 1010 (holding that merely giving petitioner an opportunity to file a discretionary motion to reopen "is not an adequate substitute for the process that is due in these circumstances" and ordering reopening); *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (remanding to BIA to determinate whether designation is appropriate).

B. DHS violates the statutory, regulatory, and due process framework by depriving Petitioner of meaningful notice and meaningful opportunity to present a fear-based claim prior to deportation to a third country.

34. On January 20, 2025, President Trump signed an Executive Order, entitled Securing our Borders, in which he instructed the Secretary of State, Attorney General, and DHS

Secretary to "take all appropriate action to facilitate additional international cooperation and agreements, . . ., including [safe third country agreements] or any other applicable provision of law." *See* Exec. Order No. 14165, 90 Fed. Reg. 8467, 8468 (Jan. 20, 2025).

35. On or about February 18, 2025, ICE issued a directive instructing officers to review cases for third country deportations and re-detain previously released individuals, including individuals granted withholding or removal or CAT protection and individuals previously released because removal was not reasonably foreseeable.

36. On March 30, DHS issued another guidance, which Justice Sotomayor described as follows:

> On March 30, DHS issued a second guidance document, which contained a two-step process for executing third-country removals. If a country provides the United States with what DHS believes to be "credible" "assurances that aliens removed from the United States will not be persecuted or tortured," then (the policy says) DHS may remove the noncitizen to that country **without any process.** See App. to Application for Stay of Injunction 54a-55a (App.) The Government says this policy permits DHS to change someone's "deportation country to Honduras . . . at 6:00 a. m., put [them] on a plane, and fl[y them] to Honduras" 15 minutes later. ECF Doc. No. 74, p. 12 (Tr. Apr. 10, 2025).
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> In the absence of credible "assurances" from a foreign country, the policy provides, "DHS will first inform the alien of" her impending removal. App. 55a. Even so, the policy prohibits officers from providing the noncitizen with an affirmative opportunity to raise her fear of torture. Only one who "states a fear of removal" unprompted will be given a screening interview, which will take place "**within 24 hours of referral.**" *Ibid.* Those who cannot establish their eligibility for relief at the screening interview can apparently be deported immediately, without a chance to provide evidence or seek judicial review. See ECF Doc. 74, at 52-53.

Dep't of Homeland Security v. D.V.D., No. 24A1153., 2025 U.S. LEXIS 2487, at *6-7 (S. Ct. June 23, 2025) (emphasis added).

37. On July 9, 2025, the ICE Director issued written guidance to all ICE employees to immediately adhere to the Secretary of Homeland Security, Kristi Noem's, March 30, 2025 guidance.

38. The March 30, 2025 guidance does not comport with minimal due process requirements. *D.V.D. v. United States Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 U.S. Dist. LEXIS 74197, at *50 (D. Mass. April 18, 2025) ("The March Guidance provides no process whatsoever to individuals whom DHS plans to remove to a country from which the United States has received blanket diplomatic assurances.").

39. The Massachusetts District court has stated that it "finds it likely that Respondents have applied and will continue to apply the alleged policy of removing aliens to third countries without notice and an opportunity to be heard on fear-based claims—in other words, without due process." *Id.* at *49.

40. Similarly, the District Court of New Jersey entered a temporary restraining order on the same grounds on July 10. *See Servellon Giron v. Noem, et al.*, 2:25-cv-6301 (D.N.J. July 10, 2025).

VI. FACTS

41. Petitioner has resided in the United States for over 40 years. He has strong ties to the United States, including his U.S. citizen wife.

42. Petitioner arrived to the United States via a long and difficult boat ride as a lawful permanent resident in 1985, when he was only seven years old. His father had previously fled Vietnam as a refugee after serving alongside the United States in the Vietnam War. In 1995, when he still only seventeen years old and with his family still recovering from the trauma of the Vietnam War and their journey to the U.S., the Petitioner was arrested and charged with a number of offences and eventually pled guilty to robbery and was sentenced to nine years in prison.

