IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Binh Thai Nguyen,

Petitioner,

v.

Pamela Bondi, Attorney General; Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of U.S. Immigration & Customs Enforcement; Marcos Charles, Acting Executive Associate Director for Enforcement and Removal Operations; Mark Siegel, Field Office Director for Enforcement and Removal Operations; U.S. Immigration & Customs Enforcement; U.S. Department of Homeland Security; Steve Kelley, Sheriff of Kay County Jail.

Respondents.

Case No.: _____

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

EXPEDITED HANDLING REQUESTED PURSUANT TO 28 U.S.C. § 1657

INTRODUCTION

1. This case challenges the unlawful detention of Petitioner, Binh Thai Nguyen ("Nguyen") who is currently in the custody of Immigration and Customs Enforcement ("ICE") at Kay County Jail in Oklahoma. Nguyen is a citizen of Vietnam who entered the United States in or around 1990 and subsequently became a lawful permanent resident. Counsel does not have Nguyen's immigration file as the FOIA request is pending with ICE and the immigration court. However, there is evidence that in 2012, that the immigration judge ordered Nguyen's removal to Vietnam because of several criminal convictions (1992 2nd degree burglary, 1992 theft, and 2010 theft). Nguyen also claims he checked in with

ICE every six months and then gradually every year under an Order for Supervision ("OSUP") pursuant to 8 C.F.R. § 241.5 and 8 C.F.R. § 241.13. Back in 2012 Vietnam refused to repatriate its citizens if they had left the country pre-1995 pursuant to the 2008 Repatriation Agreement between the United States and Vietnam, thus, Nguyen's deportation was never carried out and ICE must of found there was no significant likelihood of his removal to Vietnam in the reasonably foreseeable future therefore released Nguyen. On or abouts December 9, 2025, ICE re-detained Nguyen right after he finished his 5th degree drug possession sentence and took him directly from state custody to ICE custody. On January 2, 2026, ICE served Nguyen with a "Notice to Alien of File Custody Review" (hereinafter "Notice"). The Notice did not specify any reason why they were re-detaining Nguyen nor did Nguyen get a prompt interview. *See* Ex. 1, Notice to Alien of File Custody Review.

2. Respondents violated its own procedures by improperly revoking Nguyen's OSUP because: 1) the person revoking his OSUP did not have the authority to do so; 2) Respondents failed to making "specific findings" as to the reason Respondent revoked Nguyen's OSUP; 3) Respondent did not provide Nguyen with a "prompt" informal interview before it revoked Nguyen's OSUP; 4) Respondent potentially failed to abide by its own promise in the Order for Release to give Nguyen the right to an orderly departure; and 5) Respondent also failed to have a hearing before a neutral adjudicator before revoking Nguyen's OSUP.

3. Respondent violated its own procedures re-detaining Nguyen without any specific findings of dangerousness or flight risks. Nguyen argues the regulations permitting re-detention without findings of dangerousness or flight risks are *ultra vires*.

4. Respondent bears the burden of proving removal is "reasonably foreseeable" in the future which Respondent has failed to do.

5. Respondent's actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

6. Nguyen brings this action for expedited injunctive, habeas, and declaratory relief ordering Respondents to immediately release Nguyen.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under 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.*

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), (e)(1), and 2241(d) because Nguyen is detained at Kay County Jail, Oklahoma, some of the Respondents reside and/or are headquartered within Kay County, Oklahoma District, and a

substantial part of the events and omissions giving rise to the claim occurred within this District pursuant to 28 U.S.C. § 1391(e)(1)(A).

PARTIES

RESPONDENT

9. **Binh Thai Nguyen** is a citizen of Vietnam who entered the United States in 1990 and who later became a permanent resident. He is married to a United States citizen ("USC") and has four USC children. His parents, all his siblings, and eight nieces and nephews are all USC. Like many Vietnamese in the 1980s and 1990s, Nguyen's father was a refugee when he entered the United States escaping the Vietnam war. Nguyen has lived in the United State since he was a minor – for 36 years. Nguyen does not have a valid Vietnam passport or other original evidence of Vietnam citizenship. Nguyen's Alien Registration Number is [redacted] Nguyen is an alien with an administratively final removal order from 2012. Nguyen is currently in custody at the Immigration and Customs Enforcement ("ICE") detention center in Kay County, Oklahoma. Nguyen's aggregate period of civil immigration confinement grows as he sits in custody with ICE. Nguyen is willing to return to Vietnam and will show up for the deportation if he is released before a travel document is obtained if and when Respondents are able to secure a travel document which is unlikely as they have been trying to get a travel document for 14 years.

