IN THE UNITED STATES DISTRICT COURT
FOR THE 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 Hon. John W. Lungstrom U.S. District Judge

PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE

Petitioner, HUNG HUYNH, by and through counsel, LOUISE T. CARHART, is a noncitizen detained by Immigration and Customs Enforcement ("ICE"), and petitions this Honorable Court for a Writ of *Habeas Corpus* under 28 U.S.C. §2241, alleging his detention is illegal and that Respondents have violated his right to due process guaranteed by the Fifth Amendment. Petitioner respectfully submits this response pursuant to the Court's Order to Show Cause, Doc. 3. The § 2241 habeas petition should be granted as Petitioner has been detained after the unlawful revocation of his order of supervision, is far beyond the 90-day removal period mandated by 8 U.S.C. § 1231(a)(2)(a), and his removal is not reasonably foreseeable at this time.

STATEMENT OF FACTS

Petitioner was placed in removal proceedings on or about September 29, 1995, and ordered deported on or about March 19, 1997. ECF No. 8-1 ¶¶ 10-11. Petitioner subsequently appealed the Immigration Judge's decision to the Board of Immigration Appeals. *Id.* ¶ 12. This appeal was denied on or about August 25, 1997. *Id.* ¶ 13. Upon his release from criminal custody, Petitioner was transferred to ICE custody on or about February 14, 2001. *Id.* ¶ 16. He was released on an order of supervision on or about October 23, 2001, as his removal did not appear reasonably foreseeable at that time. *Id.* ¶ 17.

A. Revocation of Order of Supervision.

It is well-established under the Due Process Clause that individuals released from incarceration have a liberty interest in their freedom. Following Mr. Huynh's release on an order of supervision in 2001, he was entitled to liberty protections under the Due Process Clause, which requires notice and a hearing prior to re-detention. The Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the very liberty that [the Due Process Clause] protects." *See Zadvydas v. Davis*, 533 U.S. 678, 690, (2001). The Fifth Amendment's Due Process Clause extends to all persons, regardless of status. *See A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025). Thus, noncitizens such as Petitioner are entitled to its protections. *Id.*

According to Respondents, on or about December 24, 2025, the Assistant Field Office Director signed a Notice of Revocation of Release. ECF No. 8-1, ¶ 18. This assertion is based on the statement of Petitioner's Deportation Officer, however the Notice of Revocation of Release has not been produced. Per the regulations, an Assistant Field Office Director does not have the authority to sign a Notice of Revocation of Release. 8 C.F.R. § 241.4(c)(1).[1] Further, this purported revocation was signed on December 24, 2025, but was not provided to Petitioner for over a month, during which he was detained. ECF No. 8, ¶ 7. In addition to failing to comply with the regulations in signing the Notice of Revocation of Release, Respondents also failed to conduct an informal interview as required under 8 C.F.R. § 241.13(i)(3). This informal interview is meant to afford Petitioner an opportunity to:

> "Submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release."

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[1] 8 C.F.R. § 241.4(c)(1) and (2) state that the Attorney General's statutory authority to make custody determinations under §§ 241(a)(6) and 212(d)(5)(A) is delegated to District Directors, Directors of Detention and Removal Field Offices, Executive Associate Commissioners, or any person or persons designated in writing by the Executive Associate Commissioner, the Director of the Detention and Removal Field Office, or the district director. No written designation authorizing the Assistant Field Office Director to issue Notices of Revocation of Release has been produced or referenced by Respondents.

Respondents have made no indication on the record that the Notice of Revocation of Release was properly issued or that they complied with the regulations which set forth an explicit process for revocation. Therefore, Respondents have defied both regulatory and constitutional requirements in revoking Petitioner's order of supervision.

Congress did not intend for the Department of Homeland Security to pick and choose which regulations they enforce. Respondents have created a reasonable expectation and reliance over the past twenty-five years that Petitioner would be permitted to live and work in the United States without being subject to extra-regulatory and arbitrary arrest and removal. *See 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).

B. Removal of Vietnamese Nationals.

In asserting that the removal of Vietnamese nationals who arrived in the United States pre-1995 is common, Respondents again rely on Exhibit A (ECF No. 8-1). This declaration, authored by a deportation officer who joined Immigration and Customs Enforcement ("ICE") in December 2025, quotes statistics and information that have not been entered into evidence, and the basis of those statistics has not been established. The declaration states that all requested travel documents have been issued by the Vietnamese government, while admitting in the same document that the Vietnamese government has failed to produce Petitioner's travel documents within the 30-day timeline. ECF No. 8-1 ¶¶ 20-28, 30. In fact, ICE has followed up on the travel documents five times over a two-month period with no success. *Id.* ¶¶ 20-28.

