

1 **HANNAH BASALONE**

2 Cal. Bar No. 368332

3 Federal Defenders of San Diego, Inc.

4 225 Broadway, Suite 900

5 San Diego, California 92101-5030

6 Telephone: (619) 234-8467

7 Facsimile: (619) 687-2666

8 Hannah_basalone@fd.org

9 Attorneys for Nhan Thanh Nguyen



10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **NHAN THANH NGUYEN,**
13 **Petitioner,**

14 **v.**

15 **MARKWAYNE MULLIN, Secretary of**
16 **the Department of Homeland Security,**
17 **TODD BLANCHE, Acting Attorney**
18 **General, TODD M. LYONS, Acting**
19 **Director, Immigration and Customs**
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center,

20 **Respondents.**

CIVIL CASE NO.:

'26CV3653 AGS MMP

Petition for Writ
of
Habeas Corpus

[28 U.S.C. § 2241]

INTRODUCTION

On August 13, 2005, Nhan Thanh Nguyen was ordered removed to Vietnam. Yet ICE has proved unable to remove him for nearly 21 years. This is no surprise. “Vietnam has had a longstanding policy of not accepting back Vietnamese immigrants, like Petitioner[], who left the country before 1995.” *Lieu v. Bowen*, No. 26-CV-429-DOC-RAO, 2026 WL 790880, at *1 (C.D. Cal. Mar. 16, 2026). Though Vietnam is technically considering some pre-1995 immigrants for removal, “in actuality, very few people have been accepted back by Vietnam that left the country before 1995.” *Id.*

Because “there is no significant likelihood of removal in the reasonably foreseeable future,” and because a different district court ordered his release just two months ago, Mr. Nguyen’s detention is no longer statutorily authorized, and this Court must order his immediate release. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

STATEMENT OF FACTS

Mr. Nguyen was born in Vietnam  Declaration of Nhan Thanh Nguyen, Exhibit A at ¶ 1. He fled to the United States, entering on a flight as a refugee in 1990. *Id.* He had a responsory and received legal status. *Id.* Following convictions, he was ordered removed on August 13, 2005. *Id.* at ¶ 2.

In September 2009, Mr. Nguyen was released from prison into custody of ICE. *Id.* at ¶ 3. After being in ICE custody for 90 days, he was released because ICE could not obtain travel documents to remove him to Vietnam. *Id.*

Mr. Nguyen went back to prison from 2010 to 2016. In 2016, he was again released from prison into ICE custody. *Id.* at ¶ 4. This time, ICE released him that same day because they saw he had previously been held for 90 days after his order of removal became final. *Id.* He remained out of custody from 2016 to 2025. *Id.*

On August 3, 2025, Mr. Nguyen was re-detained by ICE. He was at Home Depot buying supplies for work when officers surrounded him with guns. *Id.* at ¶

1 5. They threw him to the ground, handcuffed him, and told him they had a final
2 removal order for him. *Id.* They brought him to a detention center in Arizona where
3 he was held for over eight months. *Id.*

4 On April 14, 2026, Mr. Nguyen won a habeas petition in the District of
5 Arizona. *Id.* at ¶ 6. In case 26-CV-00576-PHX-JCH, the judge granted the petition
6 and ordered Mr. Nguyen's immediate release. *Id.* But on May 22, 2026, after less
7 than two months out of custody, ICE re-detained Mr. Nguyen yet again. *Id.* at ¶ 7.
8 He went to a check-in appointment; at this appointment, ICE told him they were re-
9 detaining him and revoking his release because they were working on obtaining
10 travel documents to remove him. *Id.* They did not give him any timeframe for when
11 they would receive those documents or when he would be removed. *Id.*

12 Mr. Nguyen has not heard from ICE since his re-detention over a month ago.
13 *Id.* at ¶ 8. They have not provided any updates on the status of his removal or his
14 travel documents. *Id.* They have given him no indication of how long it might take
15 to remove him. *Id.*

16 The general experience of other Vietnamese immigrants also bears this out.
17 Even after Vietnam signed the 2020 MOU, ICE had to admit that there was no
18 reasonable likelihood of removing such immigrants in the reasonably foreseeable
19 future, Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-316-
20 CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—an admission backed up by two
21 years' experience under the MOU. Asian Law Caucus, *Resources on Deportation*
22 *of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul. 15, 2025)
23 (providing links to all quarterly reports). Though the Trump administration
24 rescinded this admission, several courts have explained that barriers continue to
25 obstruct removal for people like Mr. Nguyen. *See Nguyen v. Scott*, 796 F.Supp.3d
26 703 (W.D. Wash. Aug. 21, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP,
27 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-CV-
28 11470-MJJ, 2025 WL 1725791, at *5 (D. Mass. June 20, 2025); *see also Than*

1 *Nguyen v. Noem*, No. 25-CV-2760-TWR at ECF No. 12 (S.D. Cal. Oct. 23, 2025)
 2 (minute order noting grant of *Zadvydas* petition as to pre-1995 Vietnamese
 3 immigrant); *Ho v. Noem*, No. 25-CV-2453-BAS at ECF No. 11 (S.D. Cal. Oct. 20,
 4 2025) (granting preliminary injunction ordering release as to pre-1995 Vietnamese
 5 immigrant); *Lieu*, 2026 WL 790880 at *1.

