

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

VATSANA NOUANSISOUHAK,

PETITIONER,

Case No. 3:25-CV-2222-K

v.

KRISTI NOEM, et al.,

RESPONDENTS.

REPLY BRIEF IN SUPPORT OF HABEAS PETITION
& PRELIMINARY INJUNCTION

Introduction	3
Argument	7
I. Zadvydas is NOT applicable to the re-detention of Mr. Nouansisouhak, but it does provide the constitutional principles which guide the analysis in this case.	8
II. ICE regulations clearly envision a joint effort between the noncitizen and ICE to obtain travel documents <i>before</i> detention.....	11
III. Mr. Nouansisouhak is likely to succeed in demonstrating his current detention is unlawful and invalid because ICE detained him without making an individualized determination as to his “changed circumstances” and without following the process required by 8 C.F.R. § 241.13(i).....	13
A. Mr. Nouansisouhak is likely to succeed in showing his re-detention was unlawful because ICE did not make an individualized determination as to changed circumstances and admits that the one circumstance that has prevented removal in the past (no travel documents) has not changed.....	14
B. ICE’s Failure to Follow the Process Required by its Own Regulations Provides an Independent Basis for Relief.	19
IV. Mr. Nouansisouhak has been and continues to be deprived of his life and liberty, things universally recognized as irreparable injuries; meanwhile, ICE will suffer no injury whatsoever if the injunction is granted.	23
V. Balancing of the Equities and Public Interest Weigh Strongly in Favor of Mr. Nouansisouhak’s Requested Injunction.....	25
Conclusion	28

INTRODUCTION

For more than twenty-five years, Petitioner, Vatsana Nouansisouhak, did everything the United States government asked of him. After a conviction in 1995, he was ordered removed to Laos by an Immigration Judge on May 22, 1997.¹ The order of removal became final on January 29, 1998, when the Board of Immigration Appeals dismissed his appeal.² Mr. Nouansisouhak, however, remained detained by INS for another 837-days while it attempted to execute the removal order against him.³ It was not until May 15, 2000, that INS acknowledged it could not remove Mr. Nouansisouhak because Laos would not issue the required travel documents needed for removal.⁴ Said differently, INS detained Mr. Nouansisouhak for nearly 2.5 years after his removal order became final in January 1998. When INS finally released him, Mr. Nouansisouhak was placed on an Order of Supervision (“OSUP”).⁵

To be clear, Mr. Nouansisouhak has never attempted to stop his removal to Laos. And he is not attempting to stop his removal to Laos now. Despite leaving when he was a young child, Mr. Nouansisouhak is not afraid of removal to Laos. He is, however, afraid of being unnecessarily detained in overcrowded ICE detention

¹ (Dkt. no. 10 p. 5.)

² (*Id.*)

³ (*Id.*)

⁴ (*Id.*)

⁵ (Dkt. no. 10 p. 5.)

It is essential to be clear about the nature of Mr. Nouansisouhak's present confinement: it is not a necessary administrative measure, but a punitive act devoid of legal justification. Indeed, in resolving this matter it is Mr. Nouansisouhak's position that the most important question that must be asked is: what was the purpose of Mr. Nouansisouhak's detention when he was detained more than a month ago? And what is the purpose of his detention today? The government's response artfully evades this, the most important issue, to determining whether Mr. Nouansisouhak is being unlawfully detained right now. The government does so by completely ignoring this threshold issue and skipping forward to reasons Mr. Nouansisouhak's detention would be lawful in the future—when it has actually obtained travel documents and confirmation of a removal flight.

Civilized societies have long understood that locking a human being in a cage is a profound deprivation of liberty, an act so severe that its mere threat is used to deter criminal conduct. This is precisely what is happening to Mr. Nouansisouhak. He is currently confined in an overcrowded facility, enduring the immense mental, emotional, and physical distress that accompanies total loss of freedom. Yet, this is not punishment for a crime; Mr. Nouansisouhak has spent the last few decades being a devoted husband and father, a contributing member of his community, and a law-abiding citizen. Equally important, he has complied with all ICE has asked of him on the OSUP for more than 25 years.

The standard justifications for civil immigration detention are wholly absent here. Mr. Nouansisouhak is not detained because he is a flight risk. The most powerful evidence of this is his own action on July 23, 2025: he voluntarily appeared for a scheduled ICE check-in, fully aware he would be arrested. A man who walks willingly into his own

detention is not a man who will later abscond. Nor is he detained because it is necessary to ensure his imminent removal. By the government's own admission, it does not even have the necessary travel documents at this time, which are required to remove him, meaning his removal is not—and has never been—imminent. This begs the question: why is he being detained? The answer is that there is no legitimate reason. The government is effectively asking this Court for a blank check to inflict the punishment of imprisonment without cause, in direct contravention of the bedrock principle that civil detention must be strictly limited and justified by a significant, non-punitive interest. ICE's claimed reason for his detention is basically "we're detaining him because we think we can."

