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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

ANH VO TRAN,
Petitioner,
v.

JUAN BALTAZAR,
in his official capacity as Warden of the Aurora Contract Detentoin Facility owned and operated by GEO Group, Inc.;

GEORGE VALDEZ,
in his official capacity as Field Office Director, Denver, U.S. Immigration & Customs Enforcement;

KRISTI NOEM
in her official capacity as Secretary, U.S. Department of Homeland Security;

TODD LYONS, in his official capacity as Acting Director of Immigration & Customs Enforcement (ICE);

PAM BONDI,
in his official capacity as Attorney General, U.S. Department of Justice.

Respondents.

Case No. 1:26-cv-00940

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. The issue before this Court is not complicated. Respondents illegally incarcerate Petitioner, Anh Vo Tran ("Mr. Tran"), at the Denver Contract Detention Facility in Aurora, Colorado ("Aurora Facility").[1] Respondents' authority under 8 U.S.C. § 1231 to jail him expired 180 days after the Immigration Judge's ("IJ") order to remove Mr. Tran to Vietnam became final on August. 12, 2003. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (finding the government's authority under 8 U.S.C. § 1231 limited to six months unless the Government shows a significant likelihood of removal in the reasonably foreseeable future). In other words, ICE's authority to jail Mr. Tran pursuant to its authority in 8 U.S.C. § 1231 expired 8062 days ago. Nevertheless, Immigration and Customs Enforcement ("ICE") jailed Mr. Nguyen pursuant to § 1231 on November 4, 2025 when he duly reported to an ICE check-in.

2. There is no significant likelihood that Respondents will remove Mr. Tran in the reasonably foreseeable future. In fact, ICE agreed when it released Mr. Tran on an Order of Supervision ("OSUP") approximately 22 years ago. ICE has not taken any significant steps to secure Mr. Tran's removal since it jailed him without notice or cause when he reported to an in-person ICE appointment. This Court must therefore order Mr. Tran's immediate release.

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[1] This Petition does not refer to the Aurora Facility or Petitioner's loss of liberty as detention because it does not accurately reflect the conditions at the Aurora Facility. *E.g.*, *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. of Colo. 2024) (citation omitted) (acknowledging that the District of Colorado found that the GEO Facility is "more akin to incarceration than civil confinement"). Indeed, the conditions in the Aurora Facility are "abhorrent." *Arosteguí-Maldonado v. Baltazar*, 794 F.supp.3d 926, 940 (D. Colo. 2025).

PARTIES

3. Mr. Tran complied with all aspects of his OSUP and was at liberty in the United States for 22 years until ICE rejailed him without notice or an opportunity to be heard regarding whether his incarceration was necessary. Now, 8062 days since his removal order became final, ICE keeps Mr. Tran incarcerated at the Aurora Facility without the statutory authority to do so and in violation of his constitutionally protected liberty interest. If released, Mr. Tran will return to live with his pregnant U.S. citizen wife and U.S. citizen child in Kansas. Mr. Tran has no claim to citizenship in any country other than Vietnam.

4. Respondent George Valdez is sued in his official capacity as Field Office Director of ICE Detention and Removal Operations for the Denver District. He has jurisdiction over the Area of Responsibility in which Mr. Tran is jailed, is authorized to release Mr. Tran, and is a legal custodian of Mr. Tran.

5. Respondent Todd Lyons is sued in his official capacity as the Acting Director for ICE. He is responsible for the enforcement of the immigration laws and is a legal custodian of Mr. Tran.

6. Respondent Kristi Noem is sued in her official capacity as the Secretary of the Department of Homeland Security ("DHS"), the arm of the U.S. government responsible for enforcing the immigration laws. Secretary Noem is a legal custodian of Mr. Tran because ICE is a sub-agency of DHS.

7. Respondent Pam Bondi sued in her official capacity as the Attorney General of the United States, the chief officer within the Department of Justice ("DOJ"). The DOJ encompasses the Board of Immigration Appeals ("BIA") and the IJs as sub-agencies of the

Executive Office of Immigration Review ("EOIR"). Attorney General Bondi shares responsibility for the implementation and enforcement of the immigration laws.

8. Respondent Juan Baltazar is sued in his official capacity as the Warden of the Auroa Facility. He is a legal custodian while Mr. Tran is detained at the Aurora Facility.