6 Vietnam has accepted few pre-1995 immigrants. And Respondents have
 7 concealed the precise factors the Vietnamese government considers in making these
 8 determinations, as “this information has been redacted from the publicly available
 9 version of the 2020 MOU, and [the government] has not offered it.” *Nguyen*, 796
 10 F. Supp.3d at 722. There is no information about whether Mr. Nguyen has a
 11 Vietnamese passport or necessary travel documents to effectuate his removal to
 12 Vietnam. *See* Exh. A at ¶¶ 7–9. As long as Vietnam does not recognize Mr. Nguyen
 13 as a citizen, he cannot be removed to Vietnam.

14 ARGUMENT

15 This Court should grant this petition and order Mr. Nguyen’s immediate
 16 release because there is “no significant likelihood of removal in the reasonably
 17 foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The Court should
 18 also enjoin his removal without due process.

19 I. As judges in this district have uniformly held, immigrants must be 20 released when ICE does not adhere to the regulations governing re- 21 detention.

22 The Department of Homeland Security has enacted a series of regulations to
 23 protect the due process rights of someone who, like Mr. Nguyen, is re-detained
 24 following a period of release. Title 8 C.F.R. § 241.4(*I*) applies to re-detention
 25 generally, while 8 C.F.R. § 241.13(i) applies to persons released after providing
 26 good reason to believe that they will not be removed in the reasonably foreseeable
 27 future, *see Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165,
 28 at *2 (S.D. Cal. Sept. 15, 2025), as Mr. Nguyen was many times.

ICE is required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to abide by certain internal policies is well-established.”). A court may review a re-detention decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)). Many judges in this district have granted habeas petitions or temporary restraining orders when ICE failed to follow 8 C.F.R. §§ 241.4(l), 241.13(i). *See, e.g., Constantinovici v. Bondi*, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).¹

Here, ICE violated § 241.13 in at least four respects.²

¹ Courts in other districts have done the same. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

² Some of these violations also constitute § 241.4(l) violations, but because § 241.13(i) is more comprehensive, Mr. Nguyen focuses his arguments on that

1 First, ICE did not comply with § 241.13(i)'s informal interview requirement.
 2 No matter the reason for re-detention, the re-detained person is entitled to "an initial
 3 informal interview promptly," during which they "will be notified of the reasons
 4 for revocation." *Id.* §§ 241.4(l)(1), 241.13(i)(3). The interviewer must "afford[] the
 5 [person] an opportunity to respond to the reasons for revocation," allowing them to
 6 "submit any evidence or information" relevant to re-detention and evaluating "any
 7 contested facts." *Id.* But Mr. Nguyen has yet to receive the interview required by
 8 regulation. *See* Exh. A at ¶ 7. Any interview conducted now would not be prompt.
 9 *See, e.g., M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at
 10 *11 (D. Or. Aug. 21, 2025) (27-day delay not prompt); *Yang v. Kaiser*, No. 2:25-
 11 cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025)
 12 (two-month delay not prompt); *Soryadvongsa v. Noem*, 24-cv-2663-AGS-DDL,
 13 2025 WL 3126821, at *1 (S.D. Cal. Nov. 8, 2025) (29-day delay not prompt). That
 14 alone is enough to grant the petition.

15 Second, ICE did not comply with § 241.13(i)'s requirement that, "upon
 16 revocation," the re-detained person be "notified of the reasons for revocation." As
 17 Judge Moskowitz recently explained, the regulation's text and due process require
 18 that the notice be written. *Tran v. Noem*, 25-cv-2391-BTM, Dkt. 16, at 5–6 (S.D.
 19 Cal. Oct. 27, 2025). Here, Mr. Nguyen did not receive any notice—written or
 20 otherwise—upon his revocation on May 22, 2026. Exh. A at ¶ 7. He showed up to
 21 a regular check-in appointment and never left. *Id.*

22 Even if this court considers the information provided to Mr. Nguyen at his
 23 check-in as notice, that notice is far too vague to "notif[y] [Mr. Nguyen] of the
 24 reasons for revocation of his [] release." 8 C.F.R. § 241.13(i)(2). At his check-in,
 25 he was simply told his release was being revoked because they were "working on"

26
 27
 28 regulation.

