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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 BAO QUOC VU,) Case No. 1:25-cv-01631-WBS-JDP
11)
Petitioner,)
12 vs.) **PETITIONER'S REPLY TO**
13 WARDEN, ET AL.,) **GOVERNMENT'S OPPOSITION TO**
14) **MOTION FOR PRELIMINARY**
Respondents.) **INJUNCTION**
15)
16) Judge: Hon. William B. Shubb
Date: January 26, 2026
Time: 1:30 p.m.

17 **I. Introduction**

18 Petitioner concedes that the travel document ICE obtained from the government of
19 Vietnam on January 5, 2026, and the fact that ICE has scheduled Mr. Vu's removal to Vietnam,
20 make it unlikely he will succeed in his claims related to indefinite detention and illegal removal
21 to a third country. However, ICE's method of revoking Mr. Vu's release on an Order of
22 Supervision failed to comply with 8 C.F.R. §§ 241.4(l), 241.13(i) in violation of the applicable
23 regulations and due process. This Court should order Respondents to release Mr. Vu under the
24 terms of his former Order of Supervision. While Respondents might then choose to lawfully
25 revoke Mr. Vu's release, Respondents could also allow Mr. Vu to put his affairs in order, say
26 goodbye to his loved ones, and turn himself in at the time and place it arranges for his flight to
27 Vietnam.
28

II. Argument

Mr. Vu is likely to succeed in his claim that ICE violated its own regulations in re-detaining him.

“Noncitizens subject to a final removal order may be released pursuant to 8 C.F.R. § 241.4(l) or 8 C.F.R. § 241.13.” *Khamba v. Albarran*, No. 1:25-cv-01227-JLT-SKO, 2025 WL 2959276, at *7 (E.D. Cal. Oct. 17, 2025) (citation omitted). These regulations also govern how and when ICE may revoke that release and re-detain the non-citizen. See 8 C.F.R. §§ 241.13(i), 241.4(l). *Nguyen v. Charles*, No. 1:25-CV-01592-TLN-CSK, 2025 WL 3492117, at *2 (E.D. Cal. Dec. 4, 2025). “These procedures protect important due process rights owed to non-citizens.” *Id.* Under 8 C.F.R. § 241.4(l), if a noncitizen is returned to custody on the ground that they violated the terms of their Order of Supervision, then “[u]pon revocation” the noncitizen “will be notified of the reasons for revocation of his or her release or parole. The [noncitizen] will be afforded an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1); *see also* 8 C.F.R. § 241.13(i)(3)(requiring that “upon revocation” noncitizen will be notified of reasons for revocation of release and given “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.”).

ICE did not follow these procedures in revoking Mr. Vu’s release. Mr. Vu was ordered removed to Vietnam on July 10, 2003. Declaration of Deportation Officer Armando Meneses, ¶ 9 (ECF 14-1, p. 2:26-28). ICE released Mr. Vu on an Order of Supervision on May 3, 2004, and it has been unable to remove Mr. Vu since that date. When ICE revoked Mr. Vu’s Order of Supervision and took him into custody on July 25, 2025, it had not obtained a travel document allowing Mr. Vu to be deported to Vietnam. ICE did not even request the travel document until July 31, 2025. Meneses Decl. ¶ 14 (ECF 14-1, p. 3:11-12). ICE did not obtain a travel document for Mr. Vu until January 5, 2026, long after it revoked his Order of Supervision. Meneses Decl. ¶ 16 (ECF 14-1, p. 3:17-19). Moreover, ICE did not give Mr. Vu “Notice” of his revocation of release until December 24, 2025, some five months after it revoked his release.

1 Respondent's Exh. 6, (ECF 14-1, pp. 53-54). This is not notice "upon" revocation of release.
2 ICE also failed to give Mr. Vu an interview regarding revocation of release until December 24,
3 2025. Exh. 6, (ECF 14-1, p. 55). This does not constitute a "prompt" interview following
4 revocation of his Order of Supervision.

