UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

Minh Quan Tran DAO, *Petitioner* v. Pamela BONDI, in her official capacity as the Attorney General of the United States; Kristi NOEM, in her official capacity as the Secretary of the U.S. Department of Homeland Security; Todd LYONS, his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement; Ladeon FRANCIS, in his official capacity as Director for the Atlanta Field Office of U.S. Immigration and Customs Enforcement; Jason STREEVAL, in his official capacity as Warden of Stewart Detention Center; and the U.S. DEPARTMENT OF HOMELAND SECURITY *Respondents*	**Case No.**

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
(Expedited Consideration Requested)

Petitioner Minh Quan Tran Dao ("Mr. Dao") is confined under a final order of removal that cannot be executed. He has been detained at Stewart Detention Center since October 14, 2025, while recovering from recent open-heart surgery, despite the absence of any lawful or practical means to effectuate his removal to Vietnam.

For more than twenty-three years, Mr. Dao—a longtime Georgia resident—has lived under a final order of removal. During that entire period, Respondents have been unable to remove him because Vietnam will not issue travel documents. That reality has not changed. Nevertheless, on October 14, 2025, Mr. Dao was taken into custody during a routine ICE check-in and detained

without notice, explanation, or any lawful basis to believe his removal was possible.

Since his initial release from immigration detention in 2003, Mr. Dao has complied with every condition of supervision and is not alleged to pose a danger or flight risk. Critically, on January 7, 2026, the Vietnamese Consulate confirmed that it will not issue him a passport or any travel document. *See* Ex. 1 (Vietnamese Consulate Letter). Removal is therefore impossible, and continued detention serves no lawful purpose.

ICE's re-detention of Mr. Dao does not restart the statutory removal period set forth in 8 U.S.C. § 1231(a). The Eleventh Circuit has clarified that the six-month presumptive constitutional limit recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001), consists of the 90-day statutory removal period followed by a limited 90-day discretionary extension—not an indefinite term that may be revived years later. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). By any calculation, Mr. Dao's post-order detention—now totaling 319 days under the same removal order—exceeds that presumptive constitutional limit.

This case, however, is not merely about the passage of time. It is about certainty. Vietnam has confirmed that it will not accept Mr. Dao's return. Removal is not speculative or delayed; it is foreclosed. The consequences of continued detention are not abstract. Mr. Dao has suffered two strokes, remains partially paralyzed, and recently underwent open-heart surgery. He is still in post-operative recovery and requires consistent medical care and family support—care he cannot receive in detention.

Courts nationwide hold that ICE may not revoke supervision and re-detain a noncitizen absent an individualized determination that removal is reasonably foreseeable. They further require that the individual be afforded an opportunity to respond through an informal interview following detention. No such determination was made here, and Mr. Dao received neither advance

notice nor the required post-detention interview.

Without judicial intervention, Mr. Dao faces indefinite confinement under a removal order that cannot be executed, in violation of federal law, regulations, and the Fifth Amendment's Due Process Clause. Mr. Dao respectfully requests that the Court consider this Petition and issue a writ of habeas corpus directing his immediate release on an expedited basis due to his ongoing unlawful detention under an unexecutable removal order and his acute medical condition following recent open-heart surgery.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq*.
2. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2201-2 (declaratory judgment), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
4. Venue properly lies within the Middle District of Georgia under 28 U.S.C. § 1391, because this is a civil action in which Respondents are agencies of the United States, Mr. Dao is detained in the District, and a substantial part of the events or omissions giving rise to this action occurred in the District.

PARTIES

5. Minh Quan Tran Dao is a 52-year-old longtime resident of Augusta, Georgia. He has lived in the United States since October 26, 1994, when his family arrived as refugees from Vietnam under the United Nations High Commissioner for Refugees' ("UNHCR") Humanitarian Operation program. He has been detained at Stewart Detention Center in Lumpkin, Georgia, since October 14, 2025. He is in the custody, and under the direct control, of Respondents and their agents.
6. Respondent Pamela Bondi is the Attorney General of the United States and the senior official of the U.S. Department of Justice. She has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review, which administers the immigration courts and the Board of Immigration Appeals. Respondent Bondi is responsible for the fair administration of the laws of the United States. She is a legal custodian of Mr. Dao.
7. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees ICE, the component agency responsible for Mr. Dao's detention. Respondent Noem is also a legal custodian of Mr. Dao.
8. Respondent Todd Lyons is the Acting Director of ICE. ICE is responsible for the detention of Mr. Dao. Respondent Lyons is a legal custodian of Mr. Dao.
9. Respondent Ladeon Francis is the Director of the Atlanta Field Office of ICE. Respondent Francis is also a legal custodian of Mr. Dao.
10. Respondent Jason Streeval is the Warden of Stewart Detention Center. Respondent Streeval has immediate physical custody of Mr. Dao pursuant to the facility's contract with ICE to detain noncitizens and is a legal custodian of Mr. Dao.

