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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

Hoa Van Nguyen,

Petitioner,

v.

Sergio Albarran, *in his official capacity as
Acting Field Office Director of San Francisco
Office of Detention and Removal, U.S.
Immigration and Customs Enforcement,*

Tonya Andrews, *in her official capacity as
Facility Administrator at Golden State Annex
Detention Center, McFarland, California,*

Respondents.

Case No.

**PETITION FOR A WRIT OF HABEAS
CORPUS AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This case challenges the unlawful re-detention of Hoa Van Nguyen (“Petitioner” or “Mr. Nguyen”), who is currently in the custody of United States Immigration and Customs Enforcement (“ICE”), at the Golden State Annex Detention Center in McFarland, California.

2. On October 25, 2001, an immigration judge ordered Mr. Nguyen deported to Vietnam.

3. In April 2002, ICE released Mr. Nguyen on an Order of Supervision, or OSUP.

1 4. On September 22, 2025, at around 10:30 a.m., five plainclothes agents who
2 identified themselves as Immigration and Customs Enforcement officers detained Mr. Nguyen at
3 the Sacramento International Airport as he prepared to board a flight with his fiancé.

4
5 5. ICE transported Mr. Nguyen to a building in downtown Sacramento where he was
6 allowed to meet with his immigration attorney.

7 6. Mr. Nguyen was transported to the Mesa Verde Processing Center where he spent
8 the next two months.

9 7. On December 6, 2025, ICE transferred Mr. Nguyen to the Golden State Annex.

10 8. At no point has ICE provided Mr. Nguyen an oral or written explanation as to why
11 ICE re-detained Mr. Nguyen.

12 9. ICE did not act in accordance with 8 C.F.R. §§ 241.13(f) and 241.13(i), which
13 governs the revocation of an OSUP.

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15 10. Mr. Nguyen's removal to Vietnam is not reasonably foreseeable: ICE has not
16 obtained a travel document from Vietnam and Vietnam has not agreed to accept Mr. Nguyen.

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18 11. The punitive, unlawful detention of Mr. Nguyen violates the Due Process Clause
19 of the Fifth Amendment of the U.S. Constitution, the Immigration and Nationality Act, 8 U.S.C.
20 § 1231, implementing regulations, 8 C.F.R. § 241.4, 241.13. *See Zadvydas v. Davis*, 533 U.S. 678,
21 689-90, 121 S. Ct. 2491 (2001).

22 12. Mr. Nguyen respectfully requests this Court to issue an order directing
23 Respondents to immediately release him from custody and restore him to the status he held prior
24 to his re-detention, including the same conditions of his supervised release.
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PARTIES

13. Petitioner, Mr. Hoa Van Nguyen, has lived in the United States since February 1982. Mr. Nguyen resided with his fiancé in Sacramento, California. He is currently detained in McFarland, California.

14. Respondent, Sergio Albarran, is sued in his official capacity as the Acting Director of the San Francisco Field Office for Immigration and Customs Enforcement. In his official capacity, Acting Director Albarran oversees the arrest and detention of noncitizens in Sacramento, California and the Golden State Annex Detention Center.

15. Respondent, Tonya Andrews, is the Facility Administrator at the Golden State Annex Detention Center. In her official capacity, Ms. Andrews has taken custody of Mr. Nguyen at the behest and direction of United States Immigration and Customs Enforcement. Ms. Andrews is sued in her official capacity.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, the Suspension Clause of the Constitution, and 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, and Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*

17. Venue is proper in this district because Mr. Nguyen is in the custody of Respondent Ms. Andrews at the Golden State Annex Detention Center, which is located within this District.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Petitioner: Hoa Van Nguyen

18. In 1976, Mr. Nguyen was born in Vietnam.

1 19. Mr. Nguyen's father served in the South Vietnamese Army.

2 20. Because of his service, Mr. Nguyen, his parents, and his siblings had to flee
3 Vietnam.

4 21. The Nguyen family left Vietnam on a small fishing boat, were rescued at sea, and
5 then brought to a Malaysian refugee camp where they spent the next few years.

