

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Giau Van DANG,

Petitioner,

v.

Bruce SCOTT, Warden, Northwest ICE
Processing Center; Laura HERMOSILLO,
Enforcement and Removal Operations, Seattle
Field Office Director, U.S. Immigration and
Customs Enforcement; Kristi NOEM,
Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Todd LYONS,
Acting Director and Senior Official
Performing Duties of Director of ICE;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Respondents.

Civil Case No. 2:26-cv-00379-RSM

**PETITIONER'S TRAVERSE ON WRIT
OF HABEAS CORPUS**

I. INTRODUCTION

The government concedes that Petitioner Giau Van Dang's detention is unlawful by failing to respond *at all* to Petitioner Dang's unlawful detention claims. Instead, the government's only opposition is to Petitioner Dang's third-country removal claims and the Court's jurisdiction over his injunctive claims. Because Petitioner's release from custody on habeas would resolve his request for injunctive relief against third-country removal, this Court should immediately order his release, subject to protections against future unlawful re-detention. Each additional day in detention places Petitioner Dang's livelihood at risk and threatens his ability to support his wife and stepson.

II. ARGUMENT

A. This Court Should Order Petitioner's Immediate Release from Custody on Due Process Grounds.

Although the government filed an opposition to Petitioner's writ of habeas corpus, *see generally* Dkt. # 12 (Federal Respondents' Return Memorandum), it never addresses Petitioner Dang's core argument: that his procedural and substantive due process rights were violated when he was re-detained by ICE on December 23, 2025. That silence waives any rebuttal and leaves the point effectively conceded because issues not "specifically and distinctly argued" are waived. *See Eteros Techs. USA, Inc. v. United States*, No. C25-181-KKE, 2025 WL 2256681, at *8 (W.D. Wash. Aug. 7, 2025) (citing *Amini v. Bank of Am. Corp.*, No. C11-0974RSL, 2012 WL 398636, at *7 (W.D. Wash. Feb. 7, 2012); *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001)). On this basis alone, the Court should release Petitioner Dang immediately.

i. Procedural Due Process

The government's non-opposition indicates that it agrees with the following facts:

- Petitioner Dang was released from federal custody on March 16, 2015, and was "issued another [Order of Supervision ("OSUP")] because removal was not likely to

1 occur in the reasonably foreseeable future.” Dkt. # 12 at 5; Dkt. # 13 at 2 ¶ 6
 2 (Declaration of Anthony Rosa).

- 3 - He then turned his life around, became an active member of his religious community,
 4 and created a stable and loving family with his wife and stepson. Dkt. # 1 at 2–3 ¶ 2,
 5 6 at ¶¶ 18–20 (Petition for Writ of Habeas Corpus).
- 6 - Since his 2015 OSUP, he never missed an ICE check-in or violated any terms of
 7 supervision. *Id.* at 7 ¶ 22; Dkt. # 2 at ¶ 12 (Declaration of Theiline Cramer); Dkt. #
 8 2-11 (Exhibit K).¹

9 The government concedes that ICE did not follow any of its own regulations when it re-
 10 detained Petitioner Dang, violating his procedural due process rights. While the government
 11 contends that Petitioner Dang’s December 23, 2025, arrest was authorized under 8 C.F.R. §
 12 241.13(i),² it fails to state that there is any “significant likelihood of removal in the reasonably
 13 foreseeable future.” *See* Dkt. # 12 at 6 (citing 8 C.F.R. § 241.13(i)(2)). The government identifies
 14 no facts showing that Vietnam has changed its longstanding position on repatriating pre-1995
 15 Vietnamese refugees. *See* Dkt. # 1 at 8–9 ¶¶ 29–38. Nor does Deportation Officer Anthony Rosa
 16 state that ICE has begun the process of obtaining Petitioner Dang’s travel documents. *See* Dkt.
 17 # 13 (absence) Dkt. # 12 (absence). In short, the government identifies no changed circumstances
 18 between Dang’s placement on OSUP in 2015 and his re-detention in December 2025 and
 19 identifies no violation of any release condition that could justify re-detention. *See* 8 C.F.R. §§
 20 241.13(i)(1), 241.4(l)(1).