Three months have now passed without the production of travel documents. Respondent remains detained at the Midwest Regional Reception Center. *See* Exhibit B. Any assertion that Vietnamese nationals with pre-1995 entries are being removed regularly is speculative and not based on evidence in the record.[2] Respondents have not argued that Petitioner is in any way failing

[2] Recent testimony from the Department of Homeland Security gives Petitioner good reason to doubt the validity of statistics coming from the Department without basis. *See* "Noem confronted by House Democrats, including about allegedly removing veterans from U.S" CBS News Dec. 11, 2025 https://www.cbsnews.com/news/noem-confronted-house-democrats-removing-veterans/.

or refusing to make a timely, good-faith application for travel documents. 8 U.S.C. § 1231(a)(1)(C).

C. 90-Day Removal Period.

8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during "the removal period," which is defined as the 90-day period beginning on "the latest" of either "[t]he date the order of removal becomes administratively final"; "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order"; or "[i]f the [noncitizen]is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement."

Although 8 U.S.C. § 1231(a)(6) permits detention "beyond the removal period" of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that "the statute, read in light of the Constitution's demands, limits [a noncitizen's] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

The first justification of preventing flight, however, is "by definition . . . weak or nonexistent where removal seems a remote possibility." *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable, and the flight prevention justification for detention accordingly is "no longer practically attainable, detention no longer 'bears [a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, "preventive detention based on dangerousness" is permitted "only when limited to specially dangerous

individuals and subject to strong procedural protections." *Zadvydas*, 533 U.S. at 690–91. If removal is reasonably foreseeable, "the habeas court should consider the risk of the [noncitizen's] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period." *Id.* at 700.

Multiple courts have found that the six-month detention review cutoff created in *Zadvydas* need not be fulfilled if the detention period has exceeded a reasonable period. See *Nadaud v. Emerson*, No. 1:26-cv-90, 2026 LX 31002 (W.D. Mich. Feb. 6, 2026); *Cruz Medina v. Baker* 1:25-cv-01768 (D. Maryland 2025). Mr. Huynh has not been arrested since his release from ICE detention in 2001. His removal is not reasonably foreseeable as travel documents have not been produced. Respondents' claim that his detention is mandated by statute ignores 8 U.S.C. § 1231(a)(3), which states "If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision." In *Xuan Ho v. Noem,* the court found that "if no travel documents have, in fact, been issued, then Petitioner has met his burden." 25-cv-02453-BAS-BLM (S.D. Cal. Oct 20, 2025). ICE states it is securing travel documents for Mr. Huynh, with no explanation for why it has taken three months to do so. *See* ECF No. 8-1 ¶¶ 20-28. Without any further knowledge of why travel documents have not been issued, where ICE is in the process of procuring those documents, or how long ICE anticipates the process to take, Mr. Huynh's removal is not reasonably foreseeable, and his detention appears indefinite.

CONCLUSION

Mr. Huynh's supervision was not properly revoked in accordance with the regulations. As a result, he has been detained and separated from his family for 92 days. Respondents have not offered a reason for the delay in his removal despite claiming that removal is foreseeable. For these and the foregoing reasons, we urge this Court to grant Mr. Huynh's § 2241 habeas petition so that he may return to his family.

Dated: May 6, 2026

Respectfully submitted,

/s/ Jason R. Mudd
Jason R. Mudd
KSD Bar. No. 25749
SHOOK, HARDY & BACON L.L.P.
2555 Grand Boulevard
Kansas City, MO 64108
P: 816-474-6550
F:816-421-5547
jmudd@shb.com

Louise T. Carhart (admitted *pro hac vice*)
Attorney at Law
KEMPSTER CORCORAN, QUICENO & LENZ-CALVO, LTD.
332 S Michigan Avenue, Suite 1428
Chicago, Illinois 60604
louisec@klc-ltd.com
(312) 341-9730 Ext 119
Atty No. 6343214

Counsel for Petitioner Hung Huynh

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2025, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the District of Kansas by using the CM/ECF system. All parties to this case are registered CM/ECF users and will be served through the CM/ECF system.

/s/ Dana E. Hardy
On behalf of Jason R. Mudd