RESPONDENTS

10. **Respondent Pamela Bondi** is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the BIA and the immigration judges through the Executive Office for

Immigration Review. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Nguyen.

11. **Respondent Kristi Noem** is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1103(a), routinely transacts business in the District of Oklahoma, supervises the Oklahoma City ICE Field Office, and is legally responsible for pursuing Nguyen's detention and removal. As such, Respondent Noem is a legal custodian of Nguyen.

12. **Respondent Department of Homeland Security ("DHS")** is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

13. **Respondent Todd M. Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Nguyen's detention.

14. **Respondent Immigration and Customs Enforcement ("ICE")** is the subagency within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens.

15. **Respondent Marcos Charles** is the Acting Executive Associate Director for ICE Enforcement and Removal Operations ("ERO").

16. **Respondent Mark Siegel** is being sued in his official capacity as the Field Office Director for the Oklahoma City Field Office for ICE within DHS. In that capacity, Field Director Siegel has supervisory authority over the ICE agents responsible for detaining Nguyen.

17. **Respondent Steve Kelley** is being sued in his official capacity as the Sheriff of the Kay County Jail. Because Nguyen is detained in the Kay County Jail, Respondent Kelley has immediate day-to-day control over Nguyen.

EXHAUSTION

18. Nguyen has exhausted all administrative remedies available to him. The immigration court does not have jurisdiction to order Nguyen's released. No administrative remedies currently exist under the law to challenge indefinite post-order detention where there is no reasonable likelihood that removal will occur in the foreseeable future. Immigration agencies have no jurisdiction over constitutional challenges of the kind that Nguyen raises here. Prudential exhaustion is not required where the agency "lacks the institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute." *McCarthy*, 503 U.S. at 147–48. *See, e.g., Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *Matter of Akram*, 25 I. & N. Dec. 874, 880 (BIA 2012); *Matter of U-M-*, 20 I. & N. Dec. 327 (BIA 1991); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345 (BIA 1982); *Matter of Fuentes-Campos*, 21 I. & N. Dec. 905, 912 (BIA 1997).

19. Moreover, Prudential exhaustion is a not a requirement when "the administrative body . . . has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006). This Court has already determined the prudential exhaustion issue.

20. Lastly, Prudential exhaustion is not required in cases where "a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *McCarthy*, 503 U.S. at 147. Every day that Nguyen is unlawfully detained causes him and his family irreparable harm. *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 711 (D. Md. 2016) ("Here, continued loss of liberty without any individualized bail determination constitutes the kind of irreparable harm which forgives exhaustion."); *Hamama v. Adducci*, 349 F. Supp. 3d 665, 701 (E.D. Mich. 2018) (holding that "detention has inflicted grave" and "irreparable harm" and describing the impact of prolonged detention on individuals and their families); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (explaining that "loss of liberty" is "perhaps the best example of irreparable harm");

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

21. Nguyen believes he was incarcerated by ICE after receiving his administratively final order removal in 2012. It has been approximately 14 years so Nguyen did does not recall whether he was in ICE detention or criminal detention as he was moved around to several different facilities. But Nguyen does know he was released on OSUP. Irrespective, it is not necessary for Nguyen to wait six months to file this petition because the government re-detained Nguyen in violation of the laws and constitution of the United States stemming from the absence prompt notice, dangerousness, flight risk, or changed

circumstances demonstrating a significant likelihood of removal in the reasonably foreseeable future.

22. Assuming Nguyen was previously detained in post-order civil confinement, he alleges that his prior period(s) of post-order civil detention must be aggregated with his current period of post-order civil detention for purposes of giving meaning to "the reasonably foreseeable future." Nguyen's post-order detention time continues to accumulate, and it has been 14 years and Vietnam has not provided him a travel document. After 14 years, it is not "reasonably foreseeable future" for Nguyen's removal to Vietnam. And any request for travel documents ever made by Nguyen or on Nguyen's behalf has been denied or ignored by Vietnam.

