

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

DUONG, MARCHEL,

Petitioner,

v.

George Sterling, Field Office Director of
Enforcement and Removal Operations,
Atlanta Field Office, Immigration and
Customs Enforcement; Markwayne
Mullin, Secretary, U.S. Department of
Homeland Security; U.S. Department of
Homeland Security; Todd Blanche,
Acting U.S. Attorney General; Executive
Office for Immigration Review; Jason
Streeval, Warden of Stewart Detention
Center,

Respondents.

Case No.

4:26-cv-570

**PETITION FOR WRIT OF
HABEAS CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. This habeas corpus petition and complaint for declaratory and injunctive relief is brought on behalf of Petitioner, Marchel Duong, who fled war-torn Vietnam, was accepted by the United States as a refugee before July 12, 1995 and have resided in the United States since 1984, at the age of 16. As a result of abrupt and unlawful actions by Respondents, the Petitioner is currently facing unwarranted and indefinite immigration detention.

2. The Petitioner became a lawful permanent resident prior to 1994 but based on criminal convictions all occurring prior to 1995, lost his green card and was ordered removed from the United States on October 11, 1995. Although Petitioner has a final order of removal, he cannot be repatriated under the existing repatriation agreement between the United States and Vietnam. *See Agreement Between the Government of the United States and the Government of the Socialist Republic of Vietnam on the Acceptance of the Return of Vietnamese Citizens.*¹ The agreement does not allow for the repatriation of Vietnamese immigrants who came to the United States before July 12, 1995 (“pre-1995 Vietnamese immigrants”), a population that is largely comprised of refugees who fled Vietnam after the war to escape persecution under the new communist regime.

3. United States Immigration and Customs Enforcement (“ICE”) has had a longstanding practice of releasing pre-1995 Vietnamese immigrants with final orders of removal due to legal constraints on their detention authority. Recognizing that removal of pre-1995 Vietnamese immigrants are “not subject to return to Vietnam” under the repatriation agreement,

¹ This agreement can be found on the U.S. Department of State’s website. *See* Attachment A (Agreement Concerning the Acceptance of the Return of Vietnamese Citizens, U.S. – NAM., Jan. 22, 2008, 08-43, <https://www.state.gov/documents/organization/108921.pdf>.)

1 ICE has typically released these immigrants on orders of supervision within 90 days of their
2 removal orders becoming final. The repatriation agreement has thus given thousands of pre-1995
3 Vietnamese immigrants the opportunity to return to their families and communities to rebuild
4 their lives.

5 4. In 2017, ICE abruptly departed from past enforcement practices pertaining to pre-
6 1995 Vietnamese immigrants with final orders of removal. ICE began subjecting pre-1995
7 Vietnamese immigrants to much longer periods of post removal order detention, in some cases as
8 long as eleven months. ICE also began re-detaining without notice pre-1995 Vietnamese
9 immigrants all across the United States who had been living peaceably in their communities on
10 orders of supervision for years or decades.

11 5. ICE has undertaken its detention campaign without any evidence that Vietnam
12 will accept pre-1995 Vietnamese immigrants that have been or will be detained. The repatriation
13 agreement has not been rescinded or modified by either country. Given Vietnam's longstanding
14 policy of categorically denying repatriation to pre-1995 Vietnamese immigrants, memorialized
15 in the existing and valid repatriation agreement, detention of the Petitioner without an
16 individualized and specific showing that Vietnam actually intends to accept them is unlawful.

17 6. Additionally, ICE has kept pre-1995 Vietnamese immigrants in detention past 90
18 days, and often past 180 days, without providing them any meaningful custody review to
19 determine whether continued detention is warranted because they pose a danger or flight risk,
20 pursuant to 8 C.F.R. § 241.13. ICE cannot lawfully detain the Petitioner absent an individualized
21 showing of danger or flight risk before a neutral decision maker, especially as their detention
22 becomes more prolonged.

II. JURISDICTION

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), the Suspension Clause of Article I of the United States Constitution, 28 U.S.C. §1331 (federal question), 28 U.S.C. §1361 (mandamus), and 5 U.S.C. §§ 701 *et seq* (Administrative Procedures Act). This Court may also grant relief under 28 U.S.C. §§2201-02 (Declaratory Judgment Act) and 28 U.S.C. 651 (All Writs Act).

III. VENUE

8. Venue is proper in the Middle District of Georgia under 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Georgia; Respondents are federal officers sued in their official capacity and Respondents Sterling and Streeval are based in this district.

