**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW MEXICO**

**GIAO PHONG LE NGUYEN,**

*Petitioner,*

**v.**

**KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States; TODD M. LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; MARY DE ANDA-YBARRA, in her official capacity as Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; and DORA CASTRO, in her official capacity as Warden of the Otero County Processing Center,**

*Respondents.*

Case No. 2:25-cv-01198

**PETITIONER'S REPLY**

Petitioner Giao Phong Le Nguyen respectfully submits this Reply in support of his Petition for Writ of Habeas Corpus. Respondents' Answer and supporting declaration do not establish that Petitioner's continued detention is lawful. Instead, they confirm that Petitioner is being held in prolonged post-final-order detention in violation of the Constitution under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and without lawful revocation of his long-standing Order of Supervision ("OSUP")in violation of binding regulations and the Due Process Clause. Either defect independently warrants habeas relief. Together, they compel Petitioner's immediate release.

## I. PROCEDURAL HISTORY

Petitioner Giao Phong Le Nguyen is a Vietnamese national who, although subject to a final order of removal since September 13, 2005, has resided in the United States for nearly two decades with the permission and approval of Respondents. This habeas action does not arise from an ongoing removal proceeding, but from ICE's abrupt and unlawful re-detention of a long-released individual decades after the statutory removal period expired.

ICE first detained Petitioner on or around February 23, 1999 and placed him in removal proceedings. On July 21, 1999, an Immigration Judge granted Petitioner release on bond, and Petitioner was released from custody. He remained at liberty while his removal proceedings continued. On April 30, 2004, an Immigration Judge ordered Petitioner removed from the United States. On September 13, 2005, the Board of Immigration Appeals dismissed Petitioner's appeal, rendering the removal order administratively final. Following entry of the final order, the statutory 90-day removal period under 8 U.S.C. § 1231(a)(1) commenced. ICE did not remove Petitioner during that period. Nor did ICE detain him. Instead, Petitioner remained in the community, living freely and peacefully, and without incident.

For nearly twenty years after the removal order became final, ICE took no action to re-detain Petitioner. During that time, ICE did not assert that removal was imminent, did not claim that Petitioner posed a danger or a flight risk, and permitted him to remain at liberty under supervision. Petitioner complied with all conditions imposed upon him.

On January 20, 2025, ICE abruptly re-detained Petitioner and transferred him to the Otero County Processing Center in New Mexico. ICE did not provide notice that Petitioner's Order of Supervision was being revoked, did not conduct an informal interview, and did not make any contemporaneous individualized determination that removal was significantly likely in the reasonably foreseeable future. Petitioner has now remained in custody for approximately ***386*** days.

On December 2, 2025, Petitioner filed this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his prolonged post-final-order detention as unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Due Process Clause of the Fifth Amendment, and ICE's failure to comply with mandatory regulations governing revocation of an Order of Supervision. ECF No. 1.

On December 12, 2025, the Court issued an Order directing Respondents to file an Answer within thirty days. ECF No. 4. Respondents failed to comply with that deadline. After the deadline elapsed, and after the Clerk of Court was unable to locate Petitioner in the government's detention system, the Court *sua sponte* ordered the parties to submit a status report. ECF No. 7. The joint status report confirmed that Petitioner remained detained at Otero County Processing Center and reflected Respondents' request for an additional seven days to respond. ECF No. 9.

Respondents filed their Answer on January 27, 2026, together with a declaration from Assistant Field Office Director Jose P. Ortez. ECF Nos. 11, 11-1. Respondents asserted that detention is lawful because ICE has requested travel documents from Vietnam and contends that removal is reasonably foreseeable. ECF No. 11 at 6–7. Respondents did not claim that Petitioner violated any condition of supervision, did not assert compliance with OSUP revocation procedures, and did not identify any contemporaneous finding made at the time of re-detention that removal was significantly likely in the reasonably foreseeable future.

Petitioner now submits this Reply. As set forth below, Respondents' own submissions confirm that Petitioner's continued detention violates *Zadvydas* and that ICE unlawfully revoked Petitioner's Order of Supervision in violation of binding regulations. Habeas relief is therefore warranted, and the Court should order Petitioner's immediate release.

