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District of Kansas
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UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

HUNG HUYNH,

Petitioner,

v.

Department of Homeland Security; SAMUEL OLSON, Acting Director for the Chicago Field Office of Immigration and Customs Enforcement; PAMELA BONDI, U.S. Attorney General

Respondents.

Case No. 26-3042-JWL

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Hung Huynh, is in physical custody of Respondents at Leavenworth USP. He files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the United States Department of Homeland Security ("DHS") and Immigration and Customs Enforcement ("ICE") from continuing to detain him, unless, and until his removal is reasonably foreseeable, and that there be "an initial informal interview promptly after his … return to Service custody to afford the [non-citizen] an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(i).

2. On information and belief, Mr. Huynh has never been removed to any third country or notified of such potential removal. Given the Supreme Court of the United States' decision on June 23, 2025 in *U.S. Department of Homeland Security, et al. v. D.V.D. et al.* which stayed the nationwide injunction that had precluded Respondents from removing noncitizens to third countries without notice and an opportunity to seek fear-based relief, ICE appears emboldened and intent to implement its campaign to send noncitizens to far corners of the planet – places they have absolutely no connections to whatsoever- in violation of clear statutory obligations set forth in the Immigration and Nationality Act ("INA"), binding treaty, and due process. *See* No. 24A1153, 2025 WL 1732103 (June 23, 2025). In the absence of the nation-wide injunction, individual lawsuits like the instant case are the only method to challenge the illegal third-country removals.

3. Deportation to the country Respondents intend to send Petitioner to would violate Petitioner's statutory, regulatory, and constitutional due process rights. Mr. Huynh is a fifty-nine-year-old-man who was born in the Socialist Republic of Vietnam ("Vietnam") on December 23, 1966.

4. [redacted] Mr. Huynh arrived in the United States in 1989 when he was 23 years old. He was granted permanent lawful resident status in the United States.

5. At the age of 30, Mr. Huynh was convicted under Missouri Revised Statutes 565.021, Murder 2nd Degree; three counts of 571.015, Armed Criminal Action; 565.050, Assault 1st Degree- Serious Physical Injury; 565.050, Assault- 1st Degree.

6. Due to his contacts with law enforcement, Mr. Huynh was transferred to ICE custody and an Immigration Judge at the Kansas City Immigration Court ordered Mr. Huynh removed on March 19, 1997. Presumably, Mr. Huynh was ordered removed to Vietnam, his country of last habitual residence.[1]

7. Upon information and belief, Mr. Huynh could not be removed to Vietnam because he was admitted to the United States prior to 1995. As a stateless person with no right to return to any country, Mr. Huynh's removal was not foreseeable.

8. Mr. Huynh was released from criminal custody in 2000. Since then, he has adhered to an Order of Supervision which requires regular check-ins with the St. Louis ICE Field Office, which was granted as his removal was not reasonably foreseeable, and he is neither a flight risk nor a danger to the community.

9. Since receiving this order of supervision, he has diligently complied with all its requirements. This includes not committing any crimes since his last arrest in 1993. For over fifteen years, ICE has not moved to re-detain or remove Mr. Huynh.

[1] Due to the length of time that passed since his removal proceedings, Mr. Huynh has very few documents relating to his case. Undersigned counsel was recently retained and is not yet in receipt of Mr. Huynh's file. Currently it is taking up to a year to receive FOIA requests, often requiring appeals given the Department's generous redactions of the files.

10. Over the last twenty-six years in which he has lived at liberty, Mr. Huynh has married and raised a U.S. citizen daughter with his Legal Permanent Resident. Mr. Huynh owns a business, pays taxes, and fully supports his partner and minor child.

11. Mr. Huynh has now been detained at his most recent ICE check-in without notice or opportunity to be heard, despite posing no flight risk, presenting no danger to the community, and his removal is not reasonably foreseeable. He is currently detained miles from his family, his community, and his attorney.