11. Respondent U.S. Department of Homeland Security ("DHS") is the federal agency responsible for enforcing Mr. Dao's continued detention.

12. All respondents are named in their official capacities. One or more of the respondents is Mr. Dao's immediate custodian.

STATEMENT OF FACTS

13. Minh Quan Tran Dao has been detained at Stewart Detention Center since October 14, 2025. This marks his second period of immigration detention. He was first detained during his removal proceedings in 2002 and remained in custody after the issuance of his final order of removal on October 22, 2002, until May 29, 2003—spending approximately 219 days in post-order detention.

14. Following his release on an order of supervision in May 2003, Mr. Dao fully complied with every condition imposed upon him for more than two decades. Notwithstanding that unblemished record of compliance, ICE re-detained him on October 14, 2025, without explanation.

15. As of the filing of this petition, Mr. Dao has spent an additional 100 days in custody. When combined with his prior post-order detention under the same removal order, his confinement exceeds the six-month presumptive constitutional limit recognized in *Zadvydas*. This limit, applied by the Eleventh Circuit, recognizes that the 90-day removal period is statutorily defined and cannot be restarted through re-detention alone. *See* 8 U.S.C. § 1231(a)(1)(B); *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 & n.3 (11th Cir. 2002).

16. This case is particularly clear-cut because Mr. Dao possesses definitive evidence that Vietnam will not issue travel documents. His continued detention therefore serves no lawful purpose and constitutes prolonged, arbitrary, and unconstitutional confinement.

Mr. Dao's Arrival to the United States

17. Minh Quan Tran Dao was born in Vietnam in 1973, and has lived in the United States for nearly three decades.

18. On October 26, 1994, Mr. Dao immigrated to the United States with his parents and two siblings as refugees under the Humanitarian Operation program, a component of the United Nations High Commissioner for Refugees' Orderly Departure Program, established to resettle refugees after the Vietnam War. The Humanitarian Operation program facilitated the admission of former reeducation camp detainees and their families to the United States. These camps subjected detainees—including Mr. Dao's father—to forced labor, starvation-level rations, and severe psychological abuse. The enduring impact of this persecution shaped Mr. Dao's early life and led his family to resettle in Atlanta, Georgia.

Mr. Dao's Criminal Convictions and Initial Detention

19. Shortly after arriving in the United States, Mr. Dao faced the challenges of adjusting to a new country as a young adult with limited English proficiency. During this period, he fell in with a group of friends he did not know well, which led him into an incident that would alter the course of his life.

20. In 1995, while at a restaurant with acquaintances he barely knew, a fight erupted and shots were fired. Mr. Dao was shot in the neck and hospitalized.

21. Following the incident, on November 19, 1998, Mr. Dao was indicted on two counts under the federal Racketeer Influenced and Corrupt Organizations (RICO) Act. On July 11, 2000, he was sentenced to forty-six months' imprisonment.

22. After completing his sentence, Mr. Dao was transferred to ICE custody in Alabama around September 13, 2002, pending removal proceedings. On October 22, 2002, an Immigration Judge ordered his removal to Vietnam. Mr. Dao did not appeal the order.

23. While detained, Mr. Dao fully cooperated, completing all required paperwork for his repatriation. Despite his compliance, ICE was unable to effectuate his removal and detained him for over seven months after the removal order. He filed a pro se habeas petition on April 24, 2003. *See Dao v. Melville*, Case No. 1:03-cv-01147-JEC, 2003 WL 23825850 (N.D. Ga. July 8, 2003).

24. A month after Mr. Dao filed his habeas petition, ICE released him on May 29, 2003, placing him on an Order of Supervision. In its response to his petition, the Government acknowledged it had been unable to obtain travel documents for Mr. Dao. Over the next twenty-two years, even after newly formed U.S.–Vietnam repatriation agreements, ICE has still been unable to secure travel documents for his removal.

25. Since his release, Mr. Dao has built a stable, productive life. He earned a nail technician license, worked in salons, and eventually opened a salon with his wife. He became a devoted stepfather to his wife's two daughters. Together, they raised two sons, now nineteen and twenty-one. He remains closely connected with his extended family, including his brother in Georgia and his parents and sister in California.

26. In raising his children, Mr. Dao has instilled the values of learning from mistakes, pursuing education, and making positive choices. His sons are enrolled in college, and his step-

daughters live nearby, reflecting the close-knit and supportive environment he has nurtured.