IV. PARTIES

9. Petitioner Marchel Duong is a 58-year-old resident of Gwinnett County, Georgia who legally entered the United States from Vietnam as a sixteen-year-old refugee in 1984 with his father who served as was a marine in Vietnam. He subsequently adjusted his status to become a lawful permanent resident. Duong later married and now has three children with his wife, all of whom are United States citizens. He is a hardworking member of his community and has been working as a nail technician for the past ten years. During his youth, he was arrested on multiple occasions, the most serious of his charges being Theft in the First Degree in Multnomah County, Oregon, back in 1995. Due to his arrests, his legal permanent resident status was revoked and was ordered removed on October 11, 1994. He was released under supervision and has been a productive member of his community for the past 30 years. On September 23, 2025,

1 he was arrested when his ankle monitor went off and has been held for over 180 days at the
2 Stewart Detention Center in Lumpkin, Georgia.

3 10. Respondent George Sterling is the Director of the Atlanta Field Office of ICE's
4 Enforcement and Removal Operations division. As such, George Sterling is Petitioner's
5 immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his
6 official capacity.

7 11. Respondent Markwayne Mullin is the Secretary of the Department of Homeland
8 Security. He is responsible for the implementation and enforcement of the Immigration and
9 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mullin
10 has ultimate custodial authority over Petitioner and is sued in his official capacity.

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

14 13. Respondent Todd Blanche is the Acting Attorney General of the United States.
15 He is responsible for the Department of Justice, of which the Executive Office for Immigration
16 Review and the immigration court system it operates is a component agency. He is sued in his
17 official capacity.

18 14. Respondent Executive Office for Immigration Review (EOIR) is the federal
19 agency responsible for implementing and enforcing the INA in removal proceedings, including
20 for custody redeterminations in bond hearings.

21 15. Respondent Jason Streeval is employed by "CoreCivic" as Warden of Stewart
22 Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner.
23 He is sued in his official capacity.

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V. LEGAL BACKGROUND

Detention over 180 Days Violates the Petitioner's Due Process

16. Following a final order of removal, ICE is directed by statute to detain an individual up to 90 days in order to effectuate removal. 8 U.S.C. §1231 (a)(2). This 90-day period, also known as “the removal period,” generally commences as soon as a removal order becomes administratively final. §1231(a)(1)(A), §1231(a)(1)(B).

17. If ICE fails to remove an individual during the 90-day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. §1231(a)(3) (“If the alien... is not removed within the removal period, the alien, pending removal, shall be subject supervision.”). Limited exceptions to this rule exist. Specifically, ICE “may” detain an individual beyond 90 days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. §1231(a)(6).

18. 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) (citations omitted). 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.

19. 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. *Id.* 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 reasonable foreseeable future, “the Government must

1 respond with evidence sufficient to rebut that showing.” *Id.* at 701. If the government cannot do
2 so, the individual must be released. Moreover, as the period of post-final-order detention grows,
3 what counts as “reasonably foreseeable” must conversely shrink. *Id.* at 701.

4 20. Even if detention meets the *Zadvydas* standard for reasonable foreseeability,
5 detention violates the Due Process Clause unless it is “reasonably related” to the government’s
6 purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 (“[I]f removal
7 is reasonably foreseeable, the habeas court should consider the risk of the alien’s committing
8 further crimes as a factor potentially justifying confinement within that reasonable removal
9 period”)(emphasis added); *Id.* at 699 (purpose of detention is “assuring the alien’s presence at
10 the moment of removal”); *Id.* at 690-91 (discussing twin justifications of detention as preventing
11 flight and protecting the community). Thus, due process requires a meaningful determination that
12 the Petition pose a danger or flight risk that warrants a post-final-order detention, regardless of
13 whether their removal can be effectuated within a reasonable period of time.

14 21. The government’s own regulations contemplate this requirement. They dictate
15 that even after ICE determines that removal is reasonably foreseeable – and that detention
16 therefore does not *per se* exceed statutory authority – the government must still determine
17 whether continued detention is warranted based on flight risk or danger. See 8 C.F.R.
18 §241.13(g)(2) (providing that where removal is reasonably foreseeable, “detention will continue
19 to be governed under the established standards” in 8 C.F.R. §241.4).