23. Nguyen does not have a valid Vietnamese passport, birth certificate or other original evidence of Vietnamese citizenship. Nguyen does not know whether the government has submitted a travel document request for him but he reasonably believes Respondents have not as he has not been interviewed by the Vietnamese Embassy. Since his re-detention on December 9, 2025, the immigration officer told Nguyen if Vietnam will not take him, he would be deported to a third country.

24. Nguyen does not believe the officer who revoked his OSUP had the authority to do so, as he has not received any Notice of Revocation of Release informing him of the "specific" reasons for his re-detention. Nguyen has not received a "prompt" informal interview wherein he can provide evidence showing a good reason to believe there is no significant likelihood of his removal in the reasonably foreseeable future or provide evidence to allow him to remain in the United States based on humanitarian and family

unity factors pursuant to the November 21, 2020 Memorandum of Understanding ("MOU") between the United States and Vietnam. *See* Ex. 2, Memorandum of Understanding. Nguyen was not given a right to an orderly departure as ICE took Nguyen into custody upon Nguyen's release from state jail for a 5th degree possession conviction without any notice and he was not given a hearing in front of a neutral evaluator.

25. The government is not following its own MOU regarding pre-1995 immigrants. The purpose of the memo is to "establish a process of review and issuance of travel documents for Vietnamese citizens ordered removed from the United States pre-1995." The memo is redacted in certain sections so it is difficult to determine the MOU's full meaning or procedures. However, under section 8 of the agreement, it clearly states ICE must request the travel document before removal. Per the MOU, the documentation package for the request for the travel document must include: a cover letter, the self-declaration form, a copy of Nguyen's criminal records, etc. Nguyen was never provided a self-declaration form which means, ICE never submitted a package to request the travel document from Vietnam.

26. Nguyen is housed in Kay County Jail in Kay County, OK. The government has not provided any credible or persuasive documents or evidence that Nguyen's removal is likely to occur in the reasonably foreseeable future. Nguyen cannot be deported to his country of origin, Vietnam, because he does not have a valid travel document and there is no significant likelihood that Vietnam will issue one to him in the reasonably foreseeable future. Nguyen's re-detention is punitive in nature and to send a message to others with final

orders of removal that they need to leave the United States or they will be jailed indefinitely without any due process.

27. Federal regulations and statute also require ICE to follow procedures before they re-detained Nguyen. ICE failed to comply with these laws prior to re-detaining Nguyen. The failures are:

28. Nguyen's re-detention has not been reviewed or authorized by any member of the Headquarters Post-order Detention Unit ("HQPDU") or ERO HQ. *See* 8 C.F.R. §§ 241.13(b)(2), (c), (d), (e), (f), (g), (h)(1), (h)(4)(i), (j) (all restricting ability to perform certain functions relevant to this petition to the HQPDU); 8 C.F.R. § 241.4(c)(2)-(3), (d)(2), (e), (g)(2)-(3), (i)(1)-(3), (i)(7), (k)(2)-(4), (l)(3) (same); *see also Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing Habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

29. Nguyen's re-detention has not been reviewed or authorized by the Executive Associate Commissioner or District Director. *See* 8 C.F.R. §§ 241.4(1), (c)(2)-(4), (d)(1)-(2), (i)(1), (i)(6), (j)(1)-(4), (k)(2), (k)(4), (l)(2)-(3).

30. Nguyen has not received a written decision stating the *specific* reasons for his re-detention as required by law. *See* 8 C.F.R. § 241.13(g); *Momennia v. Bondi*, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025) ("ICE is required to issue a written decision. § 241.13(g)."); 8 C.F.R. § 241.4(h)(4), (k)(1)(i), (k)(2)(iii); 8 C.F.R. §§ 241.13(e)(1), (e)(2), (e)(6); *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3243870 (W.D. Okla. Nov. 20, 2025); *see also Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778

(E.D. Cal. Aug. 20, 2025) (DHS citing to the vague language in the notice of revocation for release is "completely conclusionary" and clearly insufficient).