27. Since 2003, Mr. Dao has fully complied with his Order of Supervision, attending all ICE check-ins for the past twenty-two years. On September 13, 2011, ICE issued Mr. Dao a new Order of Supervision requiring him, among other things, to assist in obtaining any necessary travel documents. Ex. 2 (Order of Supervision). Even following the 2020 U.S.–Vietnam Memorandum of Understanding, in which Vietnam created a process for the U.S. to seek repatriation of Vietnamese immigrants who arrived in the U.S. before 1995, ICE has been unable to secure travel documents for his removal.

Mr. Dao's Health Challenges

28. In recent years, Mr. Dao has faced serious health issues, including Type II diabetes, high blood pressure, and high cholesterol. In 2018, he suffered his first stroke, followed by a second in 2022, which left him partially paralyzed and unable to walk for months. He requires a cane or walker for mobility.

29. On June 5, 2025, Mr. Dao underwent open-heart surgery to treat severe multivessel coronary artery disease. He remains in active postoperative recovery and relies on a strict daily regimen of eleven prescription medications to manage his condition and prevent life-threatening complications. Ex. 3 (Cardiologist Letter).

Mr. Dao's Re-detention and Revocation of His Order of Supervision

30. On October 9, 2025, Mr. Dao received a letter from ICE summoning him to its Atlanta office on October 14, 2025, for a "Case Review / update / annual reporting." The letter provided no further explanation or details regarding the purpose of the meeting.

31. On October 14, 2025, Mr. Dao arrived at ICE's Atlanta office for what he reasonably believed was a routine check-in, bringing medical records documenting his recent open-heart surgery and ongoing treatment needs. Without warning or explanation—and after more than twenty-two years of full compliance—ICE abruptly revoked his Order of Supervision, took him into custody, and shortly thereafter transported him to Stewart Detention Center, where he remains detained.
32. Mr. Dao was not provided with a notice of the reasons for his re-detention upon revocation of his supervised release. Upon information and belief, ICE has not provided Mr. Dao with written notice of the reasons for the revocation of his Order of Supervision, nor has it afforded him an informal interview to respond to that revocation.
33. Since his detention, Mr. Dao has missed critical post-operative appointments and suffers frequent chest pain. His partial paralysis has worsened, causing severe hip pain and forcing him to rely on a walker; a walk that normally takes three minutes from his cell to the cafeteria now takes fifteen.
34. In early November 2025, Mr. Dao received a packet to facilitate ICE's request for travel documents, which he promptly completed, but ICE did not collect it until December 15, 2025.
35. As his health deteriorated, his family sought assistance from Mekong NYC, a community-based organization serving Southeast Asian refugees. Following their guidance, his family contacted the Vietnamese Consulate to apply for a passport. On January 7, 2026, the Consulate formally confirmed that Mr. Dao does not meet the requirements for a Vietnamese passport and that it will not issue any travel documents. *See* Ex. 1.

36. Absent this Court's intervention, Mr. Dao will remain unlawfully detained, even though ICE cannot effectuate his removal—a fact confirmed by the Vietnamese Consulate on January 7, 2026. Without relief, he faces prolonged or indefinite detention.

LEGAL FRAMEWORK

Statutory Framework Governing Post-Order Detention

37. Once a removal order become final, ICE is statutorily required to detain a noncitizen for a 90-day "removal period" to effectuate removal. 8 U.S.C. § 1231(a)(2). This period begins when the removal order becomes administratively final, unless one of two alternative events occurs: (1) a court issues a stay of removal following judicial review, or (2) the noncitizen is released from non-immigration-related confinement. *See* 8 U.S.C. § 1231(a)(1)(B).

38. The statute consistently refers to "the removal period"—singular—and does not authorize the government to reset or restart that period solely because a noncitizen is re-detained. Courts have repeatedly rejected any such interpretation. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 & n.3 (11th Cir. 2002); *see also Chen v. Holder*, CIVIL NO. 6:14-2530, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015); *Diaz-Ortega v. Lund*, CIVIL DOCKET NO. 1:19-CV-670-P, 2019 WL 6003485, at *8-9 (W.D. La. Oct. 15, 2019); *Krechmar v. Parra*, No. 2:25-CV-01095-SPC-DNF, 2025 WL 3620802, at *3 (M.D. Fla. Dec. 15, 2025). Absent one of the statutory triggers, the removal period runs once and continuously to completion.