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

8 ***Additional Requirements of Re-detention of the Petitioner on Supervised Release***

9 23. The ability for ICE to re-detain Petition is governed by 8 C.F.R. §241.13(f),
 10 which provides the factors for re-detaining an individual on supervised release. ICE’s decision to
 11 re-detain a noncitizen who has been granted supervised release is governed by ICE’s own
 12 regulations requiring (1) an individualized determination (2) by ICE that, (3) based on changed
 13 circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.”
 14 *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) (citing 8 C.F.R. §241.14(i)(2)). 8
 15 C.F.R. § 241.13 establishes special review procedures for aliens who are subject to a final order
 16 of removal and are detained after the expiration of the removal period, where the alien has
 17 provided good reason to believe there is no significant likelihood of removal to the country to
 18 which he or she was ordered removed, or to a third country, in the reasonably foreseeable future.
 19 Under 8 C.F.R. § 241.13(i)(1), the government's authority to revoke release and return an alien
 20 to custody on account of a supervision violation is triggered only when the alien has violated a
 21 condition of release, requiring an individual analysis for each individual.

22 24. Additionally, under 8 C.F.R. § 241.13(i)(2), the government may revoke release
 23 and return an alien to custody only "if, on account of changed circumstances, the Service
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1 determines that there is a significant likelihood that the alien may be removed in the reasonably
2 foreseeable future." *Id.* Factors to consider include "the history of the alien's efforts to comply
3 with the order of removal, the history of the Service's efforts to remove aliens to the country in
4 question or to third countries, including ongoing nature of the Service's efforts to remove this
5 alien and the alien's assistance with those efforts, the reasonably foreseeable results of those
6 efforts, and the views of the Department of State regarding the prospects for removal of aliens to
7 the country or countries in question. *Van Nguyen v Hyde*, 788 F.Supp.3d 144 (D. Mass. 2025).
8 See also 8 C.F.R. §241.13(f). (noting that a mere copy of the 2020 United States and Vietnam's
9 signed Memorandum of Understanding (2020 MOU), and declarations from ICE they were
10 currently processing travel documents for the detainee, was not enough for ICE to have met their
11 burden under 8 C.R.F. §241.13(i)(2), change of circumstances criteria). *Id.* The burden is shifted
12 to the government to prove the changes in circumstances.

13 ***Vietnam's Repatriation Agreement with the United States Protects Petitioner from Removal***

14 25. In 2008, after ten years of negotiation, Vietnam and the United States executed a
15 repatriation agreement to govern the repatriation of certain Vietnamese immigrants with final
16 orders of removal to Vietnam. The repatriation agreement does not permit the repatriation of
17 Vietnamese immigrants who came to the United States before July 12, 1995. It expressly
18 stipulates that "Vietnamese citizens are not subject to return to Vietnam under this Agreement if
19 they arrived in the United States before July 12, 1995." See Agreement, Article 2: Removable
20 Persons and Conditions of Acceptance. The categorical exemption of pre-1995 Vietnamese
21 immigrants from repatriation reflects humanitarian considerations related to the United States'
22 role in the Vietnam War, the subsequent resettlement of Vietnamese refugees in America, and
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1 the continuing tension between the Vietnamese government and the Vietnamese refugees who
2 were forced to flee their homes to avoid profound hardship and persecution after the war.

3 26. The Vietnamese refugees who fled to the United States in the 20 years following
4 the Vietnam War included those with close ties to the United States military or South
5 Vietnamese government who feared for their lives under the new communist government and the
6 hundreds of thousands of “Bout People” who poured out of Vietnam in rickety, wooden boats,
7 desperate to escape communist re-education camps and other forms of political persecution.

8 27. Vietnam’s longstanding practice of refusing repatriation has for years protected
9 pre-1995 Vietnamese immigrants from being removed to the country they fled to escape
10 starvation, violence, and death. The exclusion of pre-1995 Vietnamese immigrants from the
11 repatriation agreement is central to maintaining human rights protections for this population.
12 According to the U.S. Department of State’s 2016 Human Rights Report on Vietnam, the most
13 significant human rights problems in Vietnam are severe government restrictions of citizens’
14 political rights.²

15 28. In addition, even though the repatriation agreement officially opened the door for
16 repatriation of Vietnamese immigrants who arrived to the United States on or after July 12, 1995,
17 Vietnam continues to accept only a very limited number of persons for repatriation each year and
18 still regularly refuses to issue travel documents. Based on publicly available information from
19 ICE and from the Executive Office for Immigration Review, from 2008 to 2016, Vietnam only
20 accepted an average of 13 percent of individuals ordered removed to Vietnam each year, and it is
21 not clear how many of those were pre-1995 Vietnamese immigrants.