5 A government agency is required to follow its own regulations. *United States ex rel.*
6 *Accordi v. Shaughnessy*, 347 U.S. 260, 268 (1954). This is especially so when the regulation
7 provides for procedural due process. *See Niz-Chavez v. Garland*, 593 U.S. 155, 172 (2021) ("If
8 men must turn square corners when they deal with the government, it cannot be too much to
9 expect the government to turn square corners when it deals with them."); *see also Waldron v.*
10 *I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993) ("[W]hen a regulation is promulgated to protect a
11 fundamental right derived from the Constitution or a federal statute, and [the government] fails
12 to adhere to it, the challenged deportation proceeding is invalid."). ICE's failure to follow its
13 own procedural regulations constitutes a due process violation. *See, e.g., Siripan v. Andrews*,
14 No. 1:25-CV-01933-DC-CKD (HC), 2025 WL 3724526, at *3 (E.D. Cal. Dec. 23, 2025); *Diaz v.*
15 *Wofford*, No. 1:25-cv-01079-JLT-EPG, 2025 WL 2581575, at *7 (E.D. Cal. Sept. 5, 2025)
16 (same).

17 "[W]hen ICE fails to follow its own regulations in revoking release, the detention is
18 unlawful, and the petitioner's release must be ordered." *Saephanh v. Andrews*, No. 1:25-CV-
19 01668-DAD-SCR, 2025 WL 3467791, at *3 (E.D. Cal. Dec. 3, 2025) (quoting *Nguyen v. Noem*,
20 No. 25-cv-02792-LL-VET, 2025 WL 3101979, at *3 (S.D. Cal. Nov. 6, 2025). This is true even
21 when, following its unlawful revocation of release, ICE obtains travel documents allowing for a
22 petitioner's removal and schedules a removal flight. *See Saephanh*, 2025 WL 3467791, at *1
23 (where initial revocation of release was unlawful but ICE later obtained travel documents and
24 made travel arrangements, granting TRO requiring release and forbidding re-detention without
25 pre-deprivation hearing before immigration judge); *Phakeokoth v. Noem*, No. 3:25-CV-02817-
26 RBM-SBC, 2025 WL 3124341, at *6 (S.D. Cal. Nov. 7, 2025) (same); *Sphabmixay v. Noem*,
27 No. 25CV2648-LL-VET, 2025 WL 3034071, at *3 (S.D. Cal. Oct. 30, 2025) (granting habeas
28 petition on ground that ICE failed to comply with regulations in revoking release "even when, as

1 here, the Government has obtained a petitioner's travel document back to his or her country of
2 origin after their re-detainment); *Tran v. Noem*, No. 3:25-CV-02391-BTM-BLM, 2025 WL
3 3005347, at *3 (S.D. Cal. Oct. 27, 2025) (granting petition and ordering release where revocation
4 of release failed to comply with applicable regulations even where ICE subsequently obtained
5 travel document from Vietnam and made plane reservation for petitioner to depart in two weeks);
6 *Truong v. Noem*, No. 25-CV-2597-JES-MMP, 2025 WL 2988357, at *1 (S.D. Cal. Oct. 22,
7 2025) (granting petition on ground that ICE failed to comply with regulations in revoking release
8 even where ICE "has obtained a travel document from Laos, and anticipates Petitioner will be
9 removed to Laos by November 1, 2025.").

10 Because ICE did not follow applicable regulations, and thus violated Mr. Vu's procedural
11 due process rights, when it revoked his Order of Supervision, this Court should issue a
12 preliminary injunction requiring Mr. Vu's release under his previous Order of Supervision and
13 forbidding his revocation of release unless ICE follows all procedures set forth in 8 C.F.R. §§
14 241.4(l), 241.13(i).

15
16 Respectfully submitted,

17 HEATHER E. WILLIAMS
18 Federal Defender

19 Date: January 7, 2026

20 /s/ Carolyn M. Wigg
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