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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ALASKA**
12

13 Son Hoang Vu,

14 Petitioner,

15 v.

16 Warden, Anchorage Correctional

17 Complex, et al.,

18 Respondents.

Case No: 3:26-cv-00027-SLG

**PETITIONER'S RESPONSE TO
RESPONDENTS' MARCH 5, 2026
SUPPLEMENTAL DECLARATION
(HAYES)**

19 Petitioner Son Hoang Vu, by and through counsel, respectfully responds to
20 Respondents' March 5, 2026 Supplemental Declaration of Supervisory Detention and
21 Deportation Officer Bradley A. Hayes ("March 5 Hayes Decl.").

22 Respondents' new submission does not cure-nor moot-the core illegality Petitioner
23 has raised throughout these proceedings: the January 12, 2026 re-detention was justified (in
24 Respondents' own theory) as a revocation of supervised release under 8 C.F.R. § 241.13(i),
25 yet Respondents still have not produced the mandatory § 241.13 revocation record or shown
26 compliance with § 241.13's prerequisites (including notice and the required informal
27 interview opportunity).
28

1 Further, Respondents' reliance on § 241.13 is categorically incompatible with the
2 Government's "arriving alien" posture reflected on the February 25, 2026 NTA. The
3 regulation itself states: "This section does not apply to: (i) Arriving aliens, including those
4 who have not entered the United States, those who have been granted immigration parole
5 into the United States" 8 C.F.R. § 241.13(b)(3)(i).
6

7 Under persuasive authority directly on point-*Quoc Vinh Duong v. Charles*, No. 1:25-
8 cv-01375-JLT-SKO (E.D. Cal. Nov. 14, 2025)-this Court should (at minimum) require
9 Respondents to lodge the operative custody/revocation packet and identify a single
10 detention statute under oath, and (preferably) order release where the record cannot support
11 lawful re-detention.
12

13
14 The Supreme Court has reiterated a basic administrative-law principle: "If men must
15 turn square corners when they deal with the government, it cannot be too much to expect the
16 government to turn square corners when it deals with them." *Niz-Chavez v. Garland*, 141 S.
17 Ct. 1474 (2021). Where DHS invokes a regulation to deprive a person of liberty, it must
18 comply with that regulation and produce a reviewable record.
19

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21 **I. THE MARCH 5 HAYES DECLARATION DOES NOT ESTABLISH LAWFUL
CUSTODY OR MOOT HABEAS RELIEF**

22 The March 5 Hayes Decl. asserts only that "Headquarters Removals and International
23 Operations" provided an "update" that Petitioner's travel document "will be issued on March
24 6, 2026." It attaches no travel document, no issuance notice, no travel-document number, no
25 confirmation from Vietnam, and no operational removal plan (itinerary/booking/escort
26 arrangements).
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2 That is insufficient.

3 First, it is future-tense and conclusory. Under *Zadvydas v. Davis*, 533 U.S. 678
4 (2001), once a detainee provides good reason to believe there is no significant likelihood of
5 removal in the reasonably foreseeable future, the Government must respond with evidence
6 sufficient to rebut that showing. A supervisor's hearsay prediction about what "will" happen
7 tomorrow is not evidence of imminent removal or a significant likelihood of removal for
8 purposes of continued custody.
9
10

11 Second, the Ninth Circuit has applied *Zadvydas*'s significant-likelihood framework to
12 individuals deemed inadmissible, confirming that labels-including "arriving alien"-do not
13 permit evasion of constitutional limits or evidentiary burdens. *Xi v. INS*, 298 F.3d 832 (9th
14 Cir. 2002).
15

16 Third, even if a travel document later issues, that does not retroactively legalize an
17 unlawful re-detention grounded on a defective revocation process. As *Duong* explains, when
18 ICE fails to follow § 241.13's mandatory procedures in revoking release, detention is
19 unlawful and release is the remedy, without prejudice to ICE's ability later to effect removal
20 consistent with law.
21

22 Accordingly, the March 5 Hayes Decl. does not moot Petitioner's request that this
23 Court determine whether the January 12, 2026 re-detention complied with governing law
24 and regulations and order appropriate relief.
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1 **II. *DUONG V. CHARLES* IS PERSUASIVE AUTHORITY THAT FAILURE TO**
2 **COMPLY WITH § 241.13(i) REQUIRES RELEASE—REGARDLESS OF LATER**
3 **“TRAVEL DOCUMENT” UPDATES**