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24 ² U.S. Dept. of State, Vietnam 2016 Human Rights Report, 2016,
<http://www.state.gov/documents/organization/265598.pdf>.

1 29. Because of the exclusion of pre-1995 immigrants from the repatriation agreement
2 and the overall lack of cooperation from the Vietnamese government, the United States
3 government has been unable to carry out most orders of removal to Vietnam. Consequently, ICE
4 has for years routinely released pre 1995 Vietnamese immigrants with final orders of removal
5 from immigration custody upon or even before expiration of the 90-day removal period.

6 30. However, in 2017, Executive Order 13768 brought about ICE's widespread arrest
7 of immigrants from "recalcitrant" countries, without requisite evidence that these countries
8 would repatriate the individuals arrested, often followed by prolonged detention without the due
9 consideration to whether detention was necessary to effectuate their removal. The United States
10 government has made multiple claims that Vietnam was now willing to consider repatriation of
11 Vietnamese who came to the United States before July 12, 1995, however, the government has
12 failed to substantiate this claim with any official documents or statistics to support these claims,
13 as recently as 2025. *Van Nguyen v Hyde*, 788 F.Supp.3d 144 (D. Mass. 2025). As such, a class
14 action claim was brought against the government in *Trinh v. Homan* (2018), where it was found
15 that pre-1995 Vietnamese immigrants who have been detained for more than 180 days have
16 satisfied their initial *Zadvydas* burden as a matter of established judicial finding, "shifting the
17 burden to the government to justify their continued detention." *Trinh v. Homan*, 466 F. Supp. 3d
18 1077 (C.D. Cal. 2020). It also found that "there is generally no significant likelihood of removal
19 to Vietnam for pre-1995 Vietnamese immigrants who do not hold a valid Vietnamese passport or
20 other travel document." *Id.*

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VI. EXHAUSTION

31. This action is not barred by the exhaustion of remedies doctrine. That doctrine is inapplicable as exhaustion is not explicitly or implicitly required in this context. No statutory exhaustion requirement applies to Petitioner's claim of unlawful detention.

32. Even if doctrine of exhaustion did apply, Petitioner satisfies several exceptions to it. Exhaustion is excused if: (1) Requiring exhaustion of administrative remedies causes prejudice, due to unreasonable delay or an 'indefinite timeframe for administrative action'; (2) The agency lacks the ability or competence to resolve the issue or grant the relief requested; (3) Appealing through the administrative process would be futile because the agency is biased or has predetermined the issue; or (4) where substantial constitutional questions are raised. *Iddir v. INS*, 301 F.3d 492, 500 (7th circuit case citing *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992)).

33. Here, exhaustion would be futile and the court should take discretionary action as the Petitioner's detention has already exceeded the "presumptively reasonable" six-month period; the court should waive any requirement.

34. No administrative remedies currently exist under the law to challenge indefinite post-order detention where there is no reasonable likelihood that removal will occur in the foreseeable future.

VII. FACTUAL BACKGROUND

35. Petitioner entered the United States in 1984 alongside his father, who served as a member of the Vietnamese Marine Corps. Fleeing the consequences of his father's military service under the former South Vietnamese government, Petitioner arrived as part of the generation of Southeast Asian refugees whose resettlement in the United States reflected a direct national commitment to those who fought alongside American forces. Petitioner was granted

1 Lawful Permanent Resident ("LPR") status prior to July 12, 1995. Although his LPR status was
2 eventually revoked, he has resided continuously in the United States for over forty years.

3 36. Following entry of a final order of removal, Petitioner was placed on an Order of
4 Supervision ("OSUP") in 1994, a disposition that itself reflects a prior governmental
5 determination that his removal to Vietnam was not practicable. For the ensuing thirty years,
6 Petitioner complied fully with every condition of that Order of Supervision.