## II. LEGAL BACKGROUND

Freedom from bodily restraint lies at the core of the liberty protected by the Due Process Clause. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Government detention is constitutionally permissible only where it is ordered in a criminal proceeding with adequate procedural protections, or in certain special and narrow civil circumstances where a sufficiently strong justification outweighs the individual's fundamental interest in avoiding physical restraint. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

The Supreme Court has long made clear that noncitizens within the United States are fully protected by the Fifth Amendment. "The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these [noncitizens] from deprivation of life, liberty, or property without due process of law." *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). "Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection." *Id.*; *see also Zadvydas*, 533 U.S. at 693. The Supreme Court reaffirmed these principles in *Reno v. Flores*, holding that "the Fifth Amendment entitles aliens to due process of law in deportation proceedings." 507 U.S. 292, 306 (1993).

Following entry of a final order of removal, the government's detention authority is governed by 8 U.S.C. § 1231. The statute provides for a mandatory 90-day removal period, during which ICE must attempt to effectuate removal. 8 U.S.C. § 1231(a)(1)(A). If removal is not accomplished during that period, continued detention becomes discretionary, not automatic. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022). At that point, the statute expressly contemplates release under conditions of supervision as an alternative to detention. 8 U.S.C. § 1231(a)(3).

In *Zadvydas*, the Supreme Court construed § 1231(a)(6) to avoid serious constitutional concerns, holding that post-final-order detention is presumptively reasonable for six months, but may continue beyond that point only if the government can demonstrate that removal is significantly likely in the reasonably foreseeable future. 533 U.S. at 701. Where removal is not reasonably foreseeable, continued detention no longer bears a reasonable relation to its civil purpose and becomes unconstitutional. *Id*. at 690–91; *Clark v. Martinez*, 543 U.S. 371, 386–87 (2005).

Consistent with these constitutional limits, the governing regulations establish a detailed framework for release and supervision. A noncitizen may be released under an Order of Supervision only after the agency affirmatively determines that continued detention is unwarranted because the individual is not a danger to the community and not a flight risk, and because immediate removal is not practicable. 8 C.F.R. §§ 241.4(e), 241.1(d)(1).

Once issued, an Order of Supervision may be revoked only in accordance with mandatory procedures set forth in 8 C.F.R. §§ 241.4(l) and 241.13(i). These regulations require ICE to make an individualized determination, based on changed circumstances, that the noncitizen violated conditions of release or that removal has become significantly likely in the reasonably foreseeable future. They further require notice to the noncitizen, a prompt informal interview, and an opportunity to present evidence before liberty is withdrawn. These procedures provide fundamental due process protections that courts have recognized as constitutionally required. *See Hall v. Nessinger*, 2026 U.S. Dist. LEXIS 89, at *8 (D.R.I. Jan. 2, 2026) (*citing Jimenez v. Cronen*, 317 F. Supp. 3d 626, 655 (D. Mass. 2018)).

Critically, the determination that removal is significantly likely in the reasonably foreseeable future must be made by ICE in the first instance, before detention is imposed. In *Kong v. United States*, the First Circuit held that "the plain language of the regulation does not allow a court in the first instance to make the required individualized finding," and that a court's role is limited to reviewing whether ICE complied with the regulatory process governing revocation of supervision. 62 F.4th 608, 620 (1st Cir. 2023). Where ICE fails to make the required finding before revoking an Order of Supervision, a court may not cure that defect through post hoc litigation declarations or after-the-fact rationalizations. *Id*.