Given the lack of any legitimate basis for Mr. Nouansisouhak's continued detention, where there is neither a risk of flight nor any threat to public safety, it is difficult to discern a rationale for ICE's actions. The most plausible explanation is that ICE is maintaining his detention solely to inflate its statistical enforcement figures in service of meeting the Agency's arbitrarily elevated deportation targets. A basis that is as illegal as it is immoral.

This case presents two questions of profound importance to the rule of law: (1) what is required before the government may re-detain a noncitizen pursuant to 8 C.F.R. § 241.13(i)(2) on the basis of "changed circumstances"? And (2) where there is no evidence of flight risk how long prior to removal may such noncitizen be re-detained in ICE's physical custody? Mr. Nouansisouhak's position is simple and logical: First, the "changed circumstances" should be the specific circumstances that prevented removal in the past. Here, for example, "no travel documents" from Laos for Mr. Nouansisouhak is the circumstance that has prevented his removal. Accordingly, it seems reasonable to require

that this circumstance has definitively changed before ICE re-detains a noncitizen like Mr. Nouansisouhak. Detention sooner becomes plainly punitive and contrary to the constitutionally permissible civil detention requirements in this country. And second, it is Mr. Nouansisouhak's position that, absent evidence of flight risk, ICE should not be able to re-detain him more than 72 hours prior to the scheduled removal flight.

Mr. Nouansisouhak's position ensures the Constitution, statutes, and regulations, are not violated through arbitrary detention. Arbitrary decision making is what the U.S. Constitution and the regulations at 8 C.F.R. § 241.13(i) sought to prevent. Now, the government's response leaves no doubt that it wants the Court to rubber stamp its decision to re-arrest and indefinitely detain Mr. Nouansisouhak on nothing more than a vague "executive branch assessment" that gives it speculative hope that it might, remove him at some point. And it wants the Court to approve of ICE depriving Mr. Nouansisouhak of his liberty even though it has not—and indeed cannot—provide any valid reason for his detention (*e.g.*, flight risk). This position, however, is contrary to the statutes, regulations, and the Constitution.

For these reasons and those stated below, Mr. Nouansisouhak respectfully requests that the Court order ICE to release him from custody and enjoin ICE from re-detaining him until the circumstances that has prevented his removal for years has in fact changed and the "moment of removal" has arrived. Alternatively, Mr. Nouansisouhak respectfully requests that this matter be set for an evidentiary hearing.

ARGUMENT

“The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of law.’”⁶ “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.”⁷ Accordingly, the Supreme Court has explicitly stated “that government detention violates this clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, . . . or in certain special and ‘narrow’ nonpunitive ‘circumstances,’ . . . where a special justification . . . outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’”⁸ To this end, civil detention may not be penal in nature and it must be limited to “a period reasonably necessary to secure removal” to comport with the Constitution and controlling statutes.⁹ In so doing, it is Mr. Nouansisouhak’s position that ICE must follow the process set forth in the regulations, the circumstance previously preventing removal must have changed, and ICE must not take him into custody for any longer than is necessary to “assure” Mr. Nouansisouhak’s “presence at the moment of removal.”

As detailed below, Mr. Nouansisouhak is likely to succeed in demonstrating ICE’s detention of him is unlawful and invalid, the harm he will suffer is irreparable while the requested injunction will cause no harm to Respondents, and finally that a balancing of the

⁶ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (quoting U.S. Const. Amend. 5).

⁷ *Id.* (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

⁸ *Id.*

⁹ *Id.* at 699.

equities and public interest favor an injunction requiring ICE to release Mr. Nouansisouhak immediately. Before addressing these issues, however, it is important to address the proper legal framework for determining the lawfulness of ICE's current detention of Mr. Nouansisouhak.

I. Zadvydas is NOT applicable to the re-detention of Mr. Nouansisouhak, but it does provide the constitutional principles which guide the analysis in this case.

ICE seems to believe that, even though it detained Mr. Nouansisouhak for more than two-years after he was ordered removed in 1998, that they have a fresh six-month, presumptively valid window to effectuate his removal (at ICE's convenience). In so doing, Respondents improperly attempt to shoehorn this case into the framework of *Zadvydas v. Davis*, 533 U.S. 678 (2001). This is not a *Zadvydas* case. This case is not about the initial authority to detain a noncitizen following a final order of removal. Rather, it concerns ICE's authority to re-arrest and indefinitely¹⁰ detain a man who, after a prior period of detention, was released on an Order of Supervision (OSUP) for years precisely because his removal was not significantly likely in the reasonably foreseeable future.

The controlling authority for this scenario is not *Zadvydas*, but the specific federal regulation governing the revocation of release: 8 C.F.R. § 241.13(i). As another federal court recently explained in a case with indistinguishable facts:

¹⁰ The words "indefinite" or "indefinitely" when used in this brief to refer to Mr. Thai's detention, are meant to describe the length of his detention as "unknown" or an "unspecified period of time." When given their ordinary meaning Respondents cannot truly claim that Mr. Thai's detention is anything but indefinite as they have provided no time frame whatsoever for even making the request for travel documents, much less when it believes it will get them.