CUSTODY

9. Mr. Tran is in ICE's physical custody. His immediate custodian is George Valdez, Field Office Director of ICE Detention and Removal Operations for the Denver District. ICE jails Mr. Tran at the Aurora Facility, located at 3130 N. Oakland Street in Aurora, CO. Warden Baltazar oversees the Aurora Facility's operations and is employed by GEO Group, Inc.

10. Section 1231 of 8 U.S.C. authorized ICE's incarceration of Mr. Tran's from August 12, 2003 until February 8, 2004. 8 U.S.C. § 1231; *Zadvydas*, 533 U.S. at 701 (holding that the statute only permits incarceration for 180 days after a final removal order unless removal is significantly likely in the reasonably foreseeable future).

11. Nevertheless, Respondent Valdez and his agents continue to jail Mr. Tran; he is therefore "in custody under or by color of the authority of the United States" for purposes of habeas corpus under 28 U.S.C. § 2241(c)(1).

JURISDICTION AND VENUE

12. This action arises under the Constitution of the United States, 28 U.S.C. § 2241(c)(1), (3), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*

13. Under 28 U.S.C. § 1331, this Court has federal question jurisdiction over actions arising under the Constitution, laws, or treaties of the United States.

14. Federal courts have subject matter jurisdiction under 28 U.S.C. § 2241(c)(1) and (c)(3) (habeas corpus) to determine whether the government unlawfully imprisons people in its custody. *INS v. St. Cyr*, 533 U.S. 289, 305 (2001) *superseded by statute*, REAL ID Act of 2005, 119 Stat. 310 (codified as amended at 8 U.S.C. § 1252(a)(5) (2005)), *as recognized in Nasrallah v. Barr*, 140 S. Ct 1683 (2020); *Boumediene v. Bush*, 128 S.Ct. 2229, 2248 (2008) (citing *St. Cyr*).

15. Jurisdiction is also proper pursuant to 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (waiver of sovereign immunity); 28 U.S.C. § 1346 (original jurisdiction); Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); the All Writs Act, 28 U.S.C. § 1651; and 28 U.S.C. §§ 2201–02 (Declaratory Judgement Act). Mr. Tran also relies on Fed. R. Civ. P. 57 because he seeks declaratory and injunctive relief.

16. Mr. Tran is "in custody," and the custody is "in violation of the Constitution or laws or treaties of the United States." *Zadvydas*, 533 U.S. at 688 ("We conclude that § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention."); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.").

17. Venue properly lies in the District of Colorado. 28 U.S.C. §§ 1391(b)(2), (e); 2241. This petition is filed while Mr. Tran is physically present within the district because he is detained by Respondents Baltazar and Valdez at the Aurora Facility in Aurora, CO. Undersigned counsel is also in the district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. Exhaustion is not required because Congress did not codify a requirement that petitioners seeking a writ of habeas corpus must exhaust administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) ("Where Congress specifically mandates, exhaustion is required. … But where Congress has not clearly required exhaustion, sound judicial discretion governs.") (citation omitted).

19. While inapplicable here, some situations require a Petitioner to exhaust administrative remedies prior to seeking a writ under § 2241. *Baquera v. Longshore*, 948 F. Supp. 2d 1258, 1259 (D. Colo. 2013) (citing *Williams v. O'Brien*, 792 F.2d 986, 987 (10th Cir. 1986) (per curiam)) *abrogated on different grounds by Nielsen v. Preap*, 139 S. Ct. 954 (2019). However, exhaustion is unnecessary if futile. *Goodwin v. State of Okl.*, 923 F.2d 156, 157 (10th Cir. 1991) (finding that exhaustion is not required due to futility where the state's highest court recently decided the precise legal issue petitioner raised in his federal habeas petition).

20. Here, exhaustion is futile because the detention statute does not provide for a bond hearing when an individual is held pursuant to 8 U.S.C. § 1231. *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2277 (2021) (when a noncitizen "is ordered removed and the order becomes 'administratively final,' detention becomes mandatory."). An IJ lacks jurisdiction over Mr. Tran's custody status.

21. In other words, ICE is judge and jailer. ICE conducts its own custody reviews for detained noncitizens every 90 days after a final removal order. 8 C.F.R. §§ 241.4(d), (h), (i), (k). During those reviews, ICE must consider, *inter alia*, whether the noncitizen is a non-violent person; whether they will remain non-violent if released; whether they are

likely to violate conditions of release; whether they had any disciplinary infractions or incidents while incarcerated; whether they have criminal legal contacts; whether they will adjust to life in the community; and whether they will engage in future criminal activity if released. 8 C.F.R. §§ 241.4(e),(f).