District courts in the Tenth Circuit have expressly adopted this principle and relied on *Kong* to grant habeas relief where ICE detained a noncitizen without first making the individualized foreseeability determination required by 8 C.F.R. § 241.13(i)(2). *See Zhuliang Ye v. Bondi*, 2025 U.S. Dist. LEXIS 250358, at *17–21 (W.D. Okla. Dec. 4, 2025); *Zhuliang Ye v. Bondi*, 2025 U.S. Dist. LEXIS 251485, at *14–18 (W.D. Okla. Nov. 18, 2025) (R. & R.). Other courts within the Tenth Circuit have reached the same conclusion. *See Pham v. Bondi*, 2025 U.S. Dist. LEXIS 228529, at *12–15 (W.D. Okla. Nov. 20, 2025); *Qui v. Carter*, 2025 U.S. Dist. LEXIS 190236, at *10–13 (D. Kan. Sept. 26, 2025).

Where ICE fails to comply with its own binding regulations, its actions are invalid under the *Accardi* doctrine. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). When the violated regulations protect a fundamental constitutional right such as freedom from physical restraint, no showing of prejudice is required. *Waldron v. I*NS, 17 F.3d 511, 518 (2d Cir. 1993).

## III. THE PETITION PROPERLY RAISES A ZADVYDAS AND DUE PROCESS CHALLENGE

Respondents first contend that Petitioner "did not raise" a claim under *Zadvydas v. Davis*, 533 U.S. 678 (2001). That contention mischaracterizes both the Petition and the nature of habeas review and is incorrect as a matter of law.

The Petition challenges Petitioner's prolonged post-final-order detention, alleges that removal is not reasonably foreseeable, and asserts that continued detention violates the Fifth Amendment and 8 U.S.C. § 1231(a)(6). ECF No. 1. That is the essence of a *Zadvydas* claim. *Zadvydas* does not require talismanic language or citation to a particular case name; it requires courts to assess whether continued detention exceeds the constitutional and statutory limits governing post-removal-order custody. Once those limits are implicated, the court must reach the merits.

Under *Zadvydas*, detention beyond the presumptively reasonable six-month period is permissible only if the government can demonstrate that removal is significantly likely in the reasonably foreseeable future. 533 U.S. at 701. Detention may not be justified by speculation, indefinite diplomatic processes, or generalized assertions of effort. *Id*. at 690–91. Where removal is not reasonably foreseeable, continued detention no longer bears a reasonable relation to its purported civil purpose and becomes unconstitutional. *Id*.

That is precisely what the Petition alleges. Petitioner's removal order has been final since September 2005. ICE did not remove him during the statutory 90-day removal period and did not detain him again for nearly twenty years. When ICE abruptly re-detained Petitioner in January 2025, it did so without any contemporaneous showing that removal had suddenly become significantly likely. The Petition squarely places at issue whether ICE may lawfully detain Petitioner now, long after the removal period expired and in the absence of any concrete prospect of removal.

Moreover, habeas courts are required to assess the present legality of detention. Where, as here, Respondents defend detention on the ground that removal is reasonably foreseeable, the Court must evaluate that assertion under *Zadvydas*. *See Id*. at 701. Respondents cannot avoid merits review by asserting that Petitioner failed to use a particular label while simultaneously invoking the very rationale that *Zadvydas* governs.

Accordingly, the Petition properly raises a *Zadvydas* challenge, and the Court must determine whether Respondents have met their burden of demonstrating a significant likelihood of removal in the reasonably foreseeable future. As set forth below, they have not.

## IV. RESPONDENTS' ANSWER CONFIRMS THAT DETENTION IS UNLAWFUL UNDER *ZADVYDAS*

Respondents' Answer does not satisfy the government's burden to show that Petitioner's removal is significantly likely in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner has been detained for over a year—well beyond the presumptively reasonable period—and the burden therefore rests squarely with Respondents. They have not met it.

### A. Effort and Intent Are Not the *Zadvydas* Standard

Respondents emphasize that ICE has requested travel documents, followed up with consular authorities, and intends to remove Petitioner. That framing misstates the governing law. *Zadvydas* does not ask whether ICE is attempting removal; it asks whether removal is significantly likely in the reasonably foreseeable future. *Id.* at 701.

Here, Respondents identify no concrete event indicating imminent removal. There is no acceptance decision by Vietnam, no scheduled interview, no completed identity verification, and no issued travel document. Reliance on effort rather than likelihood is precisely what *Zadvydas* forbids.