7 37. To the best of counsel's knowledge, he committed no new criminal offenses,
8 reported as required, and conducted himself in a manner consistent with the expectations of
9 supervised release. On September 23, 2025, without any allegation that Petitioner violated a
10 single condition of his OSUP, and without any individualized assessment of his removability,
11 ICE re-detained Petitioner. No counter evidence has been provided for by the government. That
12 detention, now exceeding 180 days, is unlawful under 8 U.S.C. § 1231, 8 C.F.R. § 241.13, the
13 Fifth Amendment's Due Process Clause, and the binding authority of *Zadvydas v. Davis*, 533
14 U.S. 678 (2001), and *Trinh v. Homan*, 333 F. Supp. 3d 984 (C.D. Cal. 2018), *aff'd* in relevant
15 part, 466 F. Supp. 3d 1077 (C.D. Cal. 2020).

16 38. The constitutional framework governing Petitioner's detention is well established.
17 In *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001), the Supreme Court held that post-removal-
18 order detention is authorized only for a period "reasonably necessary to bring about that alien's
19 removal from the United States," and that six months constitutes a presumptively reasonable
20 period. Once that period has passed and the noncitizen provides "good reason to believe that
21 there is no significant likelihood of removal in the reasonably foreseeable future," the burden
22 shifts to the government to rebut that showing with evidence sufficient to justify continued
23 custody. *Id.* at 701.

39. Mr. Duong has not purposefully or intentionally acted to prevent his removal.

VIII. LEGAL ARGUMENT

Removal Is Not Significantly Likely in the Reasonably Foreseeable Future

40 Petitioner's burden under *Zachrydas* is met not merely by the passage of the six-month presumptive period, but by the uncontroverted fact of thirty years of supervised release without removal.

41. The government placed Petitioner on OSUP in 1994 and maintained that arrangement for three uninterrupted decades. That course of conduct is itself a governmental admission that removal to Vietnam was not practicable during that entire period. An agency cannot maintain an individual on supervised release for 30 years, tolerating his continued presence, accepting his regular compliance reports, and making no meaningful effort to secure his removal, and then credibly assert, without individualized review, that removal is now "significantly likely in the reasonably foreseeable future." The government's own conduct across five different administrations defeats that assertion.

The Government Has Failed to Establish the "Changed Circumstances" Required to Justify Revocation Under 8 C.F.R. § 241.13(i)(2)

42. The regulatory framework governing re-detention of an individual on OSUP is strict and the grounds are exclusive. ICE may revoke an alien's release under this section and return the alien to custody only if, on account of changed circumstances, ICE determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2).

43. Courts have held that a changed-circumstance determination must be made at or before the time of re-detention.

1 44. Here, to the best of counsel's knowledge, there is no evidence that ICE made any
2 individualized, contemporaneous assessment of Petitioner's removability prior to his re-detention
3 on September 23, 2025.

4 ***The Government Has Failed to Apply the Mandatory Factors of 8 C.F.R. § 241.13(f), Which***
5 ***Weigh Decisively in Petitioner's Favor***

6 45. Even where the government asserts changed circumstances, it is not free to reach
7 a revocation determination in an arbitrary manner. The regulation mandates consideration of
8 specific factors in evaluating the likelihood of removal. 8 C.F.R. § 241.13(f).

9 46. The Service's Headquarters Post-order Detention Unit (HQPDU) shall consider
10 all the facts of the case including, but not limited to, the history of the alien's efforts to comply
11 with the order of removal, the history of the Service's efforts to remove aliens to the country in
12 question or to third countries, including the ongoing nature of the Service's efforts to remove this
13 alien and the alien's assistance with those efforts, the reasonably foreseeable results of those
14 efforts, and the views of the Department of State regarding the prospects for removal of aliens to
15 the country or countries in question. 8 C.F.R. § 241.13(f).

16 47. Each of these mandatory factors, applied to Petitioner's circumstances, compels
17 the conclusion that his removal is not significantly likely in the reasonably foreseeable future.

18 48. Petitioner has been under supervised release since 1994, a period of over thirty
19 years, and to the best of counsel's knowledge, without any significant violations. He has obeyed
20 all conditions of his OSUP, committed no new criminal offenses, and cooperated with the
21 government's supervision requirements throughout. His compliance record speaks directly
22 against any contention that he poses a flight risk or has obstructed removal efforts.

1 49. As to the history of the government's efforts to remove pre-1995 Vietnamese
2 immigrants: that history is a record of consistent, documented failure. ICE was compelled by the
3 *Trinh* litigation to admit, as a matter of record, that it was generally unable to accomplish
4 removal to Vietnam for this population. Subsequent actions brought against the government
5 continues to support the documentation of their failure. See *Van Nguyen v Hyde*, 788 F.Supp.3d
6 144 (D. Mass. 2025), *Nguyen v. Scott*, 2025 WL 2419288, and *Nguyen v. Hyde*, No. 25 11470
7 (D. Mass. June 20, 2025).