1 travel documents. Exh. A at ¶ 6. He was re-detained “without any explanation” of
 2 what the changed circumstances were or how there had been any progress related
 3 to his travel documents. *Sarail A. v. Bondi*, No. 25-CV-2144 (ECT/JFD), 2025 WL
 4 2533673, at *3 (D. Minn. Sept. 3, 2025). “This bare-bones explanation does not
 5 contain reasons for the revocation of Petitioner’s release, thus it does not satisfy the
 6 ‘the due-process notification requirement of § 241.13(i)(3).’” *Anh Nguyen v. Noem*,
 7 25-CV-2792-LL, Dkt. 10 at 4 (S.D. Cal. Nov. 6, 2025) (quoting *Tran v. Noem*, No.
 8 25-cv-2391-BTM-BLM, 2025 WL 3005347, at *2 (S.D. Cal. Oct. 27, 2025)).

9 Fourth, ICE did not revoke Mr. Nguyen’s release for a permissible reason.
 10 He was not returned to custody because of a conditions violation. Exh. A at ¶¶ 2, 6.
 11 And there are no changed circumstances that justify re-detaining him. Mr. Nguyen
 12 could not be removed in 2005 or in 2016, hence why ICE released him. *Id.* at ¶¶ 3–
 13 4. And a federal district court *again* granted Mr. Nguyen’s release based on the
 14 government’s inability to remove him just this year. *See Nguyen v. Rivas et al*, No.
 15 26-CV-00576-PHX-JCH, ECF 20 (D. Ariz. Apr. 14, 2026).

16 Absent any evidence for “why obtaining a travel document is more likely
 17 this time around[,] Respondents’ intent to eventually complete a travel document
 18 request for Petitioner” to Vietnam “does not constitute a changed circumstance.”
 19 *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D.
 20 Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at
 21 *2 (D. Kan. June 17, 2025)). Indeed, there is no indication that ICE even made a
 22 pre-arrest determination that changed circumstances made Mr. Nguyen’s removal
 23 likely. If the government is unable to produce “any documented determination,
 24 made prior to Petitioner’s arrest,” that any of the prerequisites to re-detention were
 25 met, then Mr. Nguyen must be released on those grounds, too. *Rokhfirooz v. Larose*,
 26 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025).

27 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
 28 the applicable regulations, that revocation has no effect, and Mr. Nguyen is entitled

1 to his release (subject to the same Order of Supervision that governed his most
2 recent release).” *Liu*, 2025 WL 1696526, at *3.

3 **II. Mr. Nguyen’s detention violates *Zadvydas* and 8 U.S.C. § 1231.**

4 **A. Legal background**

5 Mr. Nguyen’s indefinite detention violates the statute authorizing detention,
6 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme
7 Court considered a problem affecting people like Mr. Nguyen. Federal law requires
8 ICE to detain an immigrant during the “removal period,” which typically spans the
9 first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2).
10 After that 90-day removal period expires, detention becomes discretionary—ICE
11 may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6).
12 Ordinarily, this scheme would not lead to excessive detention, as removal happens
13 within days or weeks. But some detainees cannot be removed quickly. Perhaps their
14 removal “simply require[s] more time for processing,” or they are “ordered
15 removed to countries with whom the United States does not have a repatriation
16 agreement,” or their countries “refuse to take them,” or they are “effectively
17 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257
18 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
19 immigrants can find themselves trapped in detention for months, years, decades, or
20 even the rest of their lives.

21 If federal law were understood to allow for “indefinite, perhaps permanent,
22 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at
23 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
24 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

25 As an initial matter, *Zadvydas* held that detention is “presumptively
26 reasonable” for at least six months. *Id.* at 701. This acts as a kind of grace period
27 for effectuating removals.
28

1 Following the six-month grace period, courts must use a burden-shifting
 2 framework to decide whether detention remains authorized. First, the petitioner
 3 must make a *prima facie* case for relief: He must prove that there is “good reason
 4 to believe that there is no significant likelihood of removal in the reasonably
 5 foreseeable future.” *Id.*

6 If he does so, the burden shifts to “the Government [to] respond with
 7 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of proof
 8 rests with the government: The government must prove that there is a “significant
 9 likelihood of removal in the reasonably foreseeable future,” or the immigrant must
 10 be released. *Id.*

11 **B. There is good reason to believe that there is no significant**
 12 **likelihood of Mr. Nguyen’s removal in the reasonably foreseeable**
 13 **future.**

14 This Court must evaluate Mr. Nguyen’s *Zadvydas* claim using the burden-
 15 shifting framework. At the first stage of the framework, there must be “good reason
 16 to believe that there is no significant likelihood of removal in the reasonably
 17 foreseeable future.” *Zadvydas*, 533 U.S. at 701. This standard can be broken down
 18 into three parts.