4 In *Duong*, ICE previously released a noncitizen and later re-detained him, asserting a
5 renewed "significant likelihood of removal" based on "changed circumstances." The court
6 ordered release because ICE did not comply with § 241.13's mandatory procedures. *Duong*
7 is persuasive and directly on point here for at least three reasons:

8
9 ***Duong's* core holdings map cleanly onto Petitioner's Son Vu record:**

10 **A. ICE must make the “changed circumstances” determination *before* revocation/re-**
11 **detention.**

12 Section 241.13(i)(2) permits revocation only if, "on account of changed
13 circumstances," ICE determines there is a significant likelihood of removal in the
14 reasonably foreseeable future. *Duong* rejects post hoc rationalizations; the determination
15 must precede revocation and be supported by a reviewable record.

16
17 Here, Respondents have relied on § 241.13 revocation logic to justify the January 12,
18 2026 re-detention, yet the record (as lodged) still lacks the contemporaneous changed-
19 circumstances determination and supporting evidence.

20
21 **B. Written notice must state the actual reasons for revocation so the detainee can**
22 **meaningfully respond.**

23 Section 241.13(i)(3) provides the detainee an opportunity to present evidence and
24 contest the alleged basis for revocation. Conclusory notice and the absence of the interview
25 worksheet/notes and written post-interview decision defeat meaningful participation and
26 judicial review. *Duong* holds that conclusory notice (“significant likelihood of removal”)
27
28

1 without the “what” and “why” is inadequate, and that citing inconsistent or inapplicable
2 authority undermines due process and the ability to respond at the informal interview.
3

4 Petitioner’s Opposition raised exactly this problem: Respondents’ theories shift
5 between § 1231/§ 241.13 (post-final-order revocation) and § 1226(c) (mandatory pre-
6 removal detention), without identifying the operative authority and without lodging the
7 revocation packet and interview record.
8

9
10 **C. ICE must “promptly” provide the informal interview opportunity required by §**
11 **241.13(i)(3), and the record must permit review.**

12 *Duong’s* reasoning aligns with the Supreme Court’s square-corners principle. Where
13 DHS relies on a regulation to justify confinement, it must comply with the regulation and
14 cannot withhold the very documents needed to test compliance. *Duong* holds ICE violated §
15 241.13(i)(3) where the Government provided no evidence the detainee was promptly
16 afforded the required interview opportunity.
17

18
19 Here, Petitioner specifically requested the § 241.13(i)(3) interview notes/worksheet
20 and the written post-interview custody determination, because without them the Court
21 cannot evaluate whether § 241.13 was followed.
22

23 **D. Remedy: release reinstating prior supervision conditions, even if removal may be**
24 **imminent.**

25
26 *Duong* ordered immediate release and reinstatement of the prior conditions of
27 supervision, “without prejudice” to ICE’s ability to effect removal thereafter, emphasizing
28 that the Government must “turn square corners” in applying its own rules.

1 That same remedy is appropriate here where Respondents continue to rely on a
2 theory of custody that cannot be tested on the lodged record.
3

4 **III. IN SON VU, THE DEFECT IS EVEN MORE FUNDAMENTAL: § 241.13 DOES**
5 **NOT APPLY TO “ARRIVING ALIENS,” MAKING THE GOVERNMENT’S §**
6 **241.13 REVOCATION THEORY PER SE UNLAWFUL IF DHS IS MAINTAINING**
7 **“ARRIVING ALIEN” POSTURE**

8 Petitioner’s Opposition identified a dispositive incompatibility: the February 25,
9 2026 NTA checks the box designating Petitioner as an “arriving alien” and alleges parole,
10 and under 8 C.F.R. § 1.2 an arriving alien remains an arriving alien even if paroled (and
11 even after parole is terminated).