12. The only legitimate and constitutional justifications for immigration detention are a danger to the community and a flight risk. *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). When immigration agents released Mr. Huynh from their custody on his own recognizance, they necessarily determined that he was neither a danger to the community nor a flight risk. *See* 8 C.F.R. § 1236(c)(8) ("Any [authorized] officer … may release [a noncitizen] not described in section 236(c)(1) of the Act … provided that the [noncitizen] must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.")

13. By statute and regulation, ICE has the authority to re-detain a noncitizen on an OSUP previously ordered removed only in specific circumstances, including where an individual violates any condition of release or the individual's conduct demonstrates that the release is no longer appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). The Due Process Clause proscribes that authority because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr. Huynh's case, due process notice requires notice and a hearing before any re-detention.

14. Nothing in Mr. Huynh's circumstances changed between the government's determination twenty-six years ago and his ICE check-in last month to justify re-detention. On the contrary, Petitioner has fully complied with all his ICE check-in appointments, is a cherished member of his community and is a loving and committed husband and father.

15. Therefore, at a minimum, to lawfully re-arrest Mr. Huynh, the government must first establish by clear and convincing evidence and before a neutral decision maker, that he is a danger to the community or a flight risk, such that his re-detention is necessary to preserve public safety. This is especially true as Respondents created a reasonable expectation over the past twenty-five years that Mr. Huynh would be permitted to live and work in the United States without being subject to arbitrary arrest and removal.[2]

16. By statute and regulation, ICE has the authority to re-detain a noncitizen on an OSUP previously ordered removed only in specific circumstances, including where an individual violates any condition of release or the individual's conduct demonstrates that the release is no longer appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). The Due Process Clause proscribes that authority because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr. Huynh's case, due process notice requires notice and a hearing before any re-detention.

17. The regulations, at 8 C.F.R. § 241.4, set forth the custody review process that existed even before the Supreme Court's decision in *Zadvydas*. This mandated process, known as the post-

[2] This reasonable expectation creates constitutionally-protected liberty and property interests. Perry v. Sindermann, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest); see also Texas v. United States, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S. Ct. 2271 (2016) (explaining that "DACA involve[s] issuing benefits" to certain applicants). These benefits are entitled to constitutional protections no matter how they may be characterized by Respondents. See, e.g., Newman v. Sathyavaglswaran, 287 F.3d 786, 797 (9th Cir. 2002) ("[T]he identification of property interests under constitutional law turns on the substance of the interest recognized, not the name given that interest by the state or other independent source.") (internal quotations omitted).

order custody review, requires ICE to conduct "90-day custody reviews" prior to expiration of the 90-day removal period and to consider release of individuals who pose no danger or flight risk, 8 C.F.R. § 241.4(e)-(f). Among the factors to be considered in these custody reviews are "ties to the United States such as the number of close relatives residing here lawfully"; whether the noncitizen "is a significant flight risk"; and "any other information that is probative of whether" the noncitizen is likely to "adjust to life in a community," "engage in future acts of violence," "engage in future criminal activity," pose a danger to themselves or others, or "violate the conditions of his or her release from immigration custody pending removal from the United States." *Id.*

18. Moreover, under the INA, Respondents have a statutory obligation to remove Mr. Huynh only to the designated country of removal – in this case, Vietnam. 8 U.S.C. § 1231(b)(2)(A)(ii). If Mr. Huynh is to be removed to a third country, Respondents must first assert a basis under 8 U.S.C. § 1231(b)(2)(C) and ICE must provide him with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country.

19. Petitioner challenges his detention as a violation of the Immigration and Nationality Act, the Administrative Procedure Act, the Due Process Clause of the Fifth Amendment, and the Eighth Amendment's prohibition on cruel and unusual punishment.

20. Petitioner respectfully requests that this Court grant him a Writ of Habeas Corpus and order Respondents to release him from custody. Petitioner seeks habeas relief under 28 U.S.C. 3352, which is the proper vehicle for challenging civil immigration detention. *See Soberanes v. Comfort,* 388 F.3d 1305, 1310 (10th Cir. 2004) ("Challenges to immigration detention are properly brought directly through habeas") (citing *Zadvydas v. Davis,* 533 U.S. 678, 687-88 (2001)).