Zadvydas and the Constitutional Limits on Post-Order Detention

39. The Supreme Court has narrowly construed § 1231(a)(6) to permit detention only for the period "reasonably necessary to secure removal," establishing a six-month detention period

as presumptively reasonable. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001). Detention under § 1231(a)(6) is therefore neither unlimited nor discretionary; it must "bear a reasonable relationship to the purpose for which the individual [was] committed." *Id.* at 690. Post-order detention exists solely to effectuate removal. "[I]f removal is not reasonably foreseeable, the court should hold detention continued detention is unreasonable and no longer authorized by statute." *Id.* at 699-670.

40. Even when removal is foreseeable, detention must serve a legitimate purpose—preventing flight or protecting the community. *Id.* at 690–91. Detention beyond these limits violates both the statute and the Constitution.

41. Once the presumptive six-month period expires, a noncitizen need only provide "good reason" to believe that removal is not significantly likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. At that point, the burden shifts to the Government to provide competent evidence to rebut that showing. *Id.* Failure to do so renders continued detention unlawful.

Calculation of the Removal Period Under Eleventh Circuit Law

42. The Eleventh Circuit has clarified that the six-month presumptive period includes the 90-day statutory removal period plus an additional 90 days. *See Akinwale*, 287 F.3d at 1052. It begins with the statutory removal period and expires 180 days later.

43. For Mr. Dao, the removal order became administratively final on October 22, 2002. He did not appeal, seek judicial review, obtain a stay, or undergo non-immigration-related confinement after the order. The statutory removal period—and the *Zadvydas* six-month clock—therefore began on October 22, 2002 and expired on April 22, 2003. ICE

nonetheless detained Mr. Dao until May 29, 2003, resulting in 219 days of post-order detention during his initial detention.

Re-Detention Does Not Restart the Removal Period

44. Respondents may argue that Mr. Dao's petition is "premature" because he was re-detained on October 14, 2025. This claim depends on an unsupported premise: that each re-detention erases all prior post-order detention and triggers a new six-month period.

45. Nothing in 8 U.S.C. § 1231, *Zadvydas*, or Eleventh Circuit precedent supports that notion. Courts have repeatedly held that cycling a noncitizen in and out of custody cannot be used to evade judicial scrutiny or create indefinite detention. *See,* e.g., *Krechmar*, 2025 WL 3620802, at *3 (rejecting the argument that the six-month clock restarts upon re-detention because it would allow the government to evade judicial scrutiny through repeated detention cycles); *Gonzalez v. Noem*, No. 2:25-cv-01176-SPC-NPM, 2026 WL 44818, at *3 (M.D. Fla. Jan. 7, 2026); *Beltran v. Ripa*, No. 2:25-cv-01174-SPC-NPM, 2026 WL 21252 (M.D. Fla. Jan. 5, 2026); *Diaz-Ortega*, 2019 WL 6003485, at *8-9; *Hamama v. Adducci*, Case No. 17-cv-11910, 2019 WL 2118784, *2-3 (E.D. Mich. May 15, 2019); *Sied v. Nielsen*, Case No. 17-cv-06785-LB, 2018 WL 1876907, *6 (N.D. Cal. Apr. 19, 2018); *Chen*, 2015 WL 13236635, at *2; *Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *4 (S.D. Tex. Oct. 16, 2025).

46. This Court has likewise recognized that a new removal period may begin only upon one of the three statutory triggers set forth in § 1231(a)(1)(B). In *Meskini v. Attorney General,* No. 4:14-CV-42 (CDL), 2018 WL 1321576 (M.D. Ga. Mar. 14, 2018), the Court upheld re-detention only because the petitioner's removal period had been reset by intervening, non-immigration-related criminal confinement occurring after his removal order—an event

expressly contemplated by the statute. *Id.* at *4. Here, no such trigger occurred. Mr. Dao's re-detention on October 14, 2025, cannot legally restart the statutory 90-day removal period or a new six-month *Zadvydas* clock. Allowing re-detention alone to reset the clock would rewrite § 1231 and authorize precisely the form of indefinite detention that *Zadvydas* forbids.

47. At most—and only by disregarding the statutory text—Respondents could attempt to argue that while the 90-day removal period fixed by § 1231(a)(1)(B) cannot restart, the additional, 90-day discretionary post-removal detention recognized in *Zadvydas* might somehow begin anew upon re-detention. There is no support for this interpretation in the statute, *Zadvydas*, or Eleventh Circuit precedent for that interpretation. However, even under this unsupported theory, Mr. Dao's detention remains unlawful. He has been detained for 100 days during his current custody—exceeding the discretionary 90-day period. Combined with his initial 219 days of detention, he has spent 319 days—over ten and a half months—in post-order detention, far exceeding the six-month presumptive limit under *Zadvydas*.

Mr. Dao's Removal is Not Reasonably Foreseeable

48. After the six-month period expires, if the noncitizen provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. Mr. Dao easily meets this burden.