6 22. In February 1982, the United States accepted the Nguyen family as refugees.

7 23. Mr. Nguyen became a lawful permanent resident, but was ordered deported on
8 October 25, 2001, after serving seven years in the Texas Penitentiary due to a conviction for
9 felony burglary.

10 24. On or about April 2002, Mr. Nguyen was released on an OSUP because his
11 removal was not reasonably foreseeable.

12 25. Mr. Nguyen complied with the terms of his release until 2009, when he was
13 convicted in United States District Court in Texas for being a felon in possession of a firearm.

14 26. In May 2014, Mr. Nguyen was released from federal prison.

15 27. ICE issued Mr. Nguyen an OSUP because Vietnam still refused to issue a travel
16 document for him.

17 28. In 2019, ICE approved Mr. Nguyen's request for transfer of his OSUP from Texas
18 to Sacramento.

19 29. From 2019 until September 22, 2025, Mr. Nguyen appeared at ICE's Sacramento
20 Field Office for an annual check-in.

21 30. Mr. Nguyen reported to ICE for all known appointments and check-ins.

22 31. United States Citizenship and Immigration Services had granted Mr. Nguyen work
23 authorization.

1 32. Mr. Nguyen is engaged to a United States citizen.

2 33. On September 22, 2025, at around 10:30 am, five plainclothes agents who
3 identified themselves as ICE officers detained Mr. Nguyen at the Sacramento International
4 Airport as he prepared to board a flight with his fiancé.
5

6 34. ICE transported Mr. Nguyen to a building in downtown Sacramento where he was
7 allowed to meet with his immigration attorney.

8 35. Mr. Nguyen was transported to the Mesa Verde Processing Center where he spent
9 the next two months.
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11 36. On December 6, 2025, ICE transferred Mr. Nguyen to the Golden State Annex.

12 37. At no point has ICE provided Mr. Nguyen an oral or written explanation as to why
13 he was re-detained and have not discussed the possibility of removing him to Vietnam.

14 38. ICE previously provided Mr. Nguyen with notice that the agency would offer him
15 an opportunity to prepare for an orderly departure from the United States if Vietnam agreed to his
16 return.
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18 39. There are no circumstances indicating that Mr. Nguyen now poses a flight risk or
19 danger to the community.

20 40. There is no evidence of changed circumstances, including a travel document for
21 Mr. Nguyen's repatriation to Vietnam.
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23 41. There is no evidence that ICE has taken any measures to obtain a travel document
24 from Vietnam.
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B. Repatriation To Vietnam

42. Before a Vietnamese immigrant can be repatriated, the country must issue a passport or other travel documents in response to a request from ICE. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020).

43. Between the end of the Vietnam War and 2008, Vietnam refused to repatriate any Vietnamese immigrant who had been ordered removed from the U.S. *See id.*

44. In 2008, Vietnam agreed to consider repatriation requests for Vietnamese immigrants who had arrived in the U.S. after July 12, 1995, but not those who arrived before July 12, 1995. *See id.*

45. Between 2017 and 2019, ICE requested travel documents for pre-1995 Vietnamese immigrants 251 times; Vietnam granted those requests only 18 times. *Id.* at 1087-88.

46. In November 2020, the U.S. and Vietnam signed a Memorandum of Understanding (“MOU”) that created a process for deporting pre-1995 immigrants.

47. Section 4 of the 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 for repatriation a Vietnamese citizen.

48. These factors are not publicly known, because the U.S. government redacted them in Freedom of Information Act (“FOIA”) disclosures of the MOU; yet they appear to dictate which categories of people may be deported to Vietnam.

49. 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 from 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.

50. Between September 2021 to September 2023, Vietnam issued travel documents to only four pre-1995 Vietnamese immigrants whom ICE sought to deport.

1 51. The process to secure a travel document for a pre-1995 immigrant is multilayered
2 and lengthy, requiring interviews and verification by authorities in Vietnam. The only known
3 change has been ICE’s policy and practice of deporting individuals to third countries.