Respondents argue that, because Mr. Nouansisouhak has been detained for less than six months, his detention pending execution of his removal order is presumptively reasonable under *Zadvydas*... Respondents' argument misses the mark. This case is not about ICE's authority to detain in the first place... This case is about ICE's authority to re-detain Mr. Nouansisouhak after he was issued a final order of removal, detained, and subsequently released on an OSUP. The DHS regulation, 8 C.F.R. § 241.13(i), applies to non-citizens in Petitioner's situation.¹¹

Similarly, a decision out of the Eastern District of Texas from earlier this month explained:

[T]his is not your typical first round detainment of an alien awaiting removal. Petitioner was previously detained, then released on supervised release for several years, and his 90-day removal period expired. *Zadvydas*, relied upon by Respondents, dealt with the initial detainment of an alien awaiting removal. After *Zadvydas*, the immigration regulations were revised to implement administrative review procedures for those aliens detained beyond the removal period, including those who are re-detained upon revocation of their supervised release.¹²

While *Zadvydas* does not control, its core reasoning illuminates the central question here: what constitutes a *reasonable* period of detention? The answer to that question, and the constitutional permissibility of the detention itself, depends entirely on the circumstances. Common sense dictates a profound difference between the six-month period immediately following a removal order and the re-detention of an individual decades later, after years of perfect compliance with supervision, who voluntarily appears for a check-in knowing full well he is almost certain to be taken into custody. In other words, the analysis for individuals like Mr. Nouansisouhak who report to ICE expecting to

¹¹ *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025).

¹² *Escalante, v. Noem, et. al.*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025).

be detained after years of compliance on OSUP is much different than for noncitizens who have just been ordered removed and are still within the statutory removal period.

The “historic purpose of the writ,” as *Zadvydas* reminds us, is “to relieve detention by executive authorities without judicial trial.”¹³ To that end, this Court must ask whether Mr. Nouansisouhak’s detention “exceeds a period reasonably necessary to secure removal,” measuring reasonableness “primarily in terms of the statute’s basic purpose, namely, *assuring the alien’s presence at the moment of removal.*”¹⁴

At its simplest, this inquiry is not unlike the one magistrate judges conduct daily in detention hearings: what, if any, conditions are necessary to assure a person’s appearance? The answer requires an individual assessment. Here, Mr. Nouansisouhak’s circumstances overwhelmingly demonstrate that prolonged detention is not necessary. His years of unwavering compliance with his OSUP and his status as a law-abiding citizen for decades establish he is not a flight risk. Most powerfully, Mr. Nouansisouhak demonstrated his commitment to compliance in the most definitive way possible: he walked into an ICE office for a scheduled appointment, fully aware of the agency’s recent practice of detaining Laos and Vietnamese immigrants and surrendered himself. There can be no more compelling evidence that he is not a flight risk.

In the criminal justice system, courts routinely trust individuals facing certain and lengthy prison sentences to remain on release pending sentencing. This trust is based on

¹³ 533 U.S. at 699.

¹⁴ *Id.* (emphasis added).

their history of compliance and is buttressed by severe criminal penalties for failure to appear. The same presumption should apply with even greater force to Mr. Nouansisouhak, who is separated by decades from any criminal conduct and faces a potential 10-year federal prison sentence for absconding from ICE officials under 8 U.S.C. § 1253(a)(1). To achieve its sole legitimate purpose—assuring his presence at the moment of removal—ICE should not need to have Mr. Nouansisouhak detained for any more than 72 hours before a scheduled departure. He does not need to be detained for months on end while ICE may or may not begin the process of seeking travel documents.

II. ICE regulations clearly envision a joint effort between the noncitizen and ICE to obtain travel documents *before* detention.

Respondents' reliance on its authority falters for another reason: ICE regulations clearly envision a world in which ICE and the noncitizen work together before making the decision to re-detain. The regulations first consider the noncitizen's efforts and then the steps ICE has taken in securing the requisite documentation for the noncitizen. By detaining Mr. Nouansisouhak before giving him an opportunity to request the documents himself, ICE is making the process counterproductive. This is incomprehensible for two reasons.

First, the numerous documents needed for the travel document application are items that Mr. Nouansisouhak could most likely locate or obtain himself. Likewise, the ability of Mr. Nouansisouhak to obtain alternative means of verifying he was in fact born in Laos¹⁵

¹⁵ E.g. locating family who was in Vietnam at the time of birth and remains there now, locating a "family book," etc. *See* n. 13, *infra*.

can be arduous when the individual has complete access to their phones, email, personal documents, and a delivery services like UPS. This already arduous process becomes unnecessarily complex and lengthy when the noncitizen is being forced to gather these things from an overcrowded ICE detention facility. Simply put, there is a lot the non-citizens could and would do if provided the opportunity.