PARTIES

21. Petitioner Hung P Huynh is a 59-year-old citizen of Vietnam who has been in immigration detention since February 3, 2026. He has been living in the United States since 1989.

22. Respondent Samuel Olson, Acting Director for the Chicago Field Office of Immigration and Customs Enforcement, which covers Kansas, is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

23. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

24. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

JURISDICTION

25. This Court has jurisdiction to entertain this habeas petition under the common law, 28 U.S.C. § 1331 (federal question); 28 U.S.C. 2241(habeas corpus); the Due Process Clause of

the Fifth Amendment, U.S. Const. amend. V; the Eighth Amendment, U.S. Const. amend VII; and the Suspension Clause, U.S. Const. art I, § 2.

26. This Court also has jurisdiction, though the Administrative Procedure Act ("APA") to hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(a). APA claims may be brought via habeas. 5 U.S.C. § 703 (judicial review under the APA can happen via "any applicable form of legal action, including . . . [*inter alia*] . . . habeas corpus").

REQUIREMENTS OF 28 U.S.C § 2243

34. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three* days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

35. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

STATEMENT OF FACTS

36. Petitioner is a stateless person. He was born in Vietnam on [redacted]

37. In aftermath of the Vietnam War, beginning in the 1970s, the United States welcomed millions of Southeast Asians from Laos, Vietnam, and Cambodia fleeing oppression and violence, committing to their long-term wellbeing through U.S. refugee resettlement. Hundreds

of thousands of refugees from Vietnam came to the United States fleeing war as well as communist re-education camps in the 1970s, 1980s, and 1990s.

38. [redacted]

39. Mr. Huynh was 22 years of age when he immigrated to the United States under the provisions of the 1988 Homecoming Act, passed to permit immigration of thousands of Amerasian children. Upon his entrance to the United States, he received permanent residency. He is not in possession of any documents indicating that he is a Vietnamese citizen.

40. Mr. Huynh is now married to a Legal Permanent Resident, Kim Nguyen, and is the father of an 11-year-old U.S. citizen daughter, E[redacted]. He is the sole breadwinner for their family, runs his own small business, and owns a home in St. Louis.

41. Mr. Huynh is terrified of persecution by the Vietnamese government due to [redacted]

42. At the age of 30, Mr. Huynh was convicted under Missouri Revised Statutes 565.021, Murder 2nd Degree; three counts of 571.015, Armed Criminal Action; 565.050, Assault 1st Degree- Serious Physical Injury; 565.050, Assault- 1st Degree. He served seven years in criminal custody before being released.

43. Vietnamese refugees have not historically been subject to deportation from the United States. Thus, since 2000, Mr. Huynh has reported to ERO annually. He has complied with all the requirements of his order of supervision for more than a decade. For 26 years. ICE has not attempted to physically remove Mr. Huynh.

44. Individuals like Mr. Huynh, who were born in Vietnam to American fathers and

immigrated to the United States before July 12, 1995, were historically not subject to actual removal, despite outstanding removal orders. *See e.g. Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020) discussing the history of Vietnamese immigration to the U.S). Between 2000 and 2008, Vietnam and the United States did not have diplomatic relations and therefore, removal to Vietnam was not practicable. *Id.*

45. However, in 2008, Vietnam and the United States reached an agreement under which Vietnam agreed to consider repatriation requests, but only for Vietnamese people who arrived in the United States after July 12, 1995. *See* Order, Granting Preliminary Injunction, *Nguyen v. Scott et al.* Case 2:25-cv-01398, F.Supp.3d, 2025 WL 2419288, at *6,12 (W.D. Wash. Aug. 21, 2025) (*citing Trinh v. Homan*, 466 F.Supp.3d 1077, 1083 (C.D. Cal. 2020)