22. After his removal order became final on August 12, 2003, ICE sought to secure Mr. Tran's removal while he remained in ICE custody. Unable to remove him, ICE released Mr. Tran on an OSUP approximately three months later. He complied with his OSUP requirements for 22 years until ICE rejailed him on November 4, 2025 without notice or an opportunity to be heard. Since being reincarcerated, ICE has not provided Mr. Tran with the process he is due.

23. Although no statutory exhaustion requirements apply to Mr. Tran's claim of unlawful incarceration, he exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. The Supreme Court agrees. *See Zadvydas*, 533 U.S. at 692 (criticizing the limited protections Respondents provide in the post-removal process as likely unconstitutional).

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

24. Mr. Tran is fifty-four years old and was born in Vietnam. He has no ties to any country other than Vietnam and the United States. Mr. Tran lawfully entered the United States from Vietnam pursuant to the Humanitarian Operation in 1992 and became a lawful permanent resident ("LPR").

25. The IJ ordered Mr. Tran's removal to Vietnam on August 12, 2003. ICE kept Mr. Tran in custody for approximately three months and then released him on an OSUP,

concluding *inter alia* that his removal was not significantly likely in the reasonably foreseeable future and that he was neither a risk of flight nor a danger to the community.

26. For the next 22 years, Mr. Tran complied with all aspects of his OSUP, while building a life for himself and his family.

27. Nevertheless, ICE jailed Mr. Tran on November 4, 2025 when he duly reported to ICE for an appointment. ICE did not give Mr. Tran an opportunity present evidence or arguments as to why his reincarceration was unnecessary at the time of his incarceration or since. The only reason ICE gave Mr. Tran for his reincarceration was that he was subject to a deportation order.

28. On November 30, 2025, ICE provided Mr. Tran a Notice to [Noncitizen] to File Custody Review ("Notice"). The Notice indicated that ICE would provide Mr. Tran with an opportunity to demonstrate that he need not be detained on February 2, 2026. ICE did not interview Mr. Tran on that date nor has ICE provided him another mechanism to contest whether his custody is necessary.

29. As of the date of this filing, ICE has not shown Mr. Tran a travel document to any country; Mr. Tran does not have a passport from any country; ICE has not advised Mr. Tran that it is seeking his removal to any country. ICE has not provided Mr. Tran with a prompt interview to determine whether his custody is necessary.

30. Mr. Tran has no disciplinary infractions or behavioral issues while in ICE custody.

31. Mr. Tran has no diagnosed mental health conditions and ICE is not treating him for any at the Aurora Facility.

32. Mr. Tran has always been cooperative with ICE's demands and ICE has never told him otherwise, as required by 8 C.F.R. § 241.4(g)(5).

33. ICE first jailed Mr. Tran pursuant to 8 U.S.C. § 1231 for approximately 90 days before releasing him on an OSUP. Since ICE reincarcerated Mr. Tran on November 4, 2025, ICE has kept Mr. Tran at the Aurora Facility pursuant to 8 U.S.C. § 1231 for an additional 122 days. In total, ICE has jailed Mr. Tran for approximately 212 days.

LEGAL FRAMEWORK FOR RELIEF SOUGHT

ICE's Incarceration of Mr. Tran Violates the Statute and Constitution

34. ICE is generally required to physically remove someone subject to a final removal order during the 90-day removal period. 8 U.S.C. § 1231(a). The removal period begins on: "(i) [t]he date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). Incarceration during the removal period is mandatory. 8 U.S.C. § 1231(a)(2). Pursuant to 8 U.S.C. § 1231(a)(6), ICE "may" keep someone incarcerated beyond the 90 days under limited circumstances. 8 U.S.C. § 1231(a)(6).

35. In *Zadvydas*, the U.S. Supreme Court held that 8 U.S.C. § 1231(a)(6), when "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. A "habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699. If the individual's removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute." *Id.* at 699–700.

36. The "presumptively reasonable period of detention" for someone subject to a final order of removal is six months. *Zadvydas*, 533 U.S. at 701. ICE's administrative

regulations also recognize that the Headquarters Post-Order Detention Unit ("HQPDU") has a six-month period for determining whether there is a significant likelihood of a noncitizen's removal in the reasonably foreseeable future. 8 C.F.R. § 241.4(k)(2)(ii).