Second, DO Goche's declaration states that he did not even submit the travel document request for Mr. Nouansisouhak until more than a month after he had been re-detained.¹⁶ This begs the question—why hasn't this been done before? Why did it take until 2-days before the government's response in this matter was due for the request to be made?

The simple answer is that ICE is putting the proverbial cart before the horse by re-detaining Mr. Nouansisouhak before even making the travel document request. If ICE is to be believed about Laos issuing travel documents beginning in January 2025,¹⁷ more than 7 months before Mr. Nouansisouhak was re-detained, then ICE it would seem should have been able to obtain those travel documents before it re-detained him at a check in on July 25, 2025.

To be clear, taking steps to obtain travel documents and provide proof of such efforts is a standard condition when a noncitizen is placed on OSUP because travel documents necessary for removal cannot be obtained. If ICE had taken this simple (previously) normal course of action in Mr. Nouansisouhak's case, it would have saved thousands of taxpayer

¹⁶ (Dkt. no. 10 p. 6.)

¹⁷ (*Id.*)

dollars. Even those who are in favor of the current immigration policies, surely cannot be in favor of ICE acting in a way that both wastes government resources and serves to delay Mr. Nouansisouhak's removal to Laos.

III. Mr. Nouansisouhak is likely to succeed in demonstrating his current detention is unlawful and invalid because ICE detained him without making an individualized determination as to his "changed circumstances" and without following the process required by 8 C.F.R. § 241.13(i).

Respondents' authority to detain Mr. Nouansisouhak is not boundless as the government would assert. While 8 U.S.C. § 1231(a) provides the general statutory framework for post-removal-order detention and supervised release, "[t]he revocation of that release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release for purposes of removal. Specifically, a noncitizen's release may be revoked "if, on account of changed circumstances," it is determined that "there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future."¹⁸ Furthermore, the regulations go on to proscribe the process for revocation based on a determination of changed circumstances as follows:

[T]he alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and

¹⁸ *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025) (quoting 8 C.F.R. § 241.13(i)(2)).

a determination whether the facts as determined warrant revocation and further denial of release.¹⁹

These regulations, not *Zadvydas* or 8 U.S.C. § 1231, govern ICE's re-detention of individuals who have been released after a determination was made that they could not be removed. The first step in this process is necessarily a determination of changed circumstances. Then, once that determination is made, ICE is required to follow the interview and notice requirements of § 241.13(i)(3). As discussed below, ICE's failure to do either of these things properly provide two independent bases for granting this Petition and request for an injunction.

A. Mr. Nouansisouhak is likely to succeed in showing his re-detention was unlawful because ICE did not make an individualized determination as to changed circumstances and admits that the one circumstance that has prevented removal in the past (no travel documents) has not changed.

The government's power to revoke supervised release and re-detain a noncitizen is strictly circumscribed. The regulation at 8 C.F.R. § 241.13(i)(2) provides that ICE may revoke release "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." As the First Circuit has held, and district courts have recently reaffirmed in cases identical to this one, before re-detaining an individual like Mr. Nouansisouhak based on "changed circumstances," there must be "(1) an individualized determination (2) by ICE

¹⁹ 8 C.F.R. § 241.13(i)(3).

that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.”²⁰

Significantly, in the context of re-detention, the burden is on the government to show an individualized change of circumstances sufficient to demonstrate a true “significant likelihood that the alien may be removed.”²¹ This is not a mere formality. The regulation requires ICE to consider specific factors when making this determination, including “the history of the Service’s efforts to remove aliens to the country in question,” “the ongoing nature of the Service’s efforts to remove *this alien and the alien’s assistance with those efforts*,” and “the reasonably foreseeable results of those efforts.”²² The inquiry is, by its very nature, individualized and fact-intensive.

In this case, ICE has made no attempt to claim it made “an individualized determination” that Mr. Nouansisouhak’s circumstances have changed. To the contrary,

²⁰ *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2)); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *4–6 (E.D. Cal. July 16, 2025), *Hoac v. Beccerra, et al.*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025), and *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025); *Roble v. Bondi, et al.*, No. 25-CV-3196, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025).

²¹ *Escalante, v. Noem, et al.*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); see also *See Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding Zadvydas 6-month presumption not applicable where alien is “re-detained” after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent’s burden to show removal is now likely in the reasonably foreseeable future).

²² See 8 C.F.R. § 241.13(f) (setting out factors to consider including “the history of the alien’s efforts to comply with the order of removal, the history of the Service’s efforts to remove aliens to the country in question or to third countries, including the ongoing nature of the Service’s efforts to remove this alien and the alien’s assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question.”).