43. In 2000, the Petitioner was released early from state custody and was sent to the custody of Respondents (the former INS). He attempted to apply for relief from deportation in the form of a waiver under former 8 USC 1182(c) as well as the Convention Against Torture, but both

applications were denied, and he was ordered deported on August 20, 2000. He waived his right to appeal. Respondents then continued to detain Petitioner and attempted to deport him to Vietnam. Concluding both that the Petitioner's deportation to Vietnam was not reasonably foreseeable and that he posed neither a danger nor a flight risk, he was released and placed on an OSUP on May 7, 2001.

44. For the last 24 years, the Petitioner has dutifully complied with his OSUP. He reports whenever DHS requires it. He has held work authorization and maintained gainful employment. He has had no criminal arrests and has not violated his OSUP in any way whatsoever.

45. On or around November 12, 2025, DHS revoked Petitioner's OSUP and re-detained him based on the 24-year-old deportation order. Although the Respondents have previously been unable to remove the Petitioner to Vietnam, they revoked his OSUP in violation of law—without any change in circumstances that would make removal reasonably foreseeable, without providing meaningful notice or an opportunity to respond, and without conducting a prompt interview as required by the regulations.

VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

46. Petitioner has exhausted his administrative remedies to the extent required by law.

VIII. CLAIMS FOR RELIEF

47. Petitioner alleges and incorporates by reference the paragraphs alleged above.

COUNT I

PETITIONER SHOULD BE RELEASED BECAUSE HIS REMOVAL IS NOT REASONABLY FORSEEABLE

48. The INA requires mandatory detention of individuals with final removal orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2).

49. A noncitizen who is not removed within that period "shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3).

50. While 8 U.S.C. § 1231(a)(6) permits detention beyond the removal period in certain situations, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699.

51. Multiple courts have held that re-detention does not restart the 90-day removal period under § 1231(a)(6). *See Villanueva*, 2025 WL 2774610, at *9 ("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."); *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791, at *149 (D. Mass. June 20, 2025) (finding *Zadvydas* six-month presumption inapplicable where a noncitizen is **re-detained** after a period of supervised release and the government fails to show a substantial likelihood that removal is reasonably foreseeable); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (holding that the six-month presumption had long lapsed during supervised release, and the government bears the burden of demonstrating that removal is reasonably foreseeable); *Sied v. Nielsen*, No. 17-cv-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); *Chen v. Holder*, No. 6:14-2530, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015). Even if the clock could "restart," the six-month period is not a bright line rule. The constitutionality of detention "hinges on whether his removal from the United States is reasonably likely in the foreseeable future, not how long the noncitizen has been detained." *Villanueva*, 2025 WL 2774610, at *10.

52. No statute permits Respondents to re-detain an individual who has been released under § 1231(a)(3) without evidence that removal is now reasonably foreseeable or that the individual has violated the conditions of their release.

53. The regulation provides that a release may be revoked if the noncitizen violated the terms of his release or upon a showing a change in circumstances that makes removal reasonably foreseeable. *See* 8 C.F.R. § 241.13(i)(1)–(2). In this case, the Petitioner did not violate the conditions of his release nor was there a finding of a change in circumstances showing that removal to Vietnam is reasonably foreseeable. Nor did the Petitioner receive timely notification of the revocation and was not afforded a meaningful opportunity to respond. *See* 8 C.F.R. § 241.13(i)(3). His re-detention, as such, violates his due process rights.

54. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. Amend. V.

55. Petitioner was previously detained by the former INS and released after an individualized custody determination that considered any danger or unmitigable flight risk. He has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable and he has not violated the conditions of his release. *See, e.g.*, *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 U.S. Dist. LEXIS 121997, at *11 (N.D. Cal. June 26, 2025) (finding detention not necessary when "[i]n the seven years since then, Ortega's conduct has only further supported those findings: he has had no new contacts with law enforcement, has complied with all his parole and ICE supervision requirements, and by the accounts of many is an upstanding citizen and an important contributor to his community.").