4 **LEGAL BACKGROUND**

5 **A. Due Process Governs Decisions to Revoke an Order of Supervision**

6 52. “The Due Process Clause applies to all persons within the United States, including
7 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533
8 U.S. at 693.

9 53. “Freedom from imprisonment—from government custody, detention, or other
10 forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.* at 690.

11 54. Under substantive due process doctrine, revocation of a noncitizen’s order of
12 supervision is a restraint on liberty that is permissible if it serves a “legitimate nonpunitive
13 objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997).

14 55. The Supreme Court has only recognized two legitimate objectives of immigration
15 detention; preventing danger to the community or preventing flight prior to removal. *See*
16 *Zadvydas*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

17 56. “Procedural due process imposes constraints on governmental decisions which
18 deprive individuals of liberty,” like the decision to revoke a non-citizen’s order of supervision.
19 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental
20 requirement of [procedural] due process is the opportunity to be heard at a meaningful time and
21 in a meaningful manner.” *Id.* at 333 (citation modified).

B. Procedure for Revoking an Order of Supervision

57. A noncitizen with a final order of removal “who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day period”); *see Phong Phan v. Beccerra*, No. 2:25-cv-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025).

58. Certain noncitizens, including those ordered removed for criminal convictions under 8 U.S.C. § 1227(a)(2), may be detained past the 90-day removal period following a removal order if they are found to be “a risk to the community or unlikely to comply with the order of removal” or if the order of removal was on specified grounds. *Id.* § 1231(a)(6); *Vaskanyan v. Janecka*, No. 5:25-cv-01475-MRA-AS, 2025 U.S. Dist. LEXIS 120992, 2025 WL 2014208, at *3 (C.D. Cal. June 25, 2025).

59. But even where initial detention past the 90-day removal period is authorized, if “removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances” *Zadvydas*, 533 U.S. at 699-700; *Vlasov v. Bondi*, No. 25-cv-01342-AJB-MSB, 2025 U.S. Dist. LEXIS 152632, 2025 WL 2258582, at *2 (S.D. Cal. Aug. 7, 2025).

60. The revocation of Petitioner’s release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen’s release for purposes of removal “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.” 8 C.F.R. § 241.13(i)(2); *Hoac v. Becerra*, No.

2:25-cv-01740-DC-JDP, 2025 U.S. Dist. LEXIS 136002, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025).

61. Upon such a determination:

[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).

62. Under this regulation, it is the government's burden to show a significant likelihood that Petitioner may be removed. *J.L.R.P. v. Wofford*, No. 1:25-CV-01464-KES-SKO (HC), 2025 WL 3190589, at *4 (E.D. Cal. Nov. 14, 2025) (“[W]hen ICE revokes the [OSUP] of a noncitizen who has been ordered removed to effectuate that noncitizen's removal, it is [ICE's] burden to show a significant likelihood that the alien may be removed.”) (citation modified); *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (“[T]he regulations . . . place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future.”); *cf. Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023) (“ICE's decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE's own regulation”) (citing 8 C.F.R. § 241.13(i)(2)).

63. Further, when ICE revokes a non-citizen's supervised release based on a finding of changed circumstances, the court must review that finding in light of the factors set out in 8 C.F.R. § 241.13(f), which include, among other things, the reasonably foreseeable results of the

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1 government's and the non-citizen's efforts towards removal and the history of the non-citizen's
2 efforts to comply with the order of removal. *Hoac*, 2025 U.S. Dist. LEXIS 136002, 2025 WL
3 1993771, at *3 (citing *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 150 (D. Mass. June 20, 2025) (“To
4 the extent ICE claims that it made such a determination, the court should review that claim in
5 light of the regulations instructing ICE on how it should make such a determination.”)).