46. U.S. immigration authorities have therefore long treated many pre-1995 arrival as practically non-removable because Vietnam refused to accept them back. *Id.* As a result, ICE followed a practice of releasing most pre-1995 Vietnamese with final removal orders after about 90 days, recognizing that their deportation was "not reasonably foreseeable." *Id.*

47. In 2017, Vietnamese officials verbally committed to consider travel document requests for Vietnamese refugees who entered the United States before 1995, but removal of these individuals remained very rare. Because of this, and through a lawsuit brought by the Asian Law Caucus, ICE established a policy that pre-1995 Vietnamese refugees are not likely to become removed in the reasonably foreseeable future. *Asian Ams. Advancing Just. – Asian L. Caucus v. DHS,* No. 21-02844, 2022 WL 3579886 (N.D. Cal. Aug. 19, 2022).

48. In 2020, the United States and Vietnam signed a Memorandum of Understanding that created a formal process for deporting immigrants who entered the United States before

1995. *See* Exhibit A. Despite this agreement, removals of pre-1995 Vietnamese refugees remained rare.

49. On June 9, 2025, ICE rescinded its policy of generally finding that pre-1995 Vietnamese immigrants were not likely to be removed in the reasonably foreseeable future. *Id.* In 2025, Respondents began immigration enforcement targeting refugees with final orders of removal for arrest, detention, and deportation, including pre-1995 Vietnamese refugees.

MR. HUYNH HAS A PROTECTED LIBERTY INTEREST IN HIS RELEASE

50. Mr. Huynh's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, *supra*, 533 U.S. at 690.

51. For more than 25 years, Mr. Huynh has exercised that freedom under his Order of supervision. He retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding reincarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). Moreover, the Supreme Court has recognized that post-removal order detention is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at 701. In this case, in the absence of obtaining a travel document from a country that will accept Mr. Huynh, after the Respondents satisfy the statutory and regulatory requirements, his removal is not foreseeable at all, let alone reasonably. Therefore, re-detention is unconstitutional.

52. In *Morrissey,* the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the

conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." Id. In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

53. This basic principle—that individuals have a liberty interest in their release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g., Young, supra*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon, supra*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement— even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (*citing Young*, 520 U.S. at 152, Gagnon, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

PETITIONER MUST BE AFFORDED DUE PROCESS AS DEFINED IN THE REGULATIONS AND THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT SHOULD RESPONDENTS INTEND TO MODIFY PETITIONER'S ORDER OF SUPERVISION AND DEPRIVE HIM OF HIS LIBERTY

54. Individuals with final orders who are released after a post-order custody review are subject to Form I-220B, Order of Supervision. 8 C.F.R. § 241.4(j). After an individual is released on an order of supervision, ICE cannot revoke such an order without cause and adequate legal process.

55. When an Immigration Judge issues an order of removal, the noncitizen has thirty days to appeal the decision to the Board of Immigration Appeals. If no appeal is made, the grant and order are final. 8 C.F.R. § 1241.1. Following a final order of removal, ICE is authorized by statute to detain an individual for ninety (90) days to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90) day period, also known as "the removal period," generally commences as soon as a removal order becomes administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B)[3].

56. Under the INA, Respondents have a clear and non-discretionary duty to execute final orders of removal only to the designated country of removal. 8 U.S.C. § 1231(b)(2). The statute explicitly states that a noncitizen "shall remove the [noncitizen] to the country the [noncitizen] . . . designates." *Id.* Even where a noncitizen does not designate the country of removal, the statute further mandates that DHS "shall remove the alien to a country of which the alien is a subject, national, or citizen." *Id.*

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[3] Limited exceptions apply to this statutory requirement, specifically, ICE "may" detain an individual beyond ninety days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6) However, ICE's authority to detain an individual beyond the removal period under such circumstances is not boundless. Rather, it is constrained by the constitutional requirement that detention "bear a reasonable relationship to the purpose for which the individual [was] committed." Zadvydas v. Davis, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-final-order detention statute is to effectuate removal, detention bears no reasonable relation to its purpose if removal cannot be effectuated. Id. at 697.