21
 22 ¹ Petitioner agrees that he violated the terms of his 2001 Order of Supervision (“OSUP”) when he was convicted
 23 of kidnapping for ransom in 2007. *See* Dkt. # 1 at 6 ¶ 18; Dkt. # 12 at 5; Dkt. # 13 at 2 ¶ 7. However, he received
 24 a new OSUP on March 16, 2015, after completing his federal criminal sentence, and the government confirms that
 25 he has not violated the conditions of that release. *See* Dkt. # 12 (no contrary assertion).

26 ² The government acknowledges that when “there is no significant likelihood of removal in the reasonably
 foreseeable future,” DHS may release a noncitizen on an OSUP. Dkt. # 12 at 3 (citing 8 C.F.R. § 241.13(h)). It
 further acknowledges that an OSUP may be revoked only if the noncitizen (1) “violates any of the conditions of
 release,” or (2) if DHS determines “there is a significant likelihood that the [noncitizen] may be removed in the
 reasonably foreseeable future.” *Id.* at 3–4 (citing 8 C.F.R. §§ 241.13(i), 241.4). Upon re-detention, ICE must
 provide notice of revocation and a prompt “initial informal interview” affording an opportunity to respond. *Id.* at 4
 (citing 8 C.F.R. § 241.13(i)(3)).

Furthermore, the government admits that it is “unable to find evidence” that an informal interview of Petitioner Dang ever occurred, *see* 8 C.F.R. § 241.13(i)(3), again conceding that Petitioner Dang has not been given any opportunity to respond to the reasons for revocation. *See* Dkt. # 12 at 6; Dkt. # 1 at 7 ¶ 24 (“As of the date of this filing, no ICE officer has spoken to Petitioner about the reasons for the revocation of his release, conducted an ‘initial informal interview,’ or given him an opportunity to respond to the reasons for the revocation.”). For these reasons, ICE’s re-detention of Petitioner violates procedural due process, warranting immediate release.

ii. Substantive Due Process

Just as the government ignored Petitioner Dang’s procedural due process claims, it does not oppose his substantive due process claims, waiving its challenge. Dkt. # 1 at 21–25 ¶¶ 69–79; *Zadvydas v. Davis*, 533 U.S. 678 (2001).

The government’s silence acknowledges that Petitioner Dang has been cumulatively detained past the presumptively reasonable six-month period of detention. Dkt. # 1 at 23–24 ¶ 76; Dkt. # 12 at 3 (a noncitizen may be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal,” and that detention of six months or less is a presumptively reasonable period of detention) (citing *Zadvydas*, 533 U.S. at 689). And it offers no argument—let alone evidence—that Petitioner Dang poses a danger to the community or presents a flight risk. *See* Dkt. # 1 at 22 ¶ 73. To the contrary, the record reflects Petitioner Dang’s sustained rehabilitation and community ties since his reintegration in 2015, including consistent employment, church involvement, family support, and verified community service. *See* Dkt. #2 ¶¶ 7–11, 13; Dkt. # 2-6 (Exhibit F); Dkt. # 2-7 (Exhibit G); Dkt. # 2-9 (Exhibit I); Dkt. # 2-10 (Exhibit J).

Nor does the government explain why Dang’s re-detention is not punitive. Its silence confirms the detention is unlawful because it does not serve the “narrow” and “nonpunitive” purpose of ensuring his presence “at the moment” of removal. Dkt. # 1 at 18; *Zadvydas*, 533 U.S.

1 at 690 (reasonableness is measured by the statute’s “basic purpose”: “assuring the [noncitizen’s]
 2 presence at the moment of removal”). Indeed, the government points to no facts suggesting
 3 removal is imminent. Nor does it explain why removal was foreseeable at the time of arrest, or
 4 why it would be foreseeable today. *See id.* at 699 (“if removal is not reasonably foreseeable, the
 5 court should hold continued detention unreasonable and no longer authorized by statute.”).

6 The burden is on the government to demonstrate that removal is likely in the reasonably
 7 foreseeable future, because the six-month “grace period” following his 1995 removal order long
 8 ago passed. *Tran*, 2025 WL 3140462, at *3. The government fails to meet its burden. As a
 9 refugee who fled Vietnam as a child, it is highly unlikely that Vietnam will accept him. Dkt. # 1
 10 at 5 ¶ 15. He has no passport and no remaining family ties in Vietnam. *Id.* at 7 ¶ 27. The
 11 government has made no individualized assessment of the likelihood that Vietnam will accept
 12 Petitioner given his circumstances.