12 But 8 C.F.R. § 241.13(b)(3)(i) expressly provides: “This section does not apply to ...
13 arriving aliens.”
14

15 Accordingly:

- 16
17 • If DHS is correctly treating Mr. Vu as an arriving alien (as the NTA reflects), then §
18 241.13 cannot be the lawful basis for revocation/re-detention—and the January 12 re-
19 detention justified as a § 241.13(i) revocation is per se unlawful.
20
- 21 • If DHS is *not* treating Mr. Vu as an arriving alien for custody purposes, then the
22 NTA’s “arriving alien” designation is itself erroneous and underscores the
23 Government’s shifting, unreviewable custody theories—precisely the “statutory
24 limbo” problem Petitioner raised.
25
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1 Either way, Respondents cannot carry their burden on a motion to dismiss habeas (or
2 on the merits) while refusing to commit to a single operative custody framework and
3 withholding the foundational revocation materials.
4

5 **IV. NINTH CIRCUIT AUTHORITY CONFIRMS PROCEDURAL SAFEGUARDS**
6 **AND REGULATORY COMPLIANCE**

7 **A. Prolonged detention requires meaningful procedural safeguards.**

8 In *Diouf v. Napolitano (Diouf II)*, 634 F.3d 1081 (9th Cir. 2011), the Ninth Circuit
9 held that prolonged detention under 8 U.S.C. § 1231(a)(6) requires a bond hearing with
10 adequate procedural protections. *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017),
11 likewise underscores that when physical liberty is at stake, due process requires meaningful
12 procedures and allocation of burdens consistent with constitutional safeguards.
13

14 **B. Regulatory violations designed to protect individual interests are unlawful where**
15 **they cause prejudice.**

16 Under *United States v. Calderon-Medina*, 591 F.2d 529 (9th Cir. 1979), violation of a
17 regulation intended to benefit the individual can invalidate the Government's action where
18 the violation prejudices the protected interests. Here, the prejudice is concrete: without §
19 241.13 notice and the § 241.13(i)(3) interview record and decision, Petitioner cannot
20 meaningfully contest the claimed "changed circumstances," and this Court cannot
21 meaningfully review the detention decision.
22
23

24 **V. REQUESTED RELIEF: ORDER TARGETED RECORD SUPPLEMENTATION**
25 **AND/OR ORDER RELEASE UNDER DUONG**

26 Petitioner respectfully requests that the Court:

27 **(1) Reject any claim of mootness based on the March 5 Hayes Decl.'s future-tense assertion;**
28

1 (2) Order Respondents-on a short deadline-to file a sworn submission identifying the single
2 statute and regulation currently authorizing detention (and explaining how any prior final-
3 order posture was displaced, if § 1226 is invoked);
4

5 (3) If Respondents rely on § 241.13, order them to lodge the required revocation materials,
6 including (a) the written revocation notice; (b) the § 241.13(i)(3) interview worksheet/notes
7 and written post-interview custody decision; and (c) documentary proof of travel-document
8 request/receipt/status and, if issued, the travel document itself; and
9

10 (4) If Respondents cannot timely produce the mandatory § 241.13 record and cannot
11 reconcile "arriving alien" posture with § 241.13(b)(3)(i), order Petitioner's **immediate**
12 **release** on appropriate supervision conditions.
13

14 CONCLUSION

15 Respondents' March 5, 2026 Hayes declaration supplies only a conclusory, future-
16 tense "update" and does not establish lawful custody, moot habeas relief, or cure § 241.13
17 noncompliance. Under *Zadvydas* and *Xi*, the Government must furnish evidence-not
18 predictions-to justify continued detention. Under *Duong*, failure to follow § 241.13's
19 mandatory revocation procedures warrants relief even if the Government later progresses
20 removal. And here, the Government's reliance on § 241.13 is independently defective
21 because DHS's "arriving alien" designation triggers § 241.13's categorical exclusion for
22 arriving aliens, including parolees. Petitioner respectfully requests that the Court deny any
23 request to dismiss as moot, order targeted supplementation of the custody/revocation record
24 on an expedited schedule, and/or order Petitioner's **immediate release on appropriate**
25 **supervision conditions.**
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1 Dated: March 5, 2026

2 Respectfully submitted,

3 /s/ *Daniel M Huynh*

4 Daniel M Huynh, Esq.
5 Counsel for Petitioner

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15 **CERTIFICATE OF SERVICE:** I hereby certify that on March 05, 2026, a true and correct
16 copy of the foregoing document was served via the Court's CM/ECF system on counsel for
17 Respondents.

18

19 Dated: March 5, 2026.

20

21 Respectfully submitted,

22

23 /s/ *Daniel M. Huynh*

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25 Daniel M. Huynh, Pro Bono Counsel for Petitioner

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