### B. Respondents' Statistical Evidence Does Not Establish Foreseeable Removal

Respondents rely heavily on assertions that ICE removed "over 400 Vietnamese nationals" in 2025 and that Vietnam "generally" issues travel documents within approximately thirty days. Those generalized statistics do not establish that this Petitioner's removal is significantly likely in the reasonably foreseeable future.

Respondents fail to distinguish between post-1995 arrivals and pre-1995 Vietnamese immigrants, a distinction courts have repeatedly found dispositive. Pre-1995 Vietnamese nationals have long faced uniquely entrenched and well-documented barriers to repatriation. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). Petitioner is a pre-1995 Vietnamese immigrant, and Respondents point to no evidence that Vietnam is likely to issue him a travel document within any predictable timeframe.

The existence of the 2020 Memorandum of Understanding does not alter this analysis. Courts confronting nearly identical factual records have consistently held that the MOU, standing alone, does not demonstrate changed circumstances or render removal reasonably foreseeable. *See Hoac v. Becerra*, No. 25-cv-01740-DC-JDP, 2025 WL 1993771, at *4–5 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, 2025 WL 1725791, at *4 (E.D. Cal. June 20, 2025); *Phan v. Becerra*, 2025 WL 1993735, at *4 (E.D. Cal. July 16, 2025). Empirical evidence confirms this conclusion: between 2017 and 2019, Vietnam granted only 18 of 251 travel-document requests for pre-1995 Vietnamese immigrants, and between September 2021 and September 2023 issued travel documents to only four such individuals. *Trinh*, 466 F. Supp. 3d at 1087–88. Respondents identify no evidence that these rates have meaningfully improved.

Nor does Respondents' reliance on generalized timelines regarding travel-document issuance carry their burden. Although Respondents assert that travel documents are "generally" issued within thirty days, the record in this case reflects prolonged delay. More than a year has elapsed since ICE initiated the request, yet Respondents identify no acceptance decision, scheduled interview, or issued document. ECF No. 11-1 ¶¶ 14–16. The absence of any concrete milestone supporting imminent removal weighs heavily against a finding of foreseeability.

**C. Respondents Cannot Shift Their Burden or Rely on Speculation**

Respondents' Answer implicitly shifts the burden to Petitioner to disprove removal or wait indefinitely while ICE continues its efforts. That is not the law. Once detention exceeds the presumptively reasonable period, the burden rests with the government to demonstrate foreseeable removal. *Zadvydas*, 533 U.S. at 701. Civil detention cannot continue merely because removal has not yet been declared impossible.

Here, Respondents' submissions establish at most the possibility of removal at some indeterminate point in the future. That is insufficient as a matter of law. Courts confronting materially indistinguishable circumstances involving pre-1995 Vietnamese nationals have therefore rejected ICE's reliance on speculative assurances and generalized statistics and ordered immediate release. *See Bui v. Archambeault*, No. CV-25-03774-PHX-KML (D. Ariz. Oct. 28, 2025); *Ho v. Archambeault*, No. CV-25-03753-PHX-JJT (D. Ariz. Oct. 20, 2025); *Hoac*, 2025 WL 1993771, at *4–5; *Nguyen*, 2025 WL 1725791, at *4; *Phan*, 2025 WL 1993735, at *4.

On this record, the Court cannot find that Petitioner's removal is significantly likely in the reasonably foreseeable future. Under *Zadvydas*, continued detention under 8 U.S.C. § 1231(a)(6) is unlawful, and Petitioner is entitled to release.

Respondents' assertion that Petitioner's removal is significantly likely in the reasonably foreseeable future is further undermined by the existence of active, dispositive proceedings before the Board of Immigration Appeals ("BIA"). On May 29, 2025, Petitioner filed a motion to reopen his removal proceedings together with an emergency motion to stay removal. Those motions remain pending. Exhibit B.