31. Nguyen has not received a "prompt" individualized post-detention interview to determine whether his OOS should be reinstated or to otherwise allow Nguyen to provide information to demonstrate there is no significant likelihood of his removal in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(i)(2)-(3); *see also Constantinovici v. Bondi,* ---F. Supp. 3d ---, 2025 WL 8998985 (S.D. Call. Oct. 10, 2025) (hold that providing an interview 6 weeks after re-detention cannot be construed as reasonably "prompt."); *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS-DDL, 2025 WL 3126821(S.D. Cal. Nov. 8, 2025) (holding 29-day period not deemed "prompt.").

32. The failures include failing to follow the MOU memo as discussed above to obtain a travel document to Vietnam – Nguyen has not been interviewed by the Vietnamese Consulate nor has ICE requested a self-declaration form Nguyen.

33. Nguyen has been re-detained in the absence of changed circumstances capable of rebutting his prior showing of no significant likelihood of removal in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(i)(2); *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001).

34. The government has not provided any credible or persuasive documents or evidence that Nguyen's removal is likely to occur in the reasonably foreseeable future. Nguyen cannot be deported to his country of origin, Vietnam, because he does not have a valid travel document and there is no significant likelihood that Vietnam will issue one to him in the reasonably foreseeable future. Nguyen's re-detention is punitive in nature and to

send a message to others with final orders of removal that they need to leave the United States or they will be jailed indefinitely without any due process.

LEGAL FRAMEWORK

Due Process Governs Decisions to Revoke an Order of Supervision

35. "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690 (2001).

36. Under the substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).

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

Statute and Regulation Govern Procedures for Revoking an Order of Supervision

38. A non-citizen 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").

39. A non-citizen may only be detained past the 90-day removal period following a removal order if 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).

40. 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 v. Davis*, 533 U.S. 678, 699-700.

41. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period where: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of

release"). Because "[r]egulations cannot circumvent the plain text of the statute[,]" courts question whether these regulations are *ultra vires* of statutory authority. *See, e.g.*, *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds). Here, there is no allegation in the Notice that Nguyen violated any of the four factors discussed above.

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

43. Upon revocation of an order of supervision, ICE must give a non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

The APA Sets Minimum Standards for Final Agency Action

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

45. Final agency actions are those (1) that "mark the consummation of the agency's decision-making process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

46. ICE's revocation of an order of supervision is a final agency action subject to this Court's review.

47. The revocation here marked the consummation of ICE's decision-making process regarding Nguyen's custody.

48. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Nguyen in violation of his rights under the Constitution, statute, and regulation.

The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

49. 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.").

50. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

51. Where a release notification issued alongside an order of supervision instructs that a non-citizen with a final order of removal will be given an opportunity to prepare for an "orderly departure," ICE's failure to follow that instruction is an *Accardi* violation. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

CAUSES OF ACTION

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

52. Nguyen realleges all paragraphs above as if fully set forth here.

53. When ICE issued Nguyen an order of supervision, it found that he's neither a danger to the community nor a flight risk.

54. ICE had not secured necessary travel documents for removal.

55. Nguyen's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal. ICE has not alleged in the Notice that Nguyen is a danger to the community or flight risk.

56. Because Respondents have provided no legitimate, non-punitive objective in revoking Nguyen's order of supervision, Nguyen's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

Count II
Violation of the Fifth Amendment of the U.S. Constitution
Procedural Due Process

57. Nguyen realleges all paragraphs above as if fully set forth here.

58. *Mathews v. Eldridge*, 424 U.S. 319, 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.

59. The first factor, the private interest at issue, favors 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 v. Davis*, 533 U.S. 678, 690.

60. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Nguyen. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that an order of supervision can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice, "prompt" interview, and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Nguyen, who is neither dangerous nor a flight risk.

61. The third factor, the government's interest, also favors Nguyen. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus

petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

62. For these reasons, revoking Nguyen's order of supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution. *See also Ceesay v. Kurzdorfer,* 781 F. Supp. 3d 137 (W.D.N.Y. May 2, 2025).

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

63. Nguyen realleges all paragraphs above as if fully set forth here.

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

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

66. Respondents' revocation of Nguyen's order of supervision was contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

67. The revocation was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances, as cited and discussed in the Statutory Framework section above.

68. Nguyen's order of supervision was not revoked by the ICE Executive Associate Director. The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. And Nguyen does not believe the officer in his case has been delegated authority to revoke an order of supervision. *See Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (granting habeas because revocation of the order for supervision was ordered by someone without regulatory authority to do so).