ICE admits that the decision to take Mr. Nouansisouhak back into custody was based on the generalized claim that “[s]ince January of 2025, approximately 113 individuals nationwide have been removed to Laos . . . [And] [a]s of at least February 14, 2025, Laos has started issuing travel documents for aliens with final orders of removal.”²³

This generalized information does not provide the Court with an idea of how likely any given Laos immigrant is to be issued travel documents.²⁴ The numbers DO Goche provides are completely meaningless without more information. As one court pointed out in a similar case, these numbers mean very little as they fail to provide “evidence regarding the percentage of successful requests to [Laos] to demonstrate changed circumstances.”²⁵ Such generalized claims of changed circumstances by ICE to justify re-detention in similar cases has been rejected in multiple recent cases involving pre-95 individuals from Vietnam, a group of immigrants with similar repatriation issues.²⁶

Here, Mr. Nouansisouhak was released after the statutory removal period had expired because INS could not obtain travel documents for him from Laos. Said differently, the “circumstance” which prevented his removal previously was that Laos did not issue

²³ (Dkt. no. 10 p. 6.)

²⁴ *Cf. Nguyen*, 2025 WL 1725791, at *4 (discussing ICE’s failure to provide all the information needed to know whether there is any statistical significance to the number of travel documents or removals it has obtained).

²⁵ *Phan v. Beccera, Respondent.*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at 4 (E.D. Cal. July 16, 2025).

²⁶ *Id.* (granting injunction and ordering ICE to release pre-95 Vietnam immigrant who ICE detained without following its own regulations and based only on generalized changes, not individualized ones); *see also Hoac v. Becerra, et al.*, , No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025) (same); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (same).

travel documents. The absence of travel documents continued to be the circumstance that prevented INS and then ICE from removing Mr. Nouansisouhak at any point in the 25-years that he was on OSUP. When ICE took Mr. Nouansisouhak into custody on July 23, 2025, this circumstance had not changed.²⁷ In fact, 47-days after he was taken into custody Respondents still have not even received a travel document for Mr. Nouansisouhak.²⁸

This demonstrates that no individualized assessment occurred. Instead, ICE's decision was based on a generalized policy of re-detaining previously difficult to remove immigrants, triggered by the mere fact that Mr. Nouansisouhak complied with his check-in requirement. The process for obtaining travel documents from Laos remains anything but certain. By the government's own admission, they did not even submit the request for more than a month after re-detaining Mr. Nouansisouhak. The Constitution and the agency's own regulations demand far more.

When both the spirit and letter of the regulations are followed ICE waits until travel documents have been obtained and the means of removal (e.g. charter flight, bus, commercial flight, etc.) have been scheduled. Under those circumstances, noncitizens who are re-detained pursuant to 8 C.F.R. § 241.13(i) cannot find relief in filing a habeas petition. This is illustrated by *Ahmad v. Whitaker*.²⁹ In *Ahmad*, ICE already had travel documents in hand and Mr. Ahmad's removal flight scheduled when he was detained less than two weeks

²⁷ (Dkt. no. 10 p. 6 ¶ 10.)

²⁸ (Dkt. No. 10 p. 6 ¶ 10.)

²⁹ *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540 (W.D. Wash. Dec. 4, 2018)

before the flight was scheduled to depart.³⁰ If the facts of this case were remotely close to similar to those in *Ahmad*, ICE would have had Mr. Nouansisouhak's travel documents in hand and a flight scheduled for August when they detained him at his annual check-in on July 25, 2025. And, under those circumstances, Mr. Nouansisouhak would be in Laos now, not sitting in an ICE detention center while his habeas petition is litigated. In stark contrast to *Ahmad*, ICE detained Mr. Nouansisouhak without even bothering to get necessary documents translated first—much less having travel documents in hand. As a result, more than a month later, Mr. Nouansisouhak remains in ICE custody and ICE still does not have travel documents.

Ultimately, the facts of *Ahmad* demonstrate that when ICE follows its regulations and ensures a concrete individualized change of circumstances, noncitizens with years of compliance on OSUP are not detained until the circumstance that has prevented removal in the past has changed. Unfortunately, those critical facts in *Ahmad* are not present here.³¹

³⁰ (*Id.* at 1.)

³¹ The only real factual similarity is the “appalling” way in which ICE went about re-detaining the noncitizen. The *Ahmad* court did not mince words on this issue, stating:

Although unable to grant Mr. Ahmed the relief he seeks, the Court is appalled by how ICE went about revoking his OSUP. Mr. Ahmad had given ICE no reason to suspect that he would not comply with the execution of his removal order when the time came. He already was wearing an ankle monitor. ICE officers told him that he would be permitted to take a family trip to visit his elderly parents after Christmas. But instead, they ripped him away from his family without any warning or opportunity to say goodbye. To make matters worse, the situation was entirely avoidable; ICE could have taken a number of other courses of action that would have lessened the blow of Mr. Ahmad's removal on him and his family. Were it in the Court's habeas power to remedy the way ICE treated Mr. Ahmad and his family, it would do so.

Id. at 6.