Under *Zadvydas v. Davis*, detention may continue beyond the presumptively reasonable six-month period only where removal remains practically attainable within the reasonably foreseeable future. 533 U.S. at 699–701. Where removal depends on the resolution of pending administrative proceedings that may alter or eliminate the legal basis for removal, continued detention rests on speculation rather than foreseeability and cannot be sustained.

As a practical matter, ICE cannot execute removal while a stay request is pending before the BIA without risking irreparable harm and undermining meaningful administrative review. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). The pendency of a stay request underscores that removal is legally contingent and subject to ongoing administrative adjudication, rendering any removal timeline uncertain rather than imminent. Removal that is dependent on unresolved administrative action cannot be deemed "significantly likely" within any reasonably foreseeable timeframe.

More fundamentally, Petitioner's motion to reopen directly challenges the continued validity of the removal order itself, rendering removal legally uncertain rather than imminent. Petitioner intends to supplement his motion with controlling Ninth Circuit authority establishing that his underlying conviction no longer constitutes a removable offense. In *United States v. Aguilera-Rios*, the Ninth Circuit held that California firearm statutes incorporating the state definition of "firearm" are categorically overbroad and do not match the federal firearms definition for immigration purposes. 769 F.3d 626, 633–36 (9th Cir. 2014). The Ninth Circuit subsequently clarified that this rule applies to any California statute relying on the definition formerly codified at California Penal Code § 12001(b), now recodified at § 16520(a) without substantive change. *Medina-Lara v. Holder*, 771 F.3d 1106, 1116 (9th Cir. 2014).

Because Petitioner's removability is predicated on a California conviction that incorporates this overbroad firearms definition, there is a substantial legal question whether he remains removable at all. If the BIA grants reopening or determines that the conviction no longer supports removability under *Aguilera-Rios* and *Medina-Lara*, the legal basis for removal would be eliminated entirely.

Detention premised on a removal order whose continued validity is actively contested on meritorious legal grounds cannot be justified as reasonably foreseeable. Under *Zadvydas*, the government must demonstrate that removal is "significantly likely" to occur in the reasonably foreseeable future—not merely possible at some indeterminate point following the resolution of pending litigation. 533 U.S. at 701. Where removal hinges on unresolved BIA proceedings that may vacate or materially alter the removal order itself, the government cannot meet that burden.

Accordingly, the pendency of Petitioner's motion to reopen and emergency stay before the BIA—combined with the substantial legal defects in the underlying basis for removal—renders Petitioner's deportation legally and practically uncertain. Continued detention under these circumstances violates *Zadvydas* and independently confirms that removal is not reasonably foreseeable.

**D. Petitioner's Expert Evidence Confirms That Removal Is Not Reasonably Foreseeable**

Respondents' failure to demonstrate foreseeable removal is further underscored by expert evidence. Petitioner now submits the declaration of Tin Thanh Nguyen, an experienced immigration attorney who has spent nearly two decades representing Vietnamese nationals in removal, detention, and travel-document cases, with particular expertise in cases involving pre-1995 Vietnamese refugees. Exhibit A ¶¶ 1–10.

Mr. Nguyen explains that removal of pre-1995 Vietnamese nationals requires a multi-stage, highly individualized verification process involving the Vietnamese Ministry of Foreign Affairs ("MOFA") and the Ministry of Public Security ("MPS"), including identity verification, confirmation of last residence in Vietnam, and often site visits and interviews with surviving relatives or neighbors. Exhibit A ¶¶ 11–18. Where, as here, an individual fled Vietnam as a child, lacks documentation, and has no remaining relatives able to participate in the MPS investigation process, the likelihood that Vietnam will issue a travel document is extremely low. Exhibit A ¶¶ 19–23.

Based on his direct experience monitoring and litigating nearly one hundred pre-1995 Vietnamese cases in recent years, Mr. Nguyen states that Vietnam frequently does not issue formal denials when travel-document requests fail. Instead, requests often remain pending indefinitely, functioning as de facto denials. Exhibit A ¶¶ 24–26. He further attests that, contrary to Respondents' assertions, he has not observed travel documents being issued within thirty days in pre-1995 cases, and that processing typically takes many months or longer, if a document is issued at all. Exhibit A ¶¶ 25–27.