37. ICE cannot continue to detain someone beyond the presumptive six months pursuant to 8 U.S.C. § 1231(a)(1)(C) except in limited circumstances. "A review of the case law shows that the courts have read § 1231(a)(1)(C) narrowly." *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 501 (S.D.N.Y. 2009) (collecting cases). "The Congressional intent underlying § 1231 is for the Attorney General to remove a [ ] [noncitizen] subject to an order of removal within the 90-day removal period, if possible." *Farez-Espinoza*, 600 F. Supp 2d at 502; *Morales-Fernandez v. INS*, 418 F.3d 1116, 1123 (10th Cir. 2005). It is "the responsibility of [ICE] to make a bona fide attempt to do so within the removal period." *Farez-Espinoza*, 600 F.Supp.2d at 502. When ICE does not fulfill its responsibility, § 1231(a)(1)(C) does not apply. *Id.*; *Nzayikorera v. Fabbricatore, et al.*, 1:21-cv-02037-RMR, 2021 WL 9385836, at *2 (D. Colo. Sept. 9, 2021) ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute") (citation and quotations omitted).

38. The statute does not permit ICE to pause and restart the presumptively reasonable period of post-removal detention by repeatedly detaining and releasing a noncitizen after a final removal order. *Farez-Espinoza*, 600 F. Supp. 2d at 499; *Ulysse v. Department of Homeland Sec.*, 291 F.Supp.2d 1318, 1325 (M.D.Fla. 2003). ICE cannot "arbitrarily trigger commencement of the removal period by simply waiting to take a [noncitizen] into custody . . . If [ICE] are allowed the liberty to decide when they will comply or even attempt compliance with the statutes that they are charged with enforcing,

the statutory scheme will be rendered a nullity . . . . Federal agencies should not and do not have such power." *Uylsee*, 291 F.Supp.2d at 1325–26; *Diaz-Ortega v. Lund*, 1:19-cv-670-P, 2019 WL 6003485, at *9–10 (W.D.La. Oct. 15, 2019). In other words, district courts should "conclude that at detainee's periods of detention should be considered together in determining whether the detention has exceeded the presumptively reasonable time under *Zadvydas*." *Aguilar v. Noem*, 25-cv-03463-NYW, 2025 WL 3514282, at *3 (D. Colo. Dec. 8, 2025) (collecting cases). Both Judge Wang, *id.*, and Chief Judge Brimmer agree, *Pena-Gil v. Lyons*, 25-cv-03268-PAB-NRN, 2025 WL 3268333, at *2 (D. Colo. Nov. 24, 2025).

39. After six months of incarceration, if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701; *Aguilar*, 2025 WL 3514282, at *4. That requirement is particularly relevant when ICE, as here, revokes someone's OSUP presumably to effectuate their removal. 8 C.F.R. § 241.13(i)(2); *Pan v. Oddo*, No. 3:25-cv-00265, 2025 WL 3960013, at *2 (W.D. Pa. Dec. 1, 2025), *report and recommendation adopted*, No. 3:25-cv-265, 2025 WL 3701296 (W.D. Pa. Dec. 21, 2025).

40. Here, ICE's statutory authority to jail Mr. Tran expired on February 8, 2004, 180 days after his removal order became final. ICE's failure to remove Mr. Tran for the past 22 years and inability to produce a travel document to any country despite jailing Mr. Tran for an aggregate of approximately 212 days is good reason to believe that his removal is not significantly likely in the reasonably foreseeable future.

41. That is particularly true since the District of Massachusetts issued its February 25, 2026 decision in *D.V.D. v. U.S. Department of Homeland Security*, ---F.Supp.3d---,

2026 WL 521557 (D. Mass. Feb. 25, 2026). There, the court set aside Respondents' Third Country Removal Policy as unlawful and ordered Respondents to give class members a "meaningful opportunity to raise a country-specific claim against removal before removal to any third country." *Id.* at *44. Mr. Tran is a class member[2] and ICE has not notified him of an attempt to remove him to a third country (or any country) since his reincarceration. But considering its inability to remove Mr. Tran to Vietnam for the past 22 years, and now its inability to remove Mr. Tran to a third country[3] without providing him meaningful process, ICE is not significantly likely to remove Mr. Tran in the reasonably foreseeable future. Mr. Tran's continued incarceration violates the statute and constitution.