49. Mr. Dao has submitted concrete, dispositive evidence demonstrating that his removal is not reasonably foreseeable. Specifically, he has provided a letter from the Vietnamese Consulate dated January 7, 2026, stating unequivocally that the Consulate "will not be able

to issue a Vietnamese passport or any travel documents for Mr. Minh Quan Tran Dao." Ex. 1. Without travel documents from the receiving country, removal is legally and practically impossible.

50. This evidence is particularly compelling because it was obtained through affirmative efforts to facilitate removal. Due to Mr. Dao's fragile health and prolonged detention, his family—acting on advice from Mekong NYC, a community-based organization serving Southeast Asian refugees—contacted the Vietnamese Consulate directly and submitted a passport application on Mr. Dao's behalf to expedite travel documents. The Consulate reviewed the application and formally denied it, refusing to issue any travel document.

51. This official refusal by the Vietnamese Consulate constitutes compelling evidence that removal is not reasonably foreseeable.

52. A Vietnamese national without a passport or travel document cannot be repatriated unless Vietnam affirmatively issues such documentation in response to an ICE request. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). Without Vietnam's consent and issuance of travel documents, removal is legally and practically impossible.

53. For many years, Vietnam refused to accept the return of most Vietnamese nationals ordered removed from the United States. After nearly a decade of negotiations, the two countries entered into a repatriation agreement in 2008. That agreement was expressly limited to individuals who entered the United States on or after July 12, 1995; those who arrived earlier were excluded. *Id.*

54. Vietnam has continued to exercise strict control over repatriation. Between 2017 and 2019, ICE submitted 251 travel document requests for pre-1995 Vietnamese nationals, and Vietnam approved only 18. *Id.*

55. In 2020, the United States and Vietnam executed a Memorandum of Understanding ("MOU") establishing a process by which the United States may seek repatriation of certain pre-1995 Vietnamese nationals. The MOU does not guarantee repatriation. Instead, it imposes additional eligibility requirements and leaves acceptance entirely to Vietnam's discretion, including a determination of Vietnamese citizenship. *Id.*

56. Accordingly, repatriation of pre-1995 Vietnamese nationals depends entirely on Vietnam's discretionary approval and issuance of travel documents. Absent that approval, ICE has no lawful means to effectuate removal.

57. Mr. Dao entered the United States in 1994 and is therefore excluded from the 2008 repatriation agreement. Despite his full cooperation with ICE for more than two decades, Vietnam has never issued travel documents for his return. That has not changed under the 2020 MOU. Critically, on January 7, 2026, the Vietnamese Consulate formally confirmed that Mr. Dao does not qualify for a Vietnamese passport and will not be issued any travel documents. *See* Ex. 1. Under *Zadvydas,* the burden therefore shifts to the government to provide concrete evidence that removal is likely. Where the receiving country has affirmatively declined to issue travel documents, the Government cannot meet its burden.

58. Because removal depends entirely on Vietnam's discretionary consent—and Vietnam has unequivocally refused—Mr. Dao's removal is not reasonably foreseeable. Continued detention therefore serves no removal-related purpose and exceeds the detention authority Congress authorized under the immigration statutes.

DHS Regulations Governing Revocation of Release and Re-detention

59. DHS regulations further reinforce that Mr. Dao's detention is unlawful. ICE may detain a noncitizen beyond the 90-day statutory period only in narrow circumstances—when the

individual poses a danger, a flight risk, or falls under certain criminal grounds. 8 U.S.C. § 1231(a)(6). Otherwise, release under supervision is required, and revocation may occur only for valid cause and in compliance with regulations. 8 U.S.C. § 1231(a)(3); 8 C.F.R. §§ 241.4, 241.13.

60. Two DHS regulations—8 C.F.R. §§ 241.4 and 241.13—establish the framework for post-final-order custody, including release, revocation of supervision, and re-detention.

61. Revocation under § 241.13 is limited to (1) violations of release conditions, or (2) changed circumstances creating a new significant likelihood of removal. 8 C.F.R. § 241.13(i)(1)–(2).

62. For individuals released under § 241.4, DHS may revoke supervision only on specific grounds: (1) completion of the purposes of release; (2) violation of release conditions; (3) enforcement of a removal order; or (4) other conduct or circumstances indicating that continued release would be inappropriate. 8 C.F.R. § 241.4(l)(2). Procedural safeguards, including timing and review, are detailed in § 241.4(l)(3). Courts have questioned whether these broader grounds exceed statutory authority, emphasizing that regulations cannot override the statute. *See You v. Nielsen,* 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018) (comparing § 241.4(l)(3) and 8 U.S.C. § 1231(a)(6)).