Applying this expertise to Petitioner's specific circumstances, Mr. Nguyen concludes that Petitioner's lack of family in Vietnam, absence of viable identity-verification pathways, and pre-1995 refugee status place him squarely within the category of individuals for whom Vietnam rarely, if ever, issues travel documents. Exhibit A ¶¶ 28–32. Based on these facts, Mr. Nguyen opines that it is highly unlikely that Vietnam will issue a travel document for Petitioner in the reasonably foreseeable future. Exhibit A ¶ 33.

Respondents offer no evidence to the contrary. They do not identify any steps by MOFA or MPS indicating that Petitioner's case has progressed beyond an initial request, nor do they point to any interview, site visit, family verification, or acceptance decision consistent with the Vietnamese government's established process. In the absence of such evidence, Respondents' generalized assertions of effort cannot overcome specific, unrebutted expert evidence demonstrating that removal is not reasonably foreseeable. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

When, as here, the record affirmatively demonstrates that removal depends on an unpredictable and often stalled foreign-government process with no defined endpoint, continued detention rests on speculation rather than foreseeability and cannot be sustained under *Zadvydas*.

## V. PETITIONER'S DETENTION IS INDEPENDENTLY UNLAWFUL BECAUSE ICE FAILED TO LAWFULLY REVOKE HIS ORDER OF SUPERVISION

Separate and independent from *Zadvydas*, Petitioner's detention is unlawful because ICE failed to comply with the mandatory regulations governing the revocation of an Order of Supervision ("OSUP").

After Petitioner's removal order became administratively final in September 2005, ICE did not detain him during the statutory removal period and did not seek to re-detain him for nearly twenty years. During that extended period, ICE affirmatively permitted Petitioner to remain in the community under supervision, reflecting the agency's determination that he was neither a danger to the community nor a flight risk and that continued detention was unwarranted. That determination carried legal consequences. As courts have recognized, release under an Order of Supervision is not an act of grace, but a formal agency determination that continued detention is unwarranted under the governing statutory and regulatory framework. *See Munagi v. McDonald*, 2025 U.S. Dist. LEXIS 262634, at *18–21 (D. Mass. Dec. 19, 2025); *Hall v. Nessinger*, 2026 U.S. Dist. LEXIS 89, at *14–16 (D.R.I. Jan. 2, 2026); *see also Reid v. Donelan*, 819 F.3d 486, 494–95 (1st Cir. 2016).

As set forth in the Legal Background, ICE may revoke an Order of Supervision only after making a contemporaneous, individualized determination—based on changed circumstances—that removal has become significantly likely in the reasonably foreseeable future, and only after providing the procedural protections required by regulation. *See Section II*, *supra*.

Respondents do not contend that those requirements were satisfied here. The Answer identifies no notice of revocation, no informal interview, and no contemporaneous individualized determination—made at the time of re-detention—that removal was significantly likely in the reasonably foreseeable future. Instead, Respondents argue that OSUP revocation procedures were unnecessary because ICE detained Petitioner "to effectuate removal." ECF No. 11 at 2. That position is incompatible with the governing regulations, which exist precisely to prevent arbitrary re-detention of individuals whom the agency has long determined need not be confined.

The record confirms that ICE did not make the required foreseeability determination before revoking Petitioner's supervision. The declaration submitted by ICE Assistant Field Office Director Jose P. Ortez does not state that Petitioner was arrested because removal was believed to be imminent or significantly likely. *See* ECF No. 11-1. Rather, the declaration merely recounts the fact of Petitioner's arrest—apparently during a routine or random encounter—without any indication that ICE evaluated, let alone determined, whether removal had become foreseeable at that time. Detaining Petitioner without first making the determination required by regulation was unlawful.