8 50. As to the reasonably foreseeable results of current removal efforts: no travel
9 document has been issued for Petitioner, and there is no individualized determination on record
10 that Vietnam has agreed to accept him specifically.

11 ***The Government Has Failed to Comply With the Mandatory Procedural Requirements of 8***
12 ***C.F.R. § 241.13(i)(3), Independently Requiring Release***

13 51. Separate and apart from its failure to establish a valid substantive ground for
14 revocation, the Government has failed to comply with the mandatory procedural requirements
15 that attach upon any revocation of an Order of Supervision. These requirements are not
16 aspirational. They are enforceable obligations, and their violation independently entitles
17 Petitioner to habeas relief.

18 52. The government has conducted no individualized review of Petitioner's specific
19 circumstances. No evaluation of contested facts bearing on Petitioner's removability has been
20 performed. No determination has been made on the record, specific to this petitioner, that the
21 facts as found actually warrant revocation and further denial of release.

22 53. Courts have consistently and recently reaffirmed that where ICE fails to follow its
23 own regulations in revoking supervised release, the detention is unlawful and the petitioner must
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1 be released *Nguyen v. Scott*, 2025 WL 2419288, at *13; *Nguyen v. Hyde*, No. 25-11470 (D
 2 Mass. June 20, 2025). As the Supreme Court long ago established, "[w]here the rights of
 3 individuals are affected, it is incumbent upon agencies to follow their own procedures." *Morton*
 4 *v. Ruiz*, 415 U.S. 199, 235 (1974).

5 IX. CLAIMS FOR RELIEF

6 COUNT ONE: Unlawful Detention Where Removal Is Not Reasonably Foreseeable

7 54. The foregoing allegations are realleged and incorporated herein.

8 55. Post removal order detention violates Section 1231 where removal is not
 9 significantly likely to occur in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S.
 10 678 (2001). Detention under these circumstances also violates constitutional due process.

11 56. Petitioner's removal is not significantly likely to occur in the reasonably
 12 foreseeable future because he is specifically excluded from repatriation under the repatriation
 13 agreement.

14 57. The 90-Day Class members' *Zadvydas* claim is ripe, even with the six-month
 15 period set forth in *Zadvydas*, since he has been in custody for over 180 days, since September 23,
 16 2025.

17 58. Through the repatriation agreement and Vietnam's historical practice, Petitioner
 18 have made his initial showing under *Zadvydas* and *Trinh* of "good reason to believe that their
 19 removal is not reasonably foreseeable." *Id.*

20 59. Petitioner have shifted the burden to Respondents to produce individualized
 21 evidence that their removal is reasonably foreseeable. Respondents lack such evidence, yet
 22 continue to detain Petitioner in violation of Section 1231 and constitutional due process.

23 60. Petitioner is entitled under the law to immediate released on orders of supervision.

24 COUNT TWO: Failure to Establish Changed Circumstances Establishing Significant Likelihood of Removal

1 61. The foregoing allegations are realleged and incorporated herein.

2 62. Under §241.14(i)(2), ICE may only revoke an alien's release and return the alien
3 to custody, if on account of changed circumstances, it determines that there is a significant
4 likelihood that the alien may be removed in the reasonably foreseeable future. ICE has failed to
5 provide a notification of the reasons for his revocation and has failed to promptly initiate an
6 informal interview to afford the Petitioner an opportunity to respond to the reasons for the
7 revocations, as required under 8 C.F.R §241.13(i)(3).

8 63. Respondents are subjecting Petition to months of detention without any
9 individualized determination that there has been a change in circumstances to justify their
10 detention.

11 64. This determination by the government does not require the Petitioner to be in
12 custody and should be released, pending determination. *See Van Nguyen v Hyde*, 788 F.Supp.3d
13 144 (D. Mass. 2025) (where Court ordered immediate release, showing that “nothing stops
14 Respondents from requesting the Government of Vietnam to accept his return” while on
15 supervised release.)

16 **COUNT THREE: Unlawful Detention Without Determination of Danger and Flight Risk**

17 65. The foregoing allegations are realleged and incorporated herein.

18 66. Even if removal is reasonably foreseeable, detention violates Section 1231 and
19