63. Only designated ICE officials may revoke an order of supervision: the ICE Executive Associate Director, a field office director, or a delegated official with authority for the relevant geographic 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 noting that the Homeland Security Act of 2002 renamed the position titles). A field office director or delegated official responsible for a geographic area may revoke supervision only if the action is in the public interest and

referral to the Executive Associate Director is not reasonably feasible. 8 C.F.R. § 241.4(l)(2). Delegated officials may revoke supervision only if their delegation order explicitly grants that authority. *Ceesay*, 781 F. Supp. 3d at 161 (rejecting a delegation order that listed only limited Part 241 powers and did not authorize revocation).

64. Finally, when ICE revokes an order of supervision, it must notify the individual of the reasons for revocation and promptly provide an opportunity to respond. 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). These safeguards protect against arbitrary detention, safeguard liberty interests, and ensure ICE complies with statutory and regulatory requirements.

CLAIMS FOR RELIEF

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

65. Petitioner realleges all paragraphs above as if fully set forth here.

66. ICE's continued detention of Mr. Dao violates substantive due process because it bears no reasonable relationship to any legitimate, nonpunitive governmental purpose.

67. The Due Process Clause of the Fifth Amendment requires that civil detention "bear a reasonable relationship" to the purpose for which an individual is detained. *Zadvydas*, 533 U.S. at 690. Where removal cannot be effectuated, continued detention bears no reasonable relationship to its sole lawful purpose. *Id.* at 697. Post-final-order detention is constitutionally permissible only to prevent flight or danger to the community, neither of which applies here.

68. When ICE issued Mr. Dao an order of supervision on May 29, 2003, and again on September 13, 2011, it necessarily determined that he posed neither a danger to the community nor a flight risk. Mr. Dao complied with every condition of supervision for

more than twenty-two years and has not been arrested or convicted of any further crimes since his release.

69. Having previously released Mr. Dao on an order of supervision, Respondents now bear the burden of showing that Mr. Dao's removal is significantly likely in the reasonably foreseeable future. *See Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023); *accord Escalante v. Noem,* No. 9:25-CV-00182-MJT, 2025 WL 2206113 at *3 (E.D. Tex. Aug. 2. 2025). To satisfy its burden, Respondent cannot simply reply on generalized evidence of the possibility of repatriation to Vietnam but must present particularized evidence that Mr. Nguyen's removal is reasonably foreseeable. *See Nguyen v. Hyde*, 788 F. Supp. 3d 144, 152 (D. Mass. 2025); *Nguyen v. Bondi*, No. EP-25-CV-323-KC, 2025 WL 3120516 at *7 (W.D. Tex. Nov. 7, 2025).

70. Here, Respondents have not met their burden. When ICE revoked Mr. Dao's Order of Supervision on October 14, 2025, it had not obtained travel documents, identified no violation of release conditions, and cited no material change in circumstances. On January 7, 2026, the Vietnamese Consulate formally confirmed that it would not issue a passport or any travel document for Mr. Dao.

71. Because removal is not reasonably foreseeable, Mr. Dao's detention bears no reasonable relationship to any legitimate governmental purpose and therefore violates substantive due process.

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

72. Petitioner realleges all paragraphs above as if fully set forth here.

73. ICE violated Mr. Dao's procedural due process rights by revoking his Order of Supervision and re-detaining him without advance notice, without providing a meaningful opportunity to the revocation, and without adhering to mandatory statutory and regulatory safeguards.

74. The Fifth Amendment to the U.S. Constitution guarantees that "[n]o person . . . shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const., amend. V. At a minimum, procedural due process requires notice and the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge,* 424 U.S. 319, 333 (1976). These protections apply with full force to the revocation of an order of supervision, which constitutes a severe deprivation of liberty.

75. ICE's own regulations reflect these constitutional requirements. Under 8 C.F.R. §§ 241.4 and 241.13, re-detention is permitted only if an individual violates conditions of release or if changed circumstances establish that removal is reasonably foreseeable. *Ceesay*, 781 F. Supp. 3d at 161. Revoking an order of supervision therefore triggers robust procedural safeguards designed to prevent erroneous deprivation of liberty.

76. Whether those safeguards were satisfied is governed by the three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976): (1) the private interest affected; (2) the risk of erroneous deprivation and the value of additional procedural protections; and (3) the government's interest, including fiscal and administrative burdens.

77. The first factor—the private interest at stake—weighs overwhelmingly in Mr. Dao's favor because he has a strong liberty interest in remaining out of custody so that he can continue supporting his family. "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 protects." *Zadvydas*, 533 U.S. at 690.