Unlike the 2018 decision in *Ahmad*, the recent cases of *Nguyen v. Whitaker*, *Phan v. Beccerra*, *Hoac v. Beccerra*, *Nguyen v. Scott*,³² and *Roble v. Bondi*,³³ are factually similar in nearly every relevant respect. Each case involves a noncitizen, a prior determination that removal could not be effectuated, years of compliance on OSUP, and ICE re-detaining each of the non-citizens without making an individualized concrete finding of changed circumstances or following the procedures set forth in § 241.13(i).³⁴ And in every single one of those cases, the district courts found ICE failed to (1) demonstrate the required individualized changed circumstances and (2) follow the procedures required by the regulations including an informal interview, notice, and an opportunity to respond. These conclusions led all three courts to determine “that Petitioner has shown a likelihood of success on the merits of his claims that his re-detainment is unlawful because ICE had not complied with the controlling regulations to re-detain him.”³⁵

B. ICE’s Failure to Follow the Process Required by its Own Regulations Provides an Independent Basis for Relief.

Separate and apart from the lack of changed circumstances, Mr. Nouansisouhak’s detention is unlawful because ICE violated its own mandatory procedural regulations. Indeed, 8 C.F.R. § 241.13(i) explicitly requires an informal interview, written notice of the

³² *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21, 2025).

³³ *Roble v. Bondi, et. al.*, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025).

³⁴ See *Nguyen*, 2025 WL 1725791, at 5; *Phan*, 2025 WL 1993735, at *4-6; *Hoac*, 2025 WL 1993771, at *4-6; *Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *15-20; *Roble*, 2025 WL 2443453, at *4.

³⁵ *Phan*, 2025 WL 1993735, at *4; *Hoac*, 2025 WL 1993771, at *5; *Nguyen*, 2025 WL 1725791, at 5 (“Based on ICE’s violations of its own regulations, I conclude that Mr. Thai’s detention is unlawful and that his release is appropriate.”).

reasons for the revocation, and an opportunity for the noncitizen to respond. Mr. Nouansisouhak was afforded none of these procedural protections, at least not that he was aware of at the time.³⁶

Mr. Nouansisouhak's habeas petition explicitly raised this failure.³⁷ The sole evidence of claimed compliance with 8 C.F.R. § 241.13(i) is a single, conclusory paragraph in the declaration of DO Goche.³⁸ This declaration, however, is devoid of the factual detail necessary to establish that Mr. Nouansisouhak received specific notice of any changed circumstances in his immigration case and a lawful "informal interview."³⁹ It fails to state who conducted the interview, what specific information was provided to Mr. Nouansisouhak, or how he was given a meaningful opportunity to respond. Critically, DO Goche does not claim to have personal knowledge of the arrest, and his duties appear to be administrative, suggesting his statements are based on a second-hand file review.⁴⁰

³⁶ A declaration from Mr. Nouansisouhak consistent with this statement and other statements herein would (and still will) be provided if ICE ever provides permission to the contract detention facilities to provide detainees with legal documents for signature and return to their counsel. Unfortunately, the detention centers, including the one Mr. Nouansisouhak is currently detained at, have indicated ICE has not provided them with permission to do so. Moreover, it is nearly impossible to schedule in person visits at which such declaration could be reviewed and signed.

Notably, ICE has provided no documentary evidence of these things taking place at the time of his re-detention. Based on information, belief, and extensive experience, ICE documents encounters and arrests like this one as a matter of course on documents such as an I-213 Record of Deportable Alien, or other relevant forms. Instead of such evidence, ICE has submitted a declaration that does not even purport to be from the officer who re-detained Mr. Nouansisouhak on July 23, 2025.

³⁷ (Dkt. No. 1, pp. 24-25 ¶¶ 59-62.)

³⁸ (Dkt. no. 12 p. 3 ¶ 11.)

³⁹ (*Id.*)

⁴⁰ (*Id.* at pp. 2-3 ¶¶ 2 & 9.)

ICE's failure to conform with requisite notice has been addressed as recent as this past week in a District of Minnesota case with facts extremely similar to the ones at issue here.⁴¹ Mr. Roble, a Somali national who immigrated to the United States in 1995 as a refugee, was placed on an OSUP in 2019.⁴² Like Mr. Nouansisouhak, Mr. Roble was suddenly arrested in July 2025 with zero indication of any changed circumstances.⁴³ Mr. Roble subsequently filed a habeas application, along with a motion for a temporary restraining order, arguing that ICE violated his due process rights and their own regulations when it re-detained him.⁴⁴ In considering whether ICE followed its own regulations, the district court considered that a noncitizen must "be notified of the reasons for revocation of his or her release" but this requirement is not satisfied by "simply recit[ing] the language of the regulation."⁴⁵ Instead, "the essence of due process is notice and an opportunity to respond."⁴⁶ If the notification "does not actually state any reasons for revocation," then it cannot be said that the requisite process has been met.⁴⁷

This same reasoning is applicable to Mr. Nouansisouhak's case. Like Mr. Roble, Mr. Nouansisouhak had not received any notice of what the changed circumstances actually

⁴¹ *Roble*, 2025 WL 2443453, at *1.