Consistent with the authorities discussed in the Legal Background, district courts—including courts within the Tenth Circuit—have rejected ICE's attempt to justify OSUP revocation through post hoc litigation declarations or generalized assertions of effort. *See, e.g.*, *Zhuliang Ye v. Bondi*, 2025 U.S. Dist. LEXIS 250358, at *17–21 (W.D. Okla. Dec. 4, 2025); *Pham v. Bondi*, 2025 U.S. Dist. LEXIS 228529, at *12–15 (W.D. Okla. Nov. 20, 2025); *Qui v. Carter*, 2025 U.S. Dist. LEXIS 190236, at *10–13 (D. Kan. Sept. 26, 2025). Those courts have made clear that ICE must make the foreseeability determination in the first instance, and that detention is unlawful where ICE revokes supervision without doing so.

Respondents' litigation position in this case underscores the absence of a lawful revocation. They now assert that "ICE anticipates no impediments to securing the travel document and repatriating Nguyen to Vietnam in the reasonably foreseeable future." That conclusory assurance cannot substitute for the individualized determination the regulations require. Respondents offer no explanation for why, if removal truly presents no impediments, the process has already taken more than thirteen months and remains unresolved. They assert that travel documents are typically issued within approximately thirty days, yet this case is now well beyond sixty days from the initial request.

ECF No. 11-1 ¶¶ 14–16. Nor do Respondents identify any concrete milestone—such as an interview, acceptance decision, or issued document—that would support a finding that removal is imminent. At most, the record reflects uncertainty and delay, not foreseeability.

ICE's failure to comply with its own binding regulations renders Petitioner's detention unlawful under the *Accardi* doctrine, which holds that agency action taken in violation of binding regulations is invalid. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Where, as here, the violated regulations protect a fundamental liberty interest, no showing of prejudice is required. *Waldron v. INS*, 17 F.3d 511, 518 (2d Cir. 1993).

Courts across the country have ordered immediate release where ICE unlawfully revoked an Order of Supervision without making the required findings or providing the required process. *See Munagi*, 2025 U.S. Dist. LEXIS 262634, at *18–21; *Hall*, 2026 U.S. Dist. LEXIS 89, at *23–25; *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *16–17 (W.D.N.Y. May 2, 2025); *Bui v. Archambeault*, No. CV-25-03774-PHX-KML (D. Ariz. Oct. 28, 2025); *Ho v. Archambeault*, No. CV-25-03753-PHX-JJT (D. Ariz. Oct. 20, 2025); *Rubanov v. Trump*, No. 25-23034-CIV-ALTONAGA, slip op. at 14–17 (S.D. Fla. July 29, 2025).

Respondents' Answer offers no authority to the contrary and confirms that no lawful revocation occurred in this case. Petitioner's detention is therefore independently unlawful, and habeas relief is warranted on this basis alone.

## VI. CONTINUED DETENTION VIOLATES THE DUE PROCESS CLAUSE

Petitioner's continued detention also violates the Due Process Clause of the Fifth Amendment. Freedom from physical restraint lies at the core of the liberty protected by the Constitution. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (plurality opinion) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause"). Although immigration detention is civil rather than criminal in nature, it is constitutionally permissible only where it serves a legitimate, non-punitive purpose and is accompanied by adequate procedural safeguards. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 527–28 (2003).

The Supreme Court has repeatedly emphasized that civil detention must bear a reasonable relation to its asserted purpose. Where detention is no longer reasonably related to effectuating removal, it becomes punitive in effect and unconstitutional. *Zadvydas*, 533 U.S. at 690–91; *see also Kansas v. Hendricks*, 521 U.S. 346, 361–63 (1997). For that reason, due process requires both substantive justification for detention and procedures sufficient to ensure that detention is not arbitrary. *Jennings v. Rodriguez*, 583 U.S. 513, 542 (2018).

Whether those constitutional requirements are satisfied is evaluated under the balancing framework articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which requires consideration of the private liberty interest at stake, the risk of erroneous deprivation under the procedures used and the probable value of additional safeguards, and the government's interest. Each of these considerations weighs decisively against continued detention here.