69. Before revoking the order, Respondents did not make findings that Nguyen is dangerous or unlikely to comply with a removal order, as required by statute. *You v. Nielsen*, 321 F. Supp. 3d. 451 (S.D.N.Y. 2018), holds that the provisions of 8 C.F.R. §241.4(l) purporting to authorize revocation of release impermissibly exceed the scope of detention authorized under 8 U.S.C. § 1231(a). The *You* court held that not only was an individual with a final order of removal who was re-detained pending removal entitled to notice and an informal interview under 8 C.F.R. § 241.4(l), but also that 8 U.S.C. § 1231(a) barred re-detention absent findings of flight risk or danger. *You*, 321 F. Supp. 3d. at 463

70. Even assuming that regulations purporting to offer additional justifications for revocation of an order of supervision are not ultra vires, Respondents did not comply with them. Respondents did not make findings that Nguyen's conduct indicated release

would no longer be appropriate or that Nguyen violated any condition of release, etc. Nor could Respondents make findings that the purposes of release had been served or that it was appropriate to enforce a removal order, because it had yet to make final arrangements for Nguyen's removal.

71. Nor did the Respondents give Nguyen notice of the specific reasons for revocation and prompt opportunity to be heard. *See M.Q. v. United States*, 776 F. Supp. 3d 180, 190 n.1 (S.D.N.Y. 2025); *Doe v. Smith*, 2018 WL 4696748 (D. Mass. Oct. 1, 2018); *Grigorian v. Bondi,* 2025 WL 2604573 (S. D. Fla. Sep. 9, 2025) ("The opportunity to contest detention through an informal interview is not some ticky tacky procedural requirement; it strikes at the heart of what due process demands."); *Diaz v. Wofford*, 2025 WL 2581575 (E. D. Cal. Sep. 5, 2025) (petitioner denied notice and opportunity to be heard likely to succeed on the merits of due process claim); *K.E.O. v. Woosley,* 2025 WL 2553394 (W. D. Ky. Sep. 4, 2025) (notice of revocation 90 days after the fact does not cure due process violation of lack of notice upon revocation and failure to give interview promptly after); *Orellana v. Baker*, 2025 WL 2444087 (D. Md. Aug. 25, 2025) (lack of any written notice or opportunity to be heard constitute stark violation of due process); *Zhu,* 2025 WL 2452352 (failure to provide notice or an interview violated due process.

72. The revocation should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

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

73. Nguyen realleges all paragraphs above as if fully set forth here.

74. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

75. Respondents' revocation of Nguyen's order of supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

76. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

77. Respondents' decision to revoke Nguyen's order of supervision ran counter to the evidence before the agency that Nguyen would comply with a demand to appear for removal without detention. Respondent alleges no new facts or changed circumstances suggest he would not.

78. The revocation also "failed to consider important aspects of the problem" before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

79. First, Respondents failed to consider the serious constitutional concerns raised by revoking Nguyen's order of supervision without notice and opportunity to respond.

80. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Nguyen, who is neither a flight risk and Nguyen believes he is not a danger to the community and for whom the agency does not have a travel document needed to effectuate removal, including financial and administrative costs incurred by the agency due to unnecessary detention.

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

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

83. For these and other reasons, Respondents' revocation of Nguyen's order of supervision was arbitrary and capricious and should be held unlawful and set aside.

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

84. Nguyen realleges all paragraphs above as if fully set forth here.

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

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

87. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001).

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

89. Respondents' revocation of Nguyen's order of supervision was based on *ultra vires* regulations. So, it was in excess of statutory authority and should be held unlawful and set aside.

Count VI
Ultra Vires Action

90. Nguyen realleges all paragraphs above as if fully set forth here.

91. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Nguyen.