57. If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) ("If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision.").

58. The government's own regulations contemplate this requirement. They dictate that even after ICE determines that removal is reasonably foreseeable—and that detention therefore does not per se exceed statutory authority, the government must still determine whether continued detention is warranted based on flight risk or danger. See 8 C.F.R. § 241.13(g)(2) (providing that where removal is reasonably foreseeable, "detention will continue to be governed under the established standards" in 8 C.F.R. § 241.4).

59. The regulations, at 8 C.F.R. § 241.4, set forth the custody review process that existed even before the Supreme Court's decision in *Zadvydas*. This mandated process, known as the post-order custody review, requires ICE to conduct "90-day custody reviews" prior to expiration of the 90-day removal period and to consider release of individuals who pose no danger or flight risk, 8 C.F.R. § 241.4(e)-(f). Among the factors to be considered in these custody reviews are "ties to the United States such as the number of close relatives residing here lawfully"; whether the noncitizen "is a significant flight risk"; and "any other information that is probative of whether" the noncitizen is likely to "adjust to life in a community," "engage in future acts of violence," "engage in future criminal activity," pose a danger to themselves or others, or "violate the conditions of his or her release from immigration custody pending removal from the United States." *Id.*

60. The Immigration Judge ordered Mr. Huynh removed on March 19, 1997. His subsequent appeal was dismissed on August 25, 1997. Respondents have not made any showing, or

even any allegation, of a change in circumstances warranting reopening of the IJ's order to remove Petitioner to another country other than Vietnam.

61. ICE is authorized to remove non-citizens to an alternative third country. 8 U.S.C. § 1231(b)(2)(C)(iv); *see* §1231(b)(2)(E)(vii); *DHS v. D.V.D.*, 606 U.S. ____(2025). However, the non-citizen must be permitted to make a claim for withholding of removal and / or relief under the Convention Against Torture before being removed. 8 U.S.C. § 1231(b)(2); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U. N. T. S. 113. While the decision in *D.V.D.* calls into question the parameters of the due process that must be provided before third-country removals, the decision is an emergency order lifting the District Court's stay, and not a final decision on the merits.

62. 8 C.F.R. § 241.13 governs the determination of whether there is a significant likelihood of removal for noncitizens with final orders of removal. It permits Respondents To release a noncitizen under an Order of Supervision if there is a determination that removal is not significantly likely and the noncitizen poses no danger to the public or risk of flight.

63. 8 C.F.R. § 241.13 provides special review procedures for aliens detained under the custody review procedures of § 241.4 after the removal period has expired, but who claim there is no significant likelihood of removal to the country of removal or a third country in the reasonably foreseeable future. After having been ordered removed in 2000, Respondents made a determination under 8 C.F.R. § 241.13 that there was no significant likelihood of removing Mr. Huynh in the reasonably foreseeable future, that he was not a danger to the public nor a flight risk and gave him an Order of Supervision with routine reporting requirements.

64. Once a determination has been made under 8 C.F.R. § 241.13, the regulations at 8 C.F.R. § 241.4 (governing continued detention of individuals with final orders of removal

including grants of withholding of removal), do not permit Respondents to make a new custody review determination absent a "change in circumstances." 8 C.F.R. § 241.4 (b)(4) ("The custody review procedures in this section do not apply after the Service has made a determination, pursuant to the procedures provided in 8 CFR 241.13, that there is no significant likelihood that an alien under a final order of removal can be removed in the reasonably foreseeable future. However, if the Service subsequently determines, because of a change of circumstances, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future to the country to which the alien was ordered removed or to a third country, the alien shall again be subject to the custody review procedures under this section.")

65. For the past twenty-six years, Petitioner has continued to comply with the Order of Supervision provided to him by Respondents, requiring regular reporting and notification of his address, etc. Respondents have not shown why Petitioner's order of supervision was modified due to any change of circumstances pursuant to the guidelines outlined in 8 C.F.R § 241.4(b)(4).