ICE's Reincarceration of Mr. Tran Violates Procedural Due Process

42. Alternatively, this Court must order Mr. Tran's immediate release because ICE did not provide Mr. Tran with procedural due process when it decided to rejail him despite knowing his removal is not significantly likely in the reasonably foreseeable future.

43. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty . . . ." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified).

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[2] On April 18, 2025, the court certified a nationwide class defined as "[a]ll individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5) or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in prior proceedings as a country to which the individual would be removed." *D.V.D. v. DHS*, 778 F.Supp.3d 355, 378 (D. Mass 2025).

[3] The court stayed its decision for fifteen days "from date of issuance or until the First Circuit rules on any motion for administrative stay or stay pending appeal . . . ." *D.V.D.*, 2026 WL 521557, at *44. As of the date of this petition and the concurrently filed Temporary Restraining Order, no stay has been granted.

The "touchstone" of due process is protecting people against arbitrary government action, whether from "denial of a fundamental procedural fairness, or the exercise of power without any reasonable justification in the service of a legitimate government objection." *Cty. of Sacremento v. Lewis*, 532 U.S. 833, 845–46 (1998).

44. Whether government action violates procedural due process is determined by the three-factor balancing test in *Mathews*. 424 U.S. at 335. The test requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* A proper application of the test demonstrates ICE's unlawfulness and the need for this Court to order Mr. Tran's release.

45. First, the private liberty interest at stake is the most significant liberty interest there is, the interest in being free from imprisonment. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Freedom from bodily restrain has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Incarceration "constitutes a significant deprivation of liberty that requires due process protection" no matter the purpose. *Jones v. United States*, 463 U.S. 354, 361 (1983).

46. Mr. Tran has a protected liberty interest even though he was "subject to extensive conditions of release . . . ." *Guillermo M.R. v. Kaiser*, 791 F.Supp.3d 1021, 1030 (N.D.Ca. 2025) (citation omitted); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

Moreover, ICE jails Mr. Tran in a facility that every court in this District has determined is akin to a penal institution. *E.g.*, *Daley v. Choate*, 22-cv-03034 (RM), 2023 WL 2336052 at *4 (D. Colo. 2023). This factor therefore weighs heavily in Mr. Tran's favor.

47. Second, the risk of erroneous deprivation of Mr. Tran's liberty interest is significant because ICE's decision to re-jail Mr. Tran lacked *any procedures* at all, and ICE has not provided Mr. Tran with the required process since his reincarceration. *E.g.*, *Lopez v. Sessions*, 18 Civ. 4189 (RWS), 2018 WL 2932726, at *11 (S.D.N.Y. Jun. 12, 2018) (finding that the petitioner's "re-detention, in the absence of any procedure or evidentiary findings, establishes the risk of erroneous deprivation of a liberty interest"). Moreover, there is "no statutory or regulatory entitlement to a bond hearing" for individuals like Mr. Tran who ICE jails pursuant to § 1231(a). *Guillermo M.R.*, 791 F.Supp.3d at 1034. This factor therefore weighs heavily in his favor because at no point was there any notice, any process, or any independent adjudicator to consider whether stripping Mr. Tran of his liberty was necessary to prevent flight or danger to the community.

48. Third, Government's interest is not served by the process it gave Mr. Tran because, once again, it gave him no process. The Supreme Court recognized that the government's interest in civil immigration detention is limited to "certain special and narrow nonpunitive circumstances." *Zadvydas*, 533 U.S. at 690 (quotation omitted). Those limited interests are mitigation of flight and danger to the community. *Id.*; *Demore v. Kim*, 538 U.S. 510, 515, 527–28 (2018). The non-existent process to jail Mr. Tran without notice, without cause, and without an interview after having released him 22 years ago does not address the government's purported interest and reeks of arbitrariness. *Lopez*, 2018 WL 2932726 at *12. This is especially true where—as here—the noncitizen "was released

pursuant to a process that involved a determination that he was neither a danger to himself or others and" then re-detained "without prior notice, a showing of changed circumstances, or any meaningful opportunity to respond . . . ." *Id.* This factor therefore also weighs in his favor.