92. Nguyen has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' *ultra vires* actions.

Count VII
Violation of the *Accardi* Doctrine

93. Nguyen realleges all paragraphs above as if fully set forth here.

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

95. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Nguyen's order. "As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release" and Petitioner "is entitled to release on that basis alone." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

96. Respondents also violated agency instructions in Nguyen's release notification to give an opportunity to prepare for an orderly departure when they revoked

Nguyen's order without advance notice. *See Guillermo M. R. v. Kaiser*, F.Supp.3d ---, 2025 WL 1983677 at *7 n.4 (N.D. Cal. July 17, 2025) (holding prior notice and opportunity to be heard before a neutral arbiter before or immediately after being re-detained); *Bermeo Sicha v. Bernal*, 2025 WL 2494530 (D. Me. Aug. 20, 2025) (due process requires hearing before an immigration judge before revocation of conditional parole).

97. Under *Accardi*, Respondents' revocation of the order of supervision and decision to ignore instructions in the release notification should be set aside for violating agency procedures, rules, or instructions.

REMEDY

98. Respondents' detention of Nguyen violates the Due Process Clause of the United States Constitution. Nguyen's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const., amend. V.

99. Due Process requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

100. Nguyen seeks immediate release because Respondent failed to give him notice and failed to demonstrate that there is no significant likelihood of his removal in the reasonably foreseeable future; Respondents bear the burden of rebutting the prior showing made by Nguyen. 8 C.F.R. § 241.13(i)(2)-(3). Respondents have failed to meet this burden.

101. Nguyen seeks immediate release subject to the same conditions of his prior OSUP.

102. Nguyen seeks immediate release to the extent that Respondents have violated his due process rights by failing to comply with 8 C.F.R. §§ 241.4 and/or 241.13.

103. Nguyen seeks immediate release to the extent that Respondents have re-detained him for the purpose of punishing him for remaining in the United States despite his final order of removal.

104. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").The Supreme Court has noted that the typical remedy for unlawful detention is release

105. The Supreme Court has noted that the typical *Munaf* for unlawful detention is release from detention. *See, e.g.*, *Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Wajda v. United States*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody.").

106. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . .

to dispose of habeas corpus matters 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (quoting 28 U.S.C. § 2243). An order of release falls under court's broad discretion to fashion relief. *See, e.g.*, *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

107. Immediate release is an appropriate remedy in this case.

PRAYER FOR RELIEF

WHEREFORE, Nguyen requests this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. Ch. 153.
    a. Issue an Order to Show Cause ordering Respondents to state the true cause of Nguyen's detention within 7 days of the Court's issuance of the OSC.
    b. Pursuant to 28 U.S.C. § 1657, issue an Order shortening the time for making any objections to the magistrate's forthcoming Report & Recommendation from 14 days to 5 days.
3. Issue an emergency preliminary order restraining Respondents from attempting to move Nguyen from the State of Oklahoma during the pendency of this Petition.
4. Issue an emergency preliminary order requiring Respondents to provide 48-hour notice of any intended movement of Nguyen.
5. Declare that Respondents' action is arbitrary and capricious.
6. Declare that Respondents failed to adhere to binding regulations and precedent.

7. Declare that Nguyen's detention violates the Due Process Clause of the Fifth Amendment.

8. Permanently enjoin Respondents from redetaining Nguyen under 8 C.F.R. § 241.13(i)(2)-(3) unless and until Respondents have obtained a travel document allowing for Respondent's removal from the United States.

9. Permanently enjoin Respondents from redetaining Nguyen under 8 C.F.R. § 241.13(i)(2)-(3) for more than three days after receiving a travel document.

10. Permanently enjoin Respondents from deporting Nguyen to an allegedly safe third country without first giving Nguyen due process in the form of a full merits hearing for asylum, withholding of removal, and DCAT before an immigration judge relating to the proposed country of removal with a right to an administrative appeal to the Board of Immigration Appeals.

11. Permanently enjoin Respondents from deporting Nguyen to any country in which he will more than likely be jailed upon his arrival.

12. Order Nguyen's immediate release subject to the conditions of his prior OOS.

13. Grant Nguyen reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).

14. Grant all further relief this Court deems just and proper.

DATED: January 14, 2026

/s/ Alyssa Nguyen-Schmitz

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Verification by Binh Thai Nguyen Pursuant to 28 U.S.C. § 2242

I am submitting this verification because I am the Binh Thai Nguyen. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding my detention status, are true and correct to the best of my knowledge. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that all of the factual allegations and statements in the Petition are true and correct to the best of my knowledge and belief.

Dated: January 13, 2026

/s/ Binh Thai Nguyen

Binh Thai Nguyen