⁴² (*Id.*)

⁴³ (*Id.*)

⁴⁴ (*Id.* at *2.)

⁴⁵ (*Id.* at *3.)

⁴⁶ (*Id.*)

⁴⁷ (*Id.*)

encompassed. DO Goche's affidavit only corroborates this fact by providing vague and conclusory statements about the notice that Mr. Nouansisouhak received. Like the Minnesota district court found, this cannot be sufficient notice under due process. The failure to notify Mr. Nouansisouhak what exactly has changed in his circumstances—whether that be his travel documents have now been procured and/or a flight has been scheduled to take him back to Laos—illuminates the fact that ICE has continued to fail in following their own guidelines and regulations. No specific facts have been alleged and therefore the requisite notice has not been provided.

Tellingly, Respondents have also failed to produce any contemporaneous documentation of this alleged interview. The best evidence would be the official report or system entry made at the time of Mr. Nouansisouhak's re-detainment on July 23, 2025. This is particularly true if, as Mr. Nouansisouhak suspects, DO Goche was not present at all during the process—as it means he would have had to have gotten that information from something or someone else. The who, what, and when of that information is of critical importance. The government's decision to rely on a vague, second-hand declaration instead of primary evidence creates a clear factual dispute as to whether the procedural safeguards of § 241.13(i) were actually followed. These things along with other issues with the statement in paragraph 9 are discussed in greater detail in the Motion for an Evidentiary Hearing being filed on the same date as the instant filing.⁴⁸

⁴⁸ (Dkt. no. 14 at pp. 4-6.)

An agency's failure to follow its own regulations is a fatal flaw. As multiple courts have recently held in cases identical to this one, when ICE fails to provide the interview and notice required by § 241.13(i), its decision to re-detain is invalid and release is the proper remedy.⁴⁹ As the court in *Nguyen* stated, "ICE, like any agency, has the duty to follow its own federal regulations... where an immigration regulation is promulgated to protect a fundamental right... and [ICE] fails to adhere to it, the challenged [action] is invalid."⁵⁰ This procedural failure provides a clear and independent basis upon which to grant the habeas petition and the motion for a preliminary injunction. Indeed, as stated above, the *Nguyen*, *Phan*, and *Hoac* courts all held the failure to conduct an informal interview and the other procedures required by the regulations was sufficient for petitioners to show a strong likelihood of success sufficient to meet the preliminary injunction standard. Mr. Nouansisouhak respectfully requests this Court reach the same conclusion.

IV. Mr. Nouansisouhak has been and continues to be deprived of his life and liberty, things universally recognized as irreparable injuries; meanwhile, ICE will suffer no injury whatsoever if the injunction is granted.

⁴⁹ *Phan*, 2025 WL 1993735, at *4 ("Because there is no indication that an informal interview was provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that his re-detainment was unlawful."); *See also Wing Nuen Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. Jun. 17, 2025) (finding "that officials did not properly revoke petitioner's release pursuant to [§] 241.13" because "and most obviously ... petitioner was not granted the required interview upon the revocation of his release"); *See Nguyen*, 2025 WL 1725791, at 5; *Phan v. Beccerra*, No. 25-cv-11472, 2025 WL 1993735, at *3 (D. Mass. July 1, 2025); *Hoac v. Beccerra*, No. 25-cv-11471, 2025 WL 1993771, at *3 (D. Mass. July 1, 2025).

⁵⁰ *Id.* (internal citations omitted).

Continued unlawful detention is, by its very nature, an irreparable injury.⁵¹ The Supreme Court has affirmed that “[f]reedom from imprisonment... lies at the heart of the liberty” protected by the Due Process Clause.⁵² “Where, as here, the ‘alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary’.”⁵³

Everyday Mr. Nouansisouhak remains in custody, he is irreparably harmed by the loss of his fundamental liberty, his separation from his U.S. citizen wife and children, and the loss of his ability to provide for his family. The harm is not merely abstract. This is particularly true of Mr. Nouansisouhak who was initially held at an ICE office which is not equipped for overnight detention, as it is an office building with a processing location within it. This raises grave concerns for his health and safety, especially given the recent, tragic death of a 55-year-old Vietnamese detainee in ICE custody and the rising number of in-custody deaths in 2025.⁵⁴ This risk constitutes a severe and irreparable harm that, when combined with the obvious irreparable injury of being unlawfully detained, it is the type of irreparable injury that warrants immediate judicial intervention.

⁵¹ *Phan*, 2025 WL 1993735, at *5 (“Further, ‘[i]t is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”) (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

⁵² *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

⁵³ *Phan*, 2025 WL 1993735, at *5 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004))).

⁵⁴ (Pet’r’s App. Ex. 5.)