7 **C. Removal To Third Countries Without Due Process**

8 64. To remove a foreign national to a third country, the INA requires that the Attorney
9 General—by and through a delegate, such as an immigration judge—first determine that it is
10 “impracticable, inadvisable, or impossible” to remove Petitioner to Vietnam and that the
11 designated third country “will accept [Petitioner] into that country.” 8 U.S.C. §
12 1231(b)(2)(E)(vii); see *Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. §
13 1231(b)(E)(vii) “indisputably requires the Attorney General to prove that the proposed country
14 of removal is willing to accept the alien”); see also *Jama v. Immigr. & Customs Enf’t*, 543 U.S.
15 335, 344 (2005).

16 65. The statute delegates the authority to the Attorney General, not DHS. 8 U.S.C. §
17 1231(b)(2)(E)(vii) (“the Attorney General shall remove the alien to. . .”); see also 8 C.F.R. §
18 1240.10(f) (in removal proceedings the immigration judge “shall. . . identify for the record a
19 country, or countries in the alternative, to which the alien’s removal may be made”).

20 66. To remove a foreign national to a third country, the Attorney General would need
21 to move to reopen removal proceedings to designate a third country for removal under the
22 statutory process. See, e.g., *Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014)
23 (unpublished) (holding that should a new country of removal be designated, “the agency must
24 provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of
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1 his claim of withholding of removal from” the third country); *Aden v. Nielsen*, 409 F. Supp. 3d
2 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings “shall be reopened and a
3 hearing shall be held before the immigration judge so that petitioner may apply for relief from
4 removal” as to a country not designated in prior proceedings).

5
6 67. Adherence to that process is necessary to ensure the foreign national has a statutory
7 right to claim protection in immigration court against removal to a third country where he may
8 be persecuted or tortured, a form of protection known as withholding of removal, 8 U.S.C.
9 § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of
10 removal under CAT. *See* 28 C.F.R. § 200.1 (“A removal order. . . shall not be executed in
11 circumstances that would violate [the CAT]”); 8 C.F.R. §§ 208.17-18, 1208.17-1208.18.

12
13 68. At a minimum, Due Process guarantees the noncitizen meaningful notice of the
14 third country designated for removal and an opportunity to respond. *See D.V.D.*, 145 S. Ct. at
15 2163 (Sotomayor, J., dissenting) (“[t]he Fifth Amendment unambiguously guarantees that right”
16 to notice of a third country removal so that a noncitizen “learn[s] about it in time to seek an
17 immigration judge’s review”). Notice cannot be “last minute” because that would deprive an
18 individual of a meaningful opportunity to apply for fear-based protection from removal.
19 *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

20
21 69. Individuals must have time to prepare and present relevant arguments and
22 evidence, and to seek reopening of their removal case. “[W]ritten notice of the country being
23 designated” is required and “the statutory basis for the designation, i.e., the applicable subsection
24 of § 1231(b)(2)” must be specified. *Aden*, 409 F. Supp. 3d at 1019; *see also D.V.D. v. U.S. Dep’t*
25 *of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025)
26 (“All removals to third countries, i.e., removal to a country other than the country or countries
27
28

1 designated during immigration proceedings as the country of removal on the non-citizen's order
2 of removal, must be preceded by written notice to both the non-citizen and the non-citizen's
3 counsel in a language the non-citizen can understand." (internal citation omitted)); *Andriasian*,
4 180 F.3d at 1041 (due process requires notice to the noncitizen of the right to apply for asylum
5 and withholding to the country where they will be removed).
6

7 70. Due process also demands that the government "ask the noncitizen whether he or
8 she fears persecution or harm upon removal to the designated country and memorialize in writing
9 the noncitizen's response. This requirement ensures DHS will obtain the necessary information
10 from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and
11 noncitizen said]." *Aden*, 409 F. Supp. 3d at 1019.
12

13 71. Any unannounced attempt at a third country removal would violate these statutory
14 and constitutional procedural protections.
15

16 72. According to ICE's memo issued on July 9th, individuals can be removed to third
17 countries "without the need for further procedures," so long as "the [U.S.] has received diplomatic
18 assurances."
19

20 73. The policy instructs officers to violate their statutory and constitutional obligations
21 to noncitizens.
22

23 74. The same is true of the minimal procedures ICE offers when no diplomatic
24 assurances are present that a noncitizen will not be tortured upon arrival in a third country.
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26 75. The policy provides no meaningful notice (6-24 hours), instructs officers *not* to
27 ask about fear, and provides no actual opportunity for noncitizens to seek counsel and prepare a
28 fear-based claim (6-24 hours), let alone reopen removal proceedings.