13 Petitioner Dang’s case reflects a broader pattern observed by advocates in many other
 14 pre-1995 Vietnamese cases. Despite a chorus of district court rulings,³ ICE continues to re-detain
 15 individuals without making any effort to obtain a travel document from Vietnam first. Dkt. # 3
 16 at 4 ¶ 10 (Declaration of Jacqueline Dan). Very often, it does not bother to even begin the process
 17 to initiate the travel document request until a habeas petition is filed or well into a person’s
 18 detention, “creat[ing] the impression that ICE’s main purpose in re-detaining these individuals
 19 is their incarceration, not their deportation.” Dkt. # 5 at 2 ¶ 4 (Declaration of Julie Valencia);
 20 Dkt. # 3 at 3–4 ¶ 10. Even in circumstances around the country where ICE has called people
 21 back in after their release on habeas, claiming that ICE now has the travel document, advocates

23 ³ *See Do v. Scott*, 2025 WL 3470327, at *3 (W.D. Wash. Dec. 3, 2025) (TRO order); *Do v. Scott*, 2025 WL
 24 3496909, at *6 (W.D. Wash. Dec. 5, 2025) (habeas order) (“Respondents may not re-detain petitioner unless. . . b.
 25 The government (1) obtains a valid travel document to Vietnam for her, (2) provides the valid travel document to
 26 her and counsel, (3) offers petitioner the opportunity to leave on her own within two months, and (4) petitioner
 does not leave”); *Tang v. Bondi*, No. 2:25-CV-01473-RAJ, 2025 WL 3551381, *3 (W.D. Wash. Dec. 11, 2025)
 (same). *See also Nguyen v. Bondi*, No. 2:25-CV-02024-TL, 2026 WL 183819, at *7 (W.D. Wash. Jan. 23, 2026)
 (prohibiting re-detention unless ICE first obtains a valid travel document); *Somsanuk v. Bondi*, 2026 WL 221139,
 at *6 (W.D. Wash. Jan. 28, 2026) (same).

1 report that they are again being held for prolonged periods without being put on a flight. Dkt. #
2 3 at 5–6 ¶ 14.

3 This Court should order Petitioner’s immediate release on an order of supervision and
4 with an order that he may not be re-detained unless the government first obtains a travel
5 document to Vietnam, provides him and his counsel that document, and permits him the
6 opportunity to leave on his own, consistent with other relief granted by this Court. This necessary
7 relief ensures that Petitioner’s rights are protected and he cannot be subjected again to unlawful
8 re-detention.

9 **B. The Court Should Reject the Government’s Ripeness Argument and**
10 **Grant the Requested Injunctive Relief.**

11 The government does not defend ICE’s procedural and substantive due process
12 violations, conceding that Petitioner Dang is being unlawfully detained. Consequently, the Court
13 should order his immediate release. If the Court orders release with the requested re-detention
14 protections, it need not reach the third-country removal claims. However, if the Court chooses
15 to reach them, it should grant the requested relief because the government’s ripeness argument
16 is wrong as a matter of law. Dkt. # 12 at 6–7.

17 Petitioner Dang remains subject to an active nationwide policy that permits ICE to
18 remove individuals to a third country without notice. Dkt. # 1 at 27–31 ¶¶ 86–98. The
19 government has neither rescinded the policy nor made any binding commitment not to apply it
20 to Petitioner. *Cf. A.A.R.P. v. Trump*, 605 U.S. 91, 98 (2025) (nonbinding agreement is voluntary
21 cessation and does not moot claim). The policy has been used repeatedly against post-order
22 Vietnamese nationals with criminal convictions like Petitioner and was designed to reach people
23 with his profile. Dkt. # 1 at 11–15 ¶¶ 42–54. Petitioner Dang need not wait to be subjected to the
24 policy to have standing: where threatened enforcement is not “imaginary or wholly speculative,”
25 a plaintiff need not first expose himself to harm to challenge it. *Babbitt v. United Farm Worker*
26 *Nat. ’l Union*, 442 U.S. 289, 302 (1979) (cleaned up); *see also Lopez v. Candaele*, 630 F.3d 775,