WITHOUT A DUE PROCESS HEARING PRIOR TO ANY RE-ARREST, THE RISK OF AN ERRONEOUS DEPRIVATION OF LIBERTY IS HIGH AND PROCESS IN THE FORM OF A CONSTITUTIONALLY COMPLIANT MANNER THAT FOLLOWS THE DEPARTMENT'S OWN REGULATIONS

66. Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." Haygood v. Younger, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing Morrissey, 408 U.S. at 481-82). This Court must "balance [Mr. Huynh's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), this Court must consider three

factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews*, 424 U.S. at 335).

67. The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original).

68. Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Mr. Huynh's reincarceration is warranted.

THE GOVERNMENT'S INTEREST IN REINCARCERATING MR. HUYNH WITHOUT A HEARING IS MINIMAL, AND THE BURDEN ON THE GOVERNMENT TOREFRAIN FROM RE-ARRESTING HIM UNLESS AND UNTIL HE IS PROVIDED A HEARING THAT COMPORTS WITH DUE PROCESS IS MINIMAL

69. The government's interest in detaining Mr. Huynh without a due process hearing is minimal, and when weighed against Mr. Huynh's significant private interest in his liberty, the scales tip sharply in favor of enjoining Respondents from re-arresting Mr. Huynh unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger

to the community, and that his removal is reasonably foreseeable.

70. As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. See *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for detaining Mr. Huynh in February 2026 when he lived at liberty complying with the conditions of his release since 2000.

71. Further, there are presently multiple major class-action lawsuits that have been filed against respondents over systemic issues in immigration detention centers, including: inadequate food, water, and medical care; unsanitary conditions such as sewage leaks and insect infestations; overcrowding and lack of proper bedding/hygiene items; use of solitary confinement for vulnerable populations; and forced labor by private contractors.

72. Enjoining Mr. Huynh's re-arrest until ICE (1) moves for a custody re-determination before an IJ and (2) demonstrates by clear and convincing evidence that Mr. Huynh is a flight risk or danger to the community is far less costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the Public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

MR HUYNH'S REMOVAL TO VIENAM IS NOT FORESEEABLE

73. The United States Supreme Court has accordingly construed Section 1231(a)(6) as authorizing post-final order detention only for a "period reasonably necessary to secure removal," a period that the Court determined to be presumptively six months. *Zadvydas*, 533 U.S. at 699-701. After this six-month period, if a detainee provides "good reason" to believe that his or her removal is not significantly likely in the reasonably foreseeable future, "the Government must

respond with evidence sufficient to rebut that showing." *Id.* at 701. If the government cannot do so, the individual must be released.

74. In the instant matter, Mr. Huynh's removal to Vietnam is not foreseeable. Mr. Huynh is a stateless individual having presumably been admitted as a refugee prior to his entry to the United States in 1989. Further, Mr. Huynh presently does not have any identification and more importantly travel documentation from Vietnam as he has existed as a stateless individual since his removal order was entered in 1997.

75. In addition, many courts have found in similarly situated cases that removal is not foreseeable despite Respondents' efforts. *See Chi Nguyen v. Noem,* 3:23-cv-030777-RBM-BJW (S.D. Cal. Nov. 21, 2025). "While Respondents claim ICE has removed 324 pre-1995 Vietnam refugees in the past fiscal year, this alone does not make *Petitioner's* removal reasonably foreseeable." *See Thai*, Case No.: 3:25-cv-02436-RBM-MMP, ECF No. 10 at 8-9; *accord Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *4 (E.D. Cal. July 16, 2025) (rejecting contention that removal is reasonably foreseeable "because removals to Vietnam are in fact occurring" where "[p]re-1995 Vietnamese immigrants may be repatriated to Vietnam on 'a case-by-case basis'" and Vietnam has "discretion whether to issue a travel document to any individual.") (quoting *Hoi Thanh Duong v. Tate*, No. 24-cv-04119-H, 2025 WL 933947, at *4 (S.D. Tex. Mar. 27, 2025)); *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341, at *6 (E.D. Cal. Nov. 6, 2025) ("[T]he 2020 MOU does not mandate that Vietnam accept all eligible pre-1995 Vietnamese refugees with orders of removal; it . . . does not give rise to any rights or obligations under domestic or international law; it does not create or confer any rights, privileges, or benefits on any individual.") (quoting *Nguyen v. Hyde, 788 F.Supp.3d 144, 151 (D. Mass. 2025)) (cleaned up)*; *Xuan Ho v. Noem*, 25-cv-02453-BAS-BLM (S.D. Cal. Oct 20, 2025)