78. The second factor—the risk of erroneous deprivation and the value of procedural safeguards—also strongly favors Mr. Dao. ICE provided Mr. Dao with neither advance notice prior to re-detaining him nor a prompt informal interview after taking him into custody. He was detained abruptly during a routine check-in and has remained incarcerated without any opportunity to contest the revocation of his order of supervision. The absence of even minimal process created precisely the type of erroneous deprivation the Due Process Clause is designed to prevent—and that risk has materialized here.

79. The third factor—the government's interest—likewise favors Mr. Dao. Requiring ICE to provide notice and a meaningful opportunity to respond imposes minimal administrative burden and, in fact, advances the government's interest in avoiding unnecessary detention, conserving fiscal resources, and preventing litigation arising from unlawful confinement. Detention without compliance with governing procedures serves no legitimate governmental interest.

80. Under 8 C.F.R. §§ 241.4(l) and 241.13(i), ICE must provide notice of "the reasons for revocation" and conduct an "initial informal interview promptly" after a noncitizen is returned to custody, giving them "an opportunity to respond to the reasons for revocation stated in the notification."

81. Numerous courts across the country have held that ICE cannot re-detain individuals like Mr. Dao without adhering to these basic due process protections and the procedural requirements in DHS regulations. *See, e.g.*, *Zhu v. Genalo*, Case No. 1:25-cv-06523 (JLR), 2025 WL 2452352 at *9 (S.D.N.Y. Aug. 26, 2025); *Momennia v. Bondi*, Case No. CIV-25-1067-J, 2025 WL 3011896, at *8 (W.D. Okla. Oct. 15, 2025); *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341, at *8 (C.D. Cal. Nov. 6, 2025).

82. Balancing these factors, Mr. Dao's profound liberty interest, the extreme risk of error, and the absence of any countervailing governmental interest compel the conclusion that his re-detention violates procedural due process.

Count Three
Violation of the Fifth Amendment of the U.S. Constitution
Indefinite Post-Order Detention

83. Petitioner realleges all paragraphs above as if fully set forth here.

84. Mr. Dao's prolonged post-final-order detention—aggregating well beyond the six-month presumptive constitutional limit recognized in *Zadvydas*—violates due process because Respondents cannot demonstrate a significant likelihood of his removal in the reasonably foreseeable future.

85. The Supreme Court held in *Zadvydas* that detention under 8 U.S.C. § 1231(a)(6) becomes presumptively unreasonable after six months, absent sufficient justification. *See Zadvydas*, 533 U.S. at 701. As detention grows longer, due process requires an increasingly strong justification. *Id.* at 690–91.

86. Mr. Dao has now spent well over ten months in post-order immigration detention under the same final order of removal, including his prior detention from October 22, 2002, through May 29, 2003, and his current confinement beginning on October 14, 2025—totaling 319 days.

87. ICE may not evade constitutional limits by cycling an individual in and out of custody under the same removal order. Courts have rejected the notion that 8 U.S.C. § 1231(a)(6) confers a free-floating authority to re-arrest and detain individuals years later without regard to the cumulative duration of post-order detention. *See Diallo v. Joyce*, No. 25-CV-

9909 (AS), 2025 WL 3718477, at *2 (S.D.N.Y. Dec. 23, 2025); *Abuelhawa*, 2025 WL 2937692, at *4 (collecting cases).

88. Because ICE cannot meet its burden of demonstrating that Mr. Dao's removal is significantly likely in the reasonably foreseeable future, his continued detention is presumptively unconstitutional and must end.

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

89. Petitioner realleges all paragraphs above as if fully set forth here.

90. ICE's revocation of Mr. Dao's Order of Supervision constitutes final agency action that is contrary to the Constitution, the Immigration and Nationality Act, and DHS's own binding regulations, and therefore must be set aside under the Administrative Procedure Act.

91. The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704. An action is final if it marks the consummation of the agency's decision-making process and determines rights or obligations or produces legal consequences. *Bennett v. Spear*, 520 U.S. 154, 178 (1997).

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

93. ICE's revocation of Mr. Dao's Order of Supervision constitutes a final agency action. It conclusively determined his custody status and imposed immediate, significant legal consequences by returning him to detention. As such, it is subject to judicial review under the APA.

94. Before revoking Mr. Dao's release, Respondents failed to make the substantive findings required to justify re-detention. Respondents did not find that Mr. Dao posed a danger or flight risk, nor did they establish that removal had become reasonably foreseeable. Absent such findings, revocation of supervision exceeds ICE's statutory authority and violates constitutional limits on civil detention.