19 **“Good reason to believe.”** The “good reason to believe” standard is a
 20 relatively forgiving one. “A petitioner need not establish that there exists no
 21 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
 22 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
 23 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
 24 foreseeable, significant likelihood of removal or show that his detention is
 25 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
 26 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F.
 27 Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
 28 Petitioners need only give a “good reason”—not prove anything to a certainty.

1 **“No significant likelihood of removal.”** This component focuses on
2 whether Mr. Nguyen will likely be removed: Continued detention is permissible
3 only if it is “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*,
4 533 U.S. at 701. This inquiry targets “not only the *existence* of untapped
5 possibilities, but also [the] probability of *success* in such possibilities.” *Elashi v.*
6 *Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other
7 words, even if “there remains *some* possibility of removal,” a petitioner can still
8 meet its burden if there is good reason to believe that successful removal is not
9 significantly likely. *Kacanik v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362,
10 at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

11 **“In the reasonably foreseeable future.”** This component of the test focuses
12 on when Mr. Nguyen will likely be removed: Continued detention is permissible
13 only if removal is likely to happen “in the reasonably foreseeable future.” *Zadvydas*,
14 533 U.S. at 701. This inquiry places a time limit on ICE’s removal efforts. If the
15 Court has “no idea of when it might reasonably expect [Petitioner] to be repatriated,
16 this Court certainly cannot conclude that his removal is likely to occur—or even
17 that it might occur—in the reasonably foreseeable future.” *Palma v. Gillis*, No.
18 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7,
19 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug.
20 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)).
21 Thus, even if this Court concludes that Mr. Nguyen “would *eventually* receive” a
22 travel document, he can still meet his burden by giving good reason to anticipate
23 sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich.
24 Nov. 14, 2016).

25 Mr. Nguyen has good reason to doubt his likelihood of removal in the
26 reasonably foreseeable future. ICE appears to have made no progress in removing
27 him in nearly 21 years. Exh. A at ¶¶ 2–6. And there is a good explanation for the
28 hold up: As explained *supra*, Vietnam historically does not accept immigrants who

1 left before 1995, and the United States has consistently had trouble deporting
2 people to Vietnam. Even with the current MOU stating Vietnam *will* consider some
3 pre-1995 immigrants for removal, the reality in practice is that this is incredibly
4 unlikely. Further, there is no new, specific information that has changed the
5 likelihood of Mr. Nguyen's deportation between now and when a different district
6 court ordered his release less than two months ago.

7 Thus, Mr. Nguyen has met his initial burden. Unless the government can
8 prove a "significant likelihood of removal in the reasonably foreseeable future,"
9 Mr. Nguyen must be released. *Zadvydas*, 533 U.S. at 701.

10 **III. Prayer for relief**

11 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 12 1. Order Respondents to immediately release Petitioner from custody;
- 13 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
14 § 1231(a)(6) unless and until Respondents physically obtain a travel
15 document for his removal;
- 16 3. Enjoin Respondents from removing Petitioner to any country other than
17 Vietnam unless they provide the following process, *see D.V.D. v. U.S.*
18 *Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at
19 *1 (D. Mass. May 21, 2025):
 - 20 a. written notice to both Petitioner and Petitioner's counsel in a
21 language Petitioner can understand;
 - 22 b. a meaningful opportunity, and a minimum of ten days, to raise a
23 fear-based claim for CAT protection prior to removal;
 - 24 c. if Petitioner is found to have demonstrated "reasonable fear" of
25 removal to the country, Respondents must move to reopen
26 Petitioner's immigration proceedings;
 - 27 d. if Petitioner is not found to have demonstrated a "reasonable fear"
28 of removal to the country, a meaningful opportunity, and a

1 minimum of fifteen days, for the Petitioner to seek reopening of his
2 immigration proceedings.

3 4. Order all other relief that the Court deems just and proper.
4

5 Respectfully submitted,
6

7 Dated: June 22, 2026

s/ Hannah Basalone

Hannah Basalone

Federal Defenders of San Diego, Inc.

Attorneys for Mr. Nguyen

Email: hannah_basalone@fd.org

PROOF OF SERVICE

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Date: 6/22/2026

/s/ Hannah Basalone
Hannah Basalone