49. Courts have repeatedly found that ICE's failure to provide noncitizens with notice and the opportunity to be heard prior to reincarceration violates procedural due process. *E.g.*, *Grigorian v. Bondi*, 25-cv-22914-RAR, 2025 WL 2604573, at *6–10 (S.D.Fla. Sept. 9, 2025); *K.E.O. v. Woosley*, No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *3 (W.D.Ky. Sept. 4, 2025); *Zhu v. Genalo*, 1:25-cv-06523 (JLR), 2025 WL 2452352, at *5–9 (S.D.N.Y. Aug. 26, 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at *5 (D. Mass. June 20, 2025); *Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137, 163–64 (W.D.N.Y. 2025). This Court should do the same.

ICE's Reincarceration of Mr. Tran Violates ICE's Own Regulations

50. ICE's decision to reincarcerate Mr. Tran also violates ICE's own regulations and therefore the *Accardi* doctrine. The INA's implementing regulations require that ICE give noncitizen's notice of the reasons for an OSUP revocation and a prompt interview to respond to those reasons. 8 C.F.R. § 241.4(l)(1); 8 C.F.R. § 241.13(i); *Perez Escobar v. Moniz*, 792 F.Supp.3d 224, 225 (D.Mass. 2025) (discussing regulatory requirements for OSUP revocation); *Hoac v. Becerra*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at * 3–4 (E.D.Ca. July 16, 2025) (same)

51. Those regulations provide that a noncitizen "who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody." 8 C.F.R. § 241.4(l)(1). The regulations require the

government to provide notice to the noncitizen of the "reasons for revocation of his or her release or parole" and further provide the noncitizen "an initial informal interview *promptly* after his or her return to Service custody to afford the [noncitizen] an opportunity to response to the reasons for revocation stated in the notification." *Id* (emphasis added). If not released following the informal interview, ICE must provide the jailed noncitizen the "normal review process" of custody determinations within three months after release is revoked. 8 C.F.R. § 241.4(l)(3).

52. "Government agencies are required to follow their own regulations." *Hoac*, 2025 WL 1993771, at *4 (citing *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). "[W]here an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, like the opportunity to be heard, and [ICE] fails to adhere to it, the challenged [action] is invalid . . . ." *Waldron v. I.N.S.*, 17 F.3d 551, 518 (2d Cir. 1993) (alterations in original). "[F]ailure to give [a noncitizen] meaningful notice of the basis for its revocation of his release violate[s] the regulation and due process." *Perez-Escobar*, 2025 WL 2084102, at *2 (citation omitted).

53. Failing to provide an interview after revocation violates the same. *Wing Nuen Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D.Kan. Jun. 17, 2025) (finding "that officials did not properly revoke petitioner's release pursuant to § 241.13" because "and most obviously . . . petitioner was not granted the required interview upon the revocation of his release"); *Ceesay*, 781 F.Supp.3d. at 166 (finding petition was not afforded even minimal due process protections when ICE failed to provide petitioner an informal interview upon reincarceration); *Santamaria Orellana v. Baker*, 25-1788-TDC, 2025 WL 2444087, at * 8 (D.Md. Aug. 25, 2025) (granting habeas petition for ICE's failure

to, *inter alia*, oblige by regulations to revoke OSUP); *Cf. Noem v. Abrego Garcia*, 604 U.S. ---, 145 S. Ct. 1017, 1019 (2025) (statement of Sotomayor, J.) (quoting 8 C.F.R. § 241.4(l), "in order to revoke conditional release the Government must provide adequate notice and promptly arrange an initial informal interview . . . to afford the [noncitizen] an opportunity to respond to the reasons for the revocation stated in the notification").

54. ICE's regulatory violations here are numerous. ICE did not provide Mr. Tran with notice of the revocation of his OSUP and did not provide him with a prompt interview after his incarceration. Despite stating its intention to do so, ICE did not interview Mr. Tran after jailing him for 30 days either. ICE's decision to rejail Mr. Tran is therefore invalid and this Court must order his immediate release.

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. § 1231

55. Mr. Tran incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

56. Respondents' continued detention of Mr. Tran is no longer authorized by statute. *Zadvydas*, 533 U.S. at 700–01. In the aggregate, ICE has kept Mr. Tran jailed for approximately 212 days since his removal order became final. The removal period began on August 12, 2003. 8 U.S.C. § 1231(a)(1)(B)(i). Mr. Tran never sought a stay of removal from a federal court and nothing stopped the removal period clock. 8 U.S.C. § 1231(a)(1)(B). He has been cooperative with ICE throughout the removal period, duly reported to ICE when requested to do so, and is not a danger to the community.