1 76. In sum, the policy directs ICE officers to violate the rights of noncitizens whom
2 they seek to subject to the third country removal program.

3 77. Several courts have recently ordered the government not to remove a noncitizen
4 to a third countries under similar circumstances. *See generally J.R. v. Bostock*, 25-cv-01161-JNW,
5 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025) (immediately enjoining removal to “Cuba, Libya,
6 or any third country in the world absent prior approval from this Court”); *Hoac*, 2025 WL
7 1993771, at *7 (same).

8
9 **D. The APA Sets Minimum Standards for Final Agency Action**

10 78. The Administrative Procedure Act authorizes judicial review of final agency
11 action. 5 U.S.C. § 704.

12 79. Final agency actions are those (1) that “mark the consummation of the agency’s
13 decision making process[,]” and (2) “by which rights or obligations have been determined, or
14 from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation
15 modified).

16 80. ICE’s decision to re-detain Mr. Nguyen, without complying with the regulatory
17 procedures under 8 C.F.R. § 241.13(i), is a final agency action subject to this Court’s review.

18 81. Here, Mr. Nguyen’s re-detention marked the consummation of ICE’s decision
19 making process regarding Mr. Nguyen’s custody.

20 82. Mr. Nguyen’s re-detention was an action by which rights or obligations have been
21 determined or from which legal consequences flowed, as ICE detained Mr. Nguyen in violation
22 of his rights under the Constitution, statute, and regulations.

E. Agencies Must Follow Lawful Rules And Policy

83. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

84. Many district courts have confronted the same question presented here -- that is, whether ICE’s violation of the procedural requirements set forth in § 241.13 may be overlooked in a habeas action challenging the legality of a noncitizen’s detention -- and concluded that habeas relief was warranted. *See, e.g., Hoac*, 2025 U.S. Dist. LEXIS 136002, 2025 WL 1993771, at *4; *Phan v. Noem*, 2025 WL 2898977, *5 (S.D. Cal. 2025) (“The Court’s research indicates that every district court, except one, to consider the issue has determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful, and the petitioner’s release must be ordered. This Court reaches the same conclusion. ICE’s failure to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 violated Petitioner’s due process rights.”); *Nguyen v. Archambeault*, 2025 WL 3250922, *1-2 (D. Ariz. 2025) (“Respondents implicitly acknowledge their noncompliance with the regulation that required ICE to provide notice and conduct the informal interview promptly after Petitioner’s redetention. That requirement is not an abstract procedural technicality Respondents’ failure to comply with the governing regulation is prejudicial in that, if the regulation had been followed, Petitioner would have had a meaningful timely opportunity to no longer be detained. The delay of over four months deprived Petitioner of the

1 opportunity to challenge the reasons for his redetention. Petitioner's immediate release is required
2 to return him to the status quo ante—the last uncontested status which preceded the pending
3 controversy. This decision is in accord with myriad other district courts to address this issue.”)
4 (citations omitted).
5

6 **CLAIMS FOR RELIEF**

7 **Count One**

8 **Violation of the Fifth Amendment of the U.S. Constitution**

9 **Substantive Due Process**

10 85. Petitioner incorporates all paragraphs above as if fully set forth here.

11 86. The Due Process Clause of the Fifth Amendment protects against punitive
12 detention and similar restrictions on a person's liberty.

13 87. In April 2002, ICE first released Mr. Nguyen on an OSUP.

14 88. Since his most recent OSUP issued in May 2014, Mr. Nguyen has complied with
15 all terms and conditions of his OSUP.

16 89. Prior to re-detaining Mr. Nguyen on September 22, 2025, ICE did not revoke his
17 OSUP or disclose any change in circumstances.