The government did not address these plain irreparable harms to Mr. Nouansisouhak at any point in its response. Instead, it attempted to re-cast the issue as Mr. Nouansisouhak not having a right to never-ending-supervision. There are many problems with the government's argument. First, Mr. Nouansisouhak is not seeking never-ending-supervision. Nor is he seeking to prevent or stop the government from removing him to Laos. He is simply asking ICE to follow the mandatory process required by § 241.13(i), to include ensuring there is an actual change in his circumstances (i.e. Laos has actually issued a travel document) and he is only detained when doing so is required to "assure his presence at the *moment* of removal." Not for months on end in overcrowded detention facilities. And certainly not before a travel document request has even been submitted.

V. Balancing of the Equities and Public Interest Weigh Strongly in Favor of Mr. Nouansisouhak's Requested Injunction

The balance of equities and public interest weigh overwhelmingly in Mr. Nouansisouhak's favor. "Just as the public has an interest in the orderly and efficient administration of this country's immigration laws, [] the public has a strong interest in upholding procedural protections against unlawful detention."⁵⁵ Indeed, habeas petitions in and of themselves demonstrate a recognition of the strong public interest against unlawful detention of anyone present in the United States. For this reason (buttressed by the likelihood of success discussed above), the public interest weighs strongly in Mr. Nouansisouhak's favor.

⁵⁵ *Phan*, 2025 WL 19933735 (citing *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020)).

While Petitioner does not dispute the government's and the public's strong interest in the enforcement of immigration laws, that abstract interest is in no way advanced by the needless and arbitrary detention of Mr. Nouansisouhak. In this case, and many others, ICE's intention to indefinitely detain Mr. Nugyen in the speculative hope of someday getting a travel document to Laos is not grounded in the legitimate enforcement of the immigration laws, but rather the agency's desire to use Mr. Nugyen's as to its detention statistics. But Mr. Nugyen is not a statistic, he is a human being, and the agency's refusal to treat him as such underscores the necessity of granting this habeas petition. His ultimate removal to Laos simply does not require his pre-emptive confinement. Mr. Nouansisouhak has affirmed his willingness to purchase his own flight and depart immediately upon receiving travel documents. Any suggestion that Mr. Nouansisouhak would defy such an order is baseless, as his fear is of detention, not removal. No one can reasonably argue that a man who voluntarily walked into custody on July 23rd would suddenly become a flight risk when facing a final directive to depart.

Moreover, Mr. Nouansisouhak's detention is a profound waste of public resources that actively harms the public interest it purports to serve. Taxpayers are funding the tens of thousands of dollars required to keep him needlessly incarcerated. Allowing Mr. Nouansisouhak to remain at liberty pending removal would not only save these significant detention costs but would also enable him to potentially purchase his own ticket. Among other things, this would free up a seat on an alleged future charter, saving the public the additional two-to-three-month detention cost for the individual who will ultimately take the place of Mr. Nouansisouhak on that flight. There is simply no public interest served by

unnecessarily detaining a family's primary provider, a valued employee, and a man with a 25-year record of perfect compliance. His confinement is as fiscally irresponsible as it is legally unwarranted.

This brings up one final point on the detention of Mr. Nouansisouhak and other immigrants who entered the United States in the 1980s from Vietnam, Laos, and Cambodia. It is important to recall the true facts and history behind his presence here. Millions of refugees from these countries effectively chose the United States when they fled their country following the Vietnam War. Among them, was Mr. Nouansisouhak's family who fled with him when he was a young child. Eventually, Mr. Nouansisouhak and his family were invited to the United States as refugees.

Mr. Nouansisouhak had no control over his parents' decision to come here. He has never had control over Laos's decision not to issue travel documents to individuals like him. And he did not have any control over ICE's decision to completely ignore its mandatory regulations for re-detention. Though a very different, much younger Mr. Nouansisouhak did have control over the poor decision he made in the early 1990s, that is not the same Mr. Nouansisouhak who became a devoted husband and father who is adored by his community 30 years later.

In sum, the equities in this case weigh strongly in favor of Mr. Nouansisouhak. The harm of ordering him released to Respondents is nonexistent. Mr. Nouansisouhak is not a danger to the community; he has lived peacefully and productively for decades. He is not a flight risk; he has complied with his OSUP and reported to ICE on July 23, 2025, fully aware that he would likely be detained. Releasing Mr. Nouansisouhak to his OSUP, a status

ICE itself deemed appropriate for over two decades, poses no conceivable harm to the government. Meanwhile, the harm to Mr. Nouansisouhak and his family if his is not released is significant and irreparable.

CONCLUSION

Respondents have failed to rebut any of the claims in Mr. Nouansisouhak's habeas petition indicating there is no lawful basis for his sudden and indefinite detention. They likely violated their own regulations, both substantively and procedurally. They have misrepresented key facts to this Court. Their legal arguments rest on a misreading of precedent and a fundamental misunderstanding of constitutional limits on government power. The government's case is built not on facts, but on speculation; not on law, but on whim. For 25 years, Mr. Nouansisouhak has lived under the shadow of a removal order that could never be executed. The reward for his decades of compliance should not be a cage. For all the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for a Writ of Habeas Corpus and order his immediate release from custody.

RESPECTFULLY SUBMITTED,

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