First, the private interest at stake is extraordinary. Physical liberty is "the most elemental of liberty interests," and prolonged civil detention imposes severe restraints on daily life, family relationships, and psychological well-being. *Zadvydas*, 533 U.S. at 690; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 36–37 (1st Cir. 2021). That interest carries particular weight in this case because ICE permitted Petitioner to live in the community for nearly twenty years after his removal order became final, without incident and under supervision. *See Munagi v. McDonald*, 2025 U.S. Dist. LEXIS 262634, at *19–21 (D. Mass. Dec. 19, 2025); *Hall v. Nessinger*, 2026 U.S. Dist. LEXIS 89, at *15–16 (D.R.I. Jan. 2, 2026).

Second, the risk of erroneous deprivation is exceptionally high. ICE re-detained Petitioner without notice, without an informal interview, and without any contemporaneous individualized determination that detention was authorized. As explained in Section V, ICE failed to follow mandatory OSUP revocation procedures designed to protect against erroneous deprivation of liberty. *See* 8 C.F.R. §§ 241.4(l), 241.13(i). Where the government dispenses with required procedures that protect physical liberty, the risk of error is acute. *Wilkinson v. Austin*, 545 U.S. 209, 224–25 (2005).

The probable value of the omitted procedures is substantial. Compliance with the OSUP revocation regulations would have required ICE to confront, at the time it deprived Petitioner of his liberty, whether removal was in fact significantly likely in the reasonably foreseeable future and whether any changed circumstances justified detention. Instead, detention was imposed based on assumptions and later-developed rationalizations. Courts have found similar procedural deficiencies constitutionally intolerable where they permit civil detention to rest on conjecture rather than individualized findings. *Reid v. Donelan*, 819 F.3d 486, 494–95 (1st Cir. 2016); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1184–85 (N.D. Cal. 2017).

Third, the government's interest in continued detention is weak. ICE has already determined that Petitioner does not pose a danger to the community and is not a flight risk, as demonstrated by decades of successful supervision. Supervision, rather than detention, has proven effective in this case. To the extent the government asserts an interest in effectuating removal, that interest is substantially diminished where, as here, removal is speculative and indefinite. *Zadvydas*, 533 U.S. at 699; *Clark v. Martinez*, 543 U.S. 371, 386–87 (2005). Moreover, requiring ICE to comply with its own regulations imposes no undue administrative burden and advances, rather than undermines, the accuracy and fairness of detention decisions. *Mathews*, 424 U.S. at 348.

Balancing these considerations, Petitioner's continued detention violates due process. The profound liberty interest at stake, the extreme risk of erroneous deprivation created by ICE's failure to follow mandatory procedures, and the minimal governmental interest in continued detention compel the conclusion that the Constitution does not permit Petitioner's confinement. Because this constitutional violation is ongoing, habeas relief is warranted. Continued detention cannot be cured by delay or post hoc justification. The only remedy consistent with due process is Petitioner's immediate release under appropriate conditions of supervision.

## VII. THE PROPER HABEAS REMEDY IS IMMEDIATE RELEASE

Where detention violates 8 U.S.C. § 1231(a)(6), governing regulations, and the Due Process Clause, the remedy is release. Courts addressing unlawful revocation of an Order of Supervision and prolonged post-final-order detention have consistently ordered immediate release under conditions of supervision. Remanding to ICE for further consideration would only prolong an unconstitutional deprivation of liberty.

Petitioner complied with supervision for decades. Respondents identify no new facts establishing danger or flight risk. Continued detention cannot be justified and cannot be cured by further delay. The Court should therefore grant the writ and order Petitioner's immediate release under appropriate conditions of supervision.

## VIII. CONCLUSION

Respondents have failed to justify Petitioner's continued detention. They have not shown that removal is significantly likely in the reasonably foreseeable future, as required by *Zadvydas v. Davis*, 533 U.S. 678 (2001). They also failed to lawfully revoke Petitioner's Order of Supervision in violation of binding regulations, the *Accardi* doctrine, and the Due Process Clause. Either violation independently warrants habeas relief.

For these reasons, the Court should grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate release.

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Respectfully Submitted,

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Motion for Admission Pro Hac Vice forthcoming

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