"Relying on *Zadvydas,* the Government in this case released Mr. Huynh after over six months of detention, presumably agreeing that there was no significant likelihood of removal to Vietnam in the reasonably foreseeable future in 2018. The Government argues that circumstances have changed because Vietnam is now accepting Vietnamese immigrants who have immigrated before 1995, and that the Government has had a 100% success rate in achieving removal... However, as of October 17, 2025, Petitioner has received no notice of any travel documents being issued, ... if no travel documents have, in fact, been issued, then Petitioner has met his burden."

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

76. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

77. The INA provides for detention during the ninety (90) day "removal period" that begins immediately after a noncitizen's order of removal becomes final. 8 U.S.C. § 1231(a)(1). After the ninety (90) day removal period, the INA and its applicable regulations provide that detaining noncitizens is generally permissible only upon notice to the noncitizen and after an individualized determination of dangerousness and flight risk. See 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(d), (f), (h) & (k).

78. Respondents are not permitted to continue to detain Mr. Huynh based on his prior order of removal and without any determination of whether circumstances have changed such that his removal is reasonably foreseeable, and a determination of his danger and flight risk, by an Immigration Judge. This is especially true where, as here, Mr. Huynh received a determination from the agency issuing his Form I-220B that permitted him to remain out of custody in the first place. 8 C.F.R. § 241.13(i)(2)-(3).

79. The Court should therefore order that, prior to any re-arrest of Mr. Huynh, the government must provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, inter alia, whether clear and convincing evidence demonstrates that circumstances have changed such that Mr. Huynh's removal is reasonably foreseeable, and a determination of his danger and flight risk, such that re-detention is warranted. During any custody redetermination hearing that occurs, this Court or, in the alternative, a neutral adjudicator must consider alternatives to detention.

COUNT II
Violation of Due Process

80. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

81. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

Substantive Due Process Violations

82. The Substantive Due process right under the Fifth Amendment forbids unlawful punishment. Such punishment may be inferred here because Respondents have not lawfully terminated Petitioner's Deferred Action grant via reasoned decision making. "[I]f restriction or condition is not reasonably related to a legitimate goal – if it is arbitrary or purposeless." *Bell v. Wolfish*, 441 U.S. 520,53 (1979). This is especially the case where, as here, less punitive alternatives are available, such as the reporting requirement Respondent was subject to, and complied with, for twenty-five years.

83. Petitioner's re-detention without any determination of whether circumstances have changed such that his removal is reasonably foreseeable, and a determination of his danger and flight risk, by an immigration judge. This is especially true where, as here, Mr. Huynh received a determination from the agency issuing his Form I-220B that permitted him to remain out of custody in the first place. 8 C.F.R. § 241.13(i)(2)-(3).

84. Petitioner's re-detention violates the Due Process Clause because it is not rationally related to any immigration purpose; because it is not the least restrictive mechanism for accomplishing any legitimate purpose the government could have in imprisoning Petitioner; and because it lacks any statutory authorization.

Procedural Due Process Violations

85. Further, the Due Process Clause of the Fifth Amendment requires sufficient notice and an opportunity to be heard prior to the deprivation of any protected rights. U.S. Const. amend. V; see also *Louisiana Pacific Corp. v. Beazer Materials & Services, Inc.*, 842 F.Supp. 1243, 1252 (E.D. Cal. 1994) ("[D]ue process requires that government action falling within the clause's mandate may only be taken where there is notice and an opportunity for hearing.").