95. Furthermore, Respondents revoked Mr. Dao's Order of Supervision without notice of the particularized reasons for revocation or an opportunity to be heard, as required by 8 C.F.R. §§ 241.4 and 241.13, binding internal guidance, and due process. Courts have repeatedly held that revocation of supervision without these procedural protections is unlawful and must be set aside. *See Funes Gamez v. Francis*, No. 1:25-cv-07429-PAE, 2025 WL 3263896 at *23 (S.D.N.Y. Nov. 24, 2025); *Zhang v. Genalo*, No. 25-CV-6781 (JPO), 2025 WL 3733542 (E.D.N.Y. Dec. 28, 2025); *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025); *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *2 (E.D. Cal. Aug. 20, 2025) (same).

96. Because ICE's revocation of Mr. Dao's Order of Supervision was issued without required findings, and without mandatory procedural safeguards, it is contrary to law, regulations, and the Constitution and must be set aside under the APA.

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

97. Petitioner realleges all paragraphs above as if fully set forth here.

98. ICE's decision to revoke Mr. Dao's Order of Supervision and detain him was arbitrary and capricious because it ignored undisputed evidence that removal is not foreseeable,

failed to consider constitutionally required factors, disregarded reasonable alternatives to detention, and upended Mr. Dao's settled reliance interests without explanation.

99. 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). Agency action is arbitrary and capricious when it violates statute, regulation, or constitutional requirements, runs counter to the evidence before the agency, or fails to consider relevant factors. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983); *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

100. Respondents' revocation of Mr. Dao's Order of Supervision was arbitrary and capricious for multiple independent reasons. First, ICE articulated no permissible reason for Mr. Dao's re-detention, as he has fully complied with every condition of his Order of Supervision and is neither a flight risk nor a danger to the community. Second, ICE seemingly did not even attempt to secure travel documents prior to Mr. Dao's re-detention and post re-detention, disregarded clear evidence that Vietnam would not issue travel documents. Third, ICE failed to consider the constitutional limits on prolonged detention, the substantial fiscal burden of unnecessary incarceration, and the less restrictive alternative of continued supervision. Fourth, ICE disregarded Mr. Dao's settled reliance on the agency's promise that he would receive a prompt informal interview after being taken into custody following the revocation of his Order of Supervision, depriving him of any meaningful opportunity to contest his re-detention.

101. Because Respondents failed to articulate a reasoned explanation for revoking Mr. Dao's release in light of the relevant evidence, their decision was arbitrary and capricious and should be set aside under 5 U.S.C. § 706(2)(A).

Count Six
Violation of the *Accardi* Doctrine

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

103. ICE's revocation of Mr. Dao's Order of Supervision is unlawful under the *Accardi* doctrine because the agency failed to follow its own binding regulations, delegation requirements, and release instructions that expressly govern when and how supervision may be revoked.

104. The *Accardi* doctrine mandates that agencies strictly comply with their own rules, procedures, 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 its procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (holding that agencies must adhere to their own procedures when individual rights are affected, even if those procedures are more demanding than constitutionally required).

105. *Accardi* applies with equal force to unpublished internal rules and instructions; it is not limited to formally promulgated regulations. *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Where an agency disregards binding internal guidance, courts must invalidate the resulting action. *See Morton*, 415 U.S. at 235; *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969).

106. Upon information and belief, Respondents violated agency regulations governing who and upon what findings they may properly revoke an order of supervision. Specifically, Respondents did not find any change in circumstances that make Mr. Dao a flight risk or danger to the community or likely to be removed in the foreseeable future, as required under their regulations governing revocation of release. Moreover, upon information and

belief, the official who revoked Mr. Dao's release was unauthorized under 8 C.F.R. § 241.4 to make such a decision.

107. Respondents also failed to follow their procedures and rules regarding what process is due to noncitizens upon revocation of release. They did not notify Mr. Dao of the reasons for re-detention and to this day, have not afforded him a prompt informal interview to respond.

108. Moreover, by revoking Mr. Dao's release without any pre-detention notice, Respondents also violated agency instructions contained in Mr. Dao's release notification to give him time to prepare for an orderly departure.

109. Under *Accardi*, Respondents' revocation of Mr. Dao's Order of Supervision and decision to ignore instructions in the release notification should be set aside for violating agency procedures, rules, and instructions.

PRAYER FOR RELIEF

Wherefore, Mr. Dao respectfully requests the Court to grant the following:

A. Assume jurisdiction over this matter;

B. Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Dao immediately;

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

D. Order that Respondents may not re-detain Petitioner unless and until they obtain a travel document for his removal to Vietnam and until they follow all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable statutory and regulatory procedures; and

E. Grant any further relief this Court deems just and proper.

Minh Quan Tran Dao

By and through his Counsel,

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**Pro hac vice* motion pending

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Minh Quan Tran Dao, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 are true and correct to the best of our knowledge.

Respectfully submitted this 22nd day of January, 2026

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