1 786 (9th Cir. 2010); *Nguyen v. Bondi*, No. 2:25-CV-02024-TL, 2025 WL 3534168, at *6–7
 2 (W.D. Wash. Dec. 10, 2025). Requiring him to wait would effectively deny review because the
 3 policy contemplates no notice at all. And even when notice is given, it may be only 6 to 24 hours,
 4 too little time to seek emergency relief, particularly absent diplomatic assurances against torture.
 5 *See Hambarsonpour v. Bondi*, 2025 WL 3251155, at *5 (W.D. Wash. Nov. 21, 2025) (cleaned
 6 up). As alleged, the government has executed third-country removals where individuals did not
 7 learn their destination until the plane was in the air. Dkt. # 1 at 15 ¶ 54. Petitioner Dang therefore
 8 seeks, at minimum, constitutionally adequate notice before any third-country removal. *A.A.R.P.*,
 9 605 U.S. at 97–98.

10 Further, the government’s arguments against Petitioner Dang’s prayers for injunctive
 11 relief (c)–(g), *see* Dkt. # 12 at 8; Dkt. # 1 at 38 ¶ 127, are also wrong. Courts routinely reject the
 12 claim that § 2241 habeas petitions cannot include injunctive relief addressing unlawful
 13 immigration detention. It is straightforward: courts may not second-guess broad immigration
 14 policy choices, but they must remedy concrete statutory and constitutional violations in an
 15 individual case. *See Aden v. Nielsen*, 409 F. Supp. 3d 998 (W.D. Wash. 2019); *Demore v. Kim*,
 16 538 U.S. 510 (2003); *Xiao v. Reno*, 837 F. Supp. 1506 (N.D. Cal. 1993).

17 That is exactly what Petitioner seeks here: relief preventing ICE from acting beyond its
 18 statutory authority and violating due process. Courts have repeatedly exercised § 2241
 19 jurisdiction to remedy ultra vires detention and due process violations. *See Sepulveda Ayala v.*
 20 *Bondi*, 794 F. Supp. 3d 901, 1006 (W.D. Wash. 2025) (habeas corpus remains available for
 21 collateral challenges to detention authority that are independent of challenges to removal orders
 22 and involve statutory violations or constitutional due process violations); *Magana-Pizano v. INS*,
 23 200 F.3d 603, 609 (9th Cir. 1999) (neither the Antiterrorism and Effective Death Penalty Act
 24 nor the Illegal Immigration Reform and Immigrant Responsibility Act preclude noncitizens from
 25 challenging executive detention under the general habeas statute); *E.A. T.-B. v. Wamsley*, 795 F.
 26 Supp. 3d 1316, 1321 (W.D. Wash. 2025) (“That the Government exercises discretion in

determining whether and which conditions of release to impose does not eliminate the protections afforded to Petitioner's liberty interest." Courts in this district have granted the same kind of targeted injunctive relief requested here, release and re-detention protections, in immigration habeas cases. *See Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130, 1138–39 (W.D. Wash. 2025) (granted a temporary restraining order requiring immediate release and prohibiting re-detention absent prior court approval); *e.g., Torres v. Wamsley*, No. C25-5772 TSZ, 2025 WL 2855379, at *5 (W.D. Wash. Oct. 8, 2025) ("The preliminary injunctive relief set forth in the Order entered September 22, 2025, docket no. 15, remains in full force and effect. Until Petitioner is released, the Federal Respondents and NWIPC Warden Bruce Scott are ENJOINED from transporting Petitioner to a detention facility outside the Western District of Washington."); *Nguyen v. Scott*, 796 F. Supp. 3d 703, 739 (W.D. Wash. 2025); *Elshourbagy v. Bondi*, 2025 WL 3718993, at *7–9 (W.D. Wash. Dec. 23, 2025); *Nguyen v. Bondi*, 2025 WL 3534168, at *7–10; *Hambarsonpour*, 2025 WL 3251155, at *4–5; *Abubaka v. Bondi*, 2025 WL 3204369, at *2 (W.D. Wash. Nov. 17, 2025).

For these reasons, the Court should issue the requested injunction against third-country removal, and Petitioner Dang's other injunctive prayers for relief, should it decide to reach those claims, as numerous courts in this district have done in similar cases.