86. Further, the Due Process Clause of the Fifth Amendment requires sufficient notice and an opportunity to be heard prior to the deprivation of any protected rights. U.S. Const. amend. V; see also *Louisiana Pacific Corp. v. Beazer Materials & Services, Inc.*, 842 F.Supp. 1243, 1252 (E.D. Cal. 1994) ("[D]ue process requires that government action falling within the clause's mandate may only be taken where there is notice and an opportunity for hearing.").

87. Government agencies are required to follow their own regulations. Rokhfirooz,

2025 WL 2646165, at 4 (citing *United States ex. Re. Accardi v. Shaughnessy,* 347 U.S. 260, 268 (1954); *Nat'l Ass'n of Home Builders v. Norton,* 340 F.3d 835, 852 (9th Cir. 2003)). Courts have determined where ICE fails to follow its own in revoking release, the detention is unlawful and petitioner's release must be ordered. *Id.*

88. Mr. Huynh has a protected interest in his life. Thus, before any detention or third country removal, Mr. Huynh must be provided with constitutionally compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country. This is especially true under the presumption that Vietnam was the only country designated as the country of removal when Mr. Huynh was placed in immigration proceedings.

89. For these reasons, Mr. Huynh's detention and removal to any third country without adequate notice and an opportunity to apply for relief under the Convention Against Torture would violate his procedural due process rights. The only remedy of this violation is for this Court to order that he not be summarily detained nor removed to any third country unless and until he is provided constitutionally adequate procedures.

COUNT III

VIOLATION OF THE PROHIBITION OF CRUEL AND UNUSUAL PUNISHMENT OF THE EIGHTH AMENDMENT TO THE U.S. CONSTITUTION

90. Petitioner realleges and incorporates by reference each and every allegation contained above.

91. Petitioner alleges that Respondents will violate the Eighth Amendment of the United States Constitution, which prohibits cruel and unusual punishment, by subjecting Petitioner to prolonged and indefinite immigration detention under circumstances that are excessive, punitive, and devoid of justification.

92. Petitioner's detention will be punitive in nature, as it serves no valid immigration

purpose, is not narrowly tailored to a legitimate government interest, and will cause Petitioner to suffer from arbitrary detention, which rises to the level of cruel and unusual punishment in violation of the Eighth Amendment.

COUNT IV

VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT'S PROHIBITION OF AGENCY ACTIONS THAT ARE ARBITRARY, CAPRICIOUS AND CONTRARY TO LAW

93. Petitioner realleges and incorporates by reference the paragraphs above.

94. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Respondents will have acted arbitrarily and capriciously by attempting to re-detain Petitioner without notice or an opportunity to respond.

95. If an agency fails to follow its own policies and regulations, it can be arbitrary, capricious and contrary to law under the APA, *see Accardi*, 347 U.S. 260, 226 (1954). To grant relief in the context of an *Accardi* APA violation, a Court may direct an agency to properly apply its own policies or may apply the policy itself. *Jimenez v. Cronen*, 317 F.Supp. 3d 626, 657 (D Mass. 2018) (ordering a bond hearing under ICE's standards rather than permitting ICE to remedy its own failure).

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Enjoin ICE from re-arresting Mr. Huynh unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that his removal is reasonably foreseeable, and that he is a danger or a flight risk by clear and convincing evidence;

(3) Declare that Mr. Huynh cannot be re-arrested unless and until he is

afforded a hearing on the question of whether his re-incarceration would be lawful— i.e., whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;

(4) Order that, prior to any future re-detention, Mr. Huynh is provided a hearing before an immigration judge where the government bears the burden complying with the regulations to ensure Mr. Huynh's due process rights remain intact;

(5) Order that Mr. Huynh cannot be removed to any third country without first being provided constitutionally compliant procedures.

(6) Award reasonable costs and attorney fees; and

(7) Grant such further relief as the Court deems just and proper.

Dated: March 6, 2026

Respectfully submitted,

/s/ Jason R. Mudd

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