56. Respondents have violated this liberty interest by revoking Petitioner's OSUP without providing adequate notice or an opportunity to be heard, and by failing to present changed circumstances that would make removal reasonably foreseeable.

57. Moreover, government agencies are required to follow their own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000, *16 (E.D. Cal. July 16, 2025). A violation of the *Accardi* doctrine may constitute a violation of the Fifth Amendment Due Process Clause and justify release from detention. *See, e.g., United States v. Teers*, 591 F. App'x 824, 840 (11th Cir. 2014); *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 U.S. Dist. LEXIS 84258, at *48 (W.D.N.Y. May 2, 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017)).

58. Here, ICE's failure to comply with the regulations governing revocation of an order of supervision squarely violates the *Accardi* doctrine. Courts across the country have repeatedly held that ICE acts unlawfully when it disregards these mandatory procedures. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) ("Because DHS failed to make the determination required by Section 241.13(i)(2) for revoking Petitioner's release, the Court has no occasion to address the adequacy of the reasons stated for such a determination. The Court cannot conclude that Petitioner was "[u]pon revocation" duly notified of those reasons, or that DHS "conduct[ed] an initial informal interview promptly ... to afford [Petitioner] an opportunity to respond to the reasons for revocation in the notification," as required by Section 241.13(i)(3)."); *Rombot*, 296 F. Supp. 3d at 387–88 (ordering release where "[b]ased on ICE's violations of its own regulations, the Court concludes [the petitioner's] detention was unlawful"); *K.E.O.*, 2025 WL 2553394, at *7 (noting that "courts across the country have ordered the release of individuals" where ICE "violated their own regulations"); *Grigorian v.*

Bondi, No. 25-cv-22914-RAR, 2025 WL 2604573, at *10 (S.D. Fla. Sept. 9, 2025) (holding that ICE's failure to provide the required informal interview or a meaningful opportunity to contest revocation "violates both ICE's own regulations and the Fifth Amendment Due Process Clause" and "compels [the petitioner's] release"); *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *5 (D. Minn. Aug. 25, 2025) (same). Because ICE failed to adhere to the regulations that govern its own authority, this Court should likewise conclude that Petitioner's detention is unlawful and order his release from unlawful detention.

COUNT II

FIFTH AMENDMENT DUE PROCESS CLAUSE VIOLATION

59. The INA, FARRA, and implementing regulations mandate meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

60. Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country. *See, e.g.*, *Aden*, 409 F. Supp. 3d at 1004. Petitioner also has a due process right to implementation of a process or procedure to afford these protections. *See, e.g.*, *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991). Petitioner also has a due process not to be re-detained pursuant to the March 30, 2024 directive because such directive does not provide meaningful notice and opportunity to present a fear-based claim prior to removal to a third country. *Zadvydas*, 533 U.S. at 690.

61. Accordingly, the Court should declare that Respondents have violated Petitioner's constitutional right to due process and that the Due Process Clause affords Petitioner the right to a process and procedure ensuring that DHS provides meaningful notice and opportunity to present

a fear-based claim to an immigration judge before DHS deports a person to a third country and ordering Petitioner released since his removal is not reasonably foreseeable without a meaningful process in place.

COUNT III

RELIEF UNDER THE EQUAL ACCESS TO JUSTICE ACT

62. The Petitioner seeks and is entitled to recover reasonable attorney fees, expenses and costs pursuant to the Equal Access to Justice Act. 28 U.S.C.§ 2412.

IX. PRAYER FOR RELIEF

For the foregoing reasons, the Petitioner requests that the Respondents be cited to appear and that, upon due consideration, the Court enter an order:

a. Granting a writ of habeas corpus finding that the Petitioner's detention is in violation of the due process clause;

b. Providing declaratory relief that the Petitioner's detention is unlawful;

c. Ordering the Petitioner's release from custody;

d. Awarding Petitioner reasonable attorney's fees, expenses and costs; and

e. Granting Petitioner such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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