18 90. Mr. Nguyen's arrest and re-detention, therefore, did not bear a reasonable
19 relationship to the two recognized purposes of immigration detention: preventing danger to the
20 community, or flight prior to removal.

21 91. Because ICE had no legitimate, non-punitive objective in revoking Mr. Nguyen's
22 order of supervision, his re-detention violates substantive due process under the Fifth Amendment
23 of the U.S. Constitution.
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Count Two
Violation of the Fifth Amendment of the U.S. Constitution
Procedural Due Process

92. Petitioner incorporates all paragraphs above as if fully set forth here.

93. The Supreme Court’s decision in *Matthews*, 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.

94. All three factors demonstrate ICE violated Mr. Nguyen’s rights to due process.

95. The first factor, the private interest at issue, favors Mr. Nguyen. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690.

96. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Mr. Nguyen.

97. The governing regulation specifies the procedures that must be followed when revoking an OSUP. 8 C.F.R. § 241.13(i).

98. Here, ICE detained Mr. Nguyen in violation of the regulation and the procedural due process protections embodied in the INA and the Fifth Amendment.

99. The failure to follow the requisite regulations and procedural safeguards has led to the unconstitutional deprivation of Mr. Nguyen’s liberty.

1 100. When the government ignores law that ensures notice and an opportunity to
2 respond to a person at risk of revocation of an order of supervision, it is more likely to waste
3 limited financial and administrative resources on unnecessary detention of people who are neither
4 flight risks nor dangerous to the community, as is the case with Mr. Nguyen.
5

6 101. The re-detention of Mr. Nguyen, prior to the revocation of his OSUP and without
7 providing him requisite notice and a meaningful opportunity to respond in compliance with the
8 regulations, violated his procedural due process rights under the Fifth Amendment of the U.S.
9 Constitution.
10

11 **Count Three**
12 **Detention In Violation of Law**

13 102. Petitioner incorporates all paragraphs above as if fully set forth here.

14 103. Under the APA, a court shall “hold unlawful and set aside agency action . . . found
15 to be . . . not in accordance with law” or “contrary to constitutional right, power, privilege, or
16 immunity.” 5 U.S.C. § 706(2)(A), (B).

17 104. The APA’s reference to “law” in the phrase “not in accordance with law,” “means,
18 of course, *any* law, and not merely those laws that the agency itself is charged with administering.”
19 *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).
20

21 105. ICE failed to comply with 8 C.F.R. § 241.13 at the time of Mr. Nguyen’s re-
22 detention.

23 106. ICE never revoked Mr. Nguyen’s OSUP prior to taking him into custody nor
24 provided him with the requisite notice at the time of his detention.
25

26 107. ICE has not disclosed the changed circumstances or shown that Mr. Nguyen’s
27 removal was reasonably foreseeable at the time it revoked his OSUP.
28

1 108. ICE re-detained Mr. Nguyen in violation of law and not done in accordance with
2 procedure.

3 109. ICE's decision to arrest, re-detain, and hold Mr. Nguyen in custody was unlawful,
4 and thus Respondents should immediately release him from custody and return him to the status
5 he held prior to his arrest on September 22, 2025.
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioner requests that this Court:

9 A. Exercise jurisdiction over this matter;

10 B. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and
11 the United States pending its adjudication of this petition;

12 C. Declare that Petitioner's detention violates the Due Process Clause of the Fifth
13 Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;

14 D. Order Petitioner's immediate release under the conditions of his most recent order
15 of supervision.
16

17 E. Order Respondents to provide Petitioner with notice and a meaningful opportunity
18 to respond, and act in accordance with the conditions of removal outlined in the November 2020
19 Memorandum of Understanding between the U.S. and Vietnam;
20

21 F. Award Petitioner costs and reasonable attorney's fees; and

22 G. Grant such other relief as this Court may deem just and proper.
23

24 December 19, 2025

Respectfully Submitted,

25 /s/ Kristina David

26 Kristina David

27 CA Bar No. 346347

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Attorney for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. Based on documents, discussions with Petitioner's immigration counsel, and Petitioner's family, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

/s/ Kristina David
Kristina David