57. There is no evidence that ICE will succeed in deporting Mr. Tran in the reasonably foreseeable future. On the contrary, ICE's failure to secure Mr. Tran's removal during the removal period is evidence enough that his removal is not significantly likely in the reasonably foreseeable future. *See Morales-Fernandez v. INS*, 418 F.3d at 1124 ("The Government having brought forward nothing to indicate that a substantial likelihood of removal subsists despite the passage of six months . . . the petitions for habeas corpus should have been granted"); *See Zadvydas*, 533 U.S. at 701 (after "the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence to rebut that showing" or the petition will be granted).

58. ICE failed to deport Mr. Tran within a constitutionally compliant timeframe and there is no significant likelihood that it will be able to deport him in the reasonably foreseeable future. ICE's decision to continue Mr. Tran's detention is unreasonable and unlawful. *Zadvydas*, 533 U.S. at 701; *Clark v. Martinez*, 543 U.S. 371, 386 (2005).

COUNT TWO

Respondents Unreviewed Incarceration of Mr. Tran Violates Due Process

59. Mr. Tran incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

60. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the [detained] individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal citation omitted).

61. ICE has not provided Mr. Tran with any meaningful procedural protections and its decision to keep him incarcerated is an unconstitutional use of 8 U.S.C. § 1231. When ICE issued Mr. Tran's OSUP it found that he was neither a danger to the community nor a flight risk. Mr. Tran has no contact with the criminal legal system to now support a contrary finding. When ICE revoked his OSUP, Mr. Tran had meaningfully complied with the conditions of his OSUP and ICE had not secured necessary travel documents for removal.

62. Mr. Tran's incarceration therefore does not bear a reasonably relationship to the two lawful purposes of immigration detention: preventing danger to the community and flight prior to removal.

63. Because ICE had no legitimate, non-punitive objective in revoking Mr. Tran's OSUP, Mr. Tran's incarceration violates substantive due process under the Fifth Amendment.

COUNT THREE

Violation of Procedural Due Process

64. Mr. Tran incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

65. ICE has yet to provide Mr. Tran with any process related to its decision to revoke his OSUP and re-jail him. Respondents' revocation of Mr. Tran's OSUP without providing notice and a meaningful opportunity to be heard violates procedural due process under the Fifth Amendment.

COUNT FOUR

Violation of the *Accardi* Doctrine

66. Mr. Tran incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

67. Under the *Accardi* doctrine, Mr. Tran has a right to set aside agency action that violated agency procedures, rules, or instructions. *Accardi*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

68. Respondents' failure to provide Mr. Tran with notice of its revocation, the reasons for the revocation, an opportunity to respond to those alleged reasons, and a prompt custody review after his reincarceration or within 90 days of his reincarceration violates ICE's binding regulations.

69. Under *Accardi*, Respondents' revocation of the OSUP and reincarceration of Mr. Tran should be set aside for violating agency procedures, rules, or instructions

COUNT FIVE

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)

70. Mr. Tran incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

71. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

72. Respondents' revocation of Mr. Tran's order of supervision was arbitrary and capricious because it violated the statute, regulation, and the Constitution.

PRAYER FOR RELIEF

WHEREFORE, Mr. Tran prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring Mr. Tran outside of the jurisdiction of the District of Colorado pending the resolution of this case;

(3) Issue a writ of habeas corpus directing Respondents to immediately release Mr. Tran from ICE custody pursuant to the same or less onerous conditions on which ICE released Mr. Tran on his original OSUP;

(4) Award Mr. Tran attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

(5) Grant any other and further relief that this Court deems just and proper.

Dated this 6th day of March, 2026

/s/ Conor T. Gleason
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VERIFICATION

I, Mary Jo Highland, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Dated: March 6, 2026

/s/ Mary Jo Highland
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CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on March 6, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Leslie Bezanilla, hereby certify that I will mail a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail within 72 business hours of filing or pursuant to any forthcoming Court order requiring something else. Kevin Traskos, attorney for Respondents, confirmed with undersigned counsel that he will accept service on behalf of all Respondents.

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Pam Bondi
Attorney General of the United States
U.S. Department of Justice
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And to: Kristi Noem and Todd Lyons, DHS/ICE, c/o:

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And to:

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