C. The Court Has Jurisdiction to Review Petitioner's APA Claims.

The government also argues the Court "has no subject[-]matter jurisdiction to hear" Petitioner Dang's claims under the Administrative Procedure Act. Dkt. # 12 at 7 (citing 5 U.S.C. § 706(2)(A)–(C)). That framing is wrong. The APA's "adequate remedy" limitation goes to whether a plaintiff states a viable APA cause of action, not to the Court's subject matter jurisdiction.⁴

⁴ The D.C. Circuit confirms that APA finality and the "adequate remedy" requirement in 5 U.S.C. § 704 go to the existence of an APA cause of action, not federal subject-matter jurisdiction. *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 621 (D.C. Cir. 2017) (explaining that adequacy is "an element of the cause of action created by the APA," not a jurisdictional defect). The Sixth Circuit agrees: because the APA does not confer jurisdiction, "the elements of a claim under the APA ... are not jurisdictional." *Haines v. Fed. Motor Carrier Safety Admin.*, 814 F.3d 417, 424 (6th Cir. 2016).

1 Nor does the existence of habeas relief automatically make APA review “adequate.” An
 2 alternative remedy is “adequate” only if it offers relief of the “same genre” as APA review.
 3 *Garcia v. Vilsack*, 563 F.3d 519, 522 (D.C. Cir. 2009) (citing *El Rio Santa Cruz Neighborhood*
 4 *Health Ctr. v. U.S. Dep’t of Health & Human Servs.*, 396 F.3d 1265, 1272 (D.C. Cir. 2005)).
 5 Habeas relief and APA relief are not interchangeable. Habeas can secure individual release; APA
 6 relief can vacate the challenged policy itself.⁵ *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
 7 BFM, 2025 WL 3713987, at *15 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom.*
 8 *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal.
 9 Dec. 18, 2025) (“APA relief, unlike habeas relief, provides a complete remedy because relief
 10 would take form through vacatur of the very policy that Respondents rely on in violating the
 11 rights of Petitioners and members of the Bond Eligible Class.”); *see also Bowen v.*
 12 *Massachusetts*, 487 U.S. 879, 893 (1988). The same is true here: individual habeas release cannot
 13 substitute for the APA relief Petitioner seeks.⁶

14 In any event, the government’s argument overlooks what Petitioner seeks here: relief
 15 from unlawful re-detention and from violations of the Fifth Amendment’s Due Process Clause,
 16 both procedural and substantive. *See* Dkt. # 1 at 33–35 ¶¶ 104–113.

17 III. Conclusion

18 For the foregoing reasons, Petitioner Dang respectfully requests that this Court order his
 19

20
 21 ⁵ Petitioner seeks APA relief only *as applied*, meaning an injunction barring Respondents from applying the
 22 challenged policy to him and not a systemic policy vacatur. That distinction does not turn § 704 into a
 23 jurisdictional bar or make habeas automatically “adequate.” *Cf. Manafort v. U.S. Dep’t of Just.*, 311 F. Supp. 3d
 24 22 (D.D.C. 2018) (recognizing as-applied challenges or prayers for systemic relief to be still “of the same genre”).
 Habeas may secure release from custody, but it is not necessarily a substitute for prospective relief preventing
 future reliance on an unlawful policy, even when that relief is limited to Petitioner. *See, e.g., Rudometkin v.*
Wormuth, No. 23-5088, 2024 WL 5165697 (D.C. Cir. Dec. 19, 2024) (the “other adequate remedy” requirement is
 not jurisdictional; it goes to whether Petitioner has stated a viable APA claim) (citing *Perry*, 864 F.3d at 621);
Bautista, 2025 WL 3713987 at *15.

25 ⁶ Further, the government’s reliance on *Trump v. J.G.G.*, 604 U.S. 670 (2025) (per curiam), is misplaced. *J.G.G.*
 26 held that Alien Enemies Act detention and removal challenges had to proceed in habeas and then resolved a venue
 question in light of the statute’s unusual limits on judicial review. *Id.* at 672. It did not announce any general rule
 that detention-related APA claims must always be brought in habeas, and it did not address § 704 adequacy where
 judicial review is otherwise available. *Id.* at 672–73.

1 immediate release from custody under the protections against unlawful re-detention explained
2 herein and in his Petition for Writ of Habeas Corpus.

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4 Dated: February 23, 2026.

5
6 Respectfully submitted,

7 /s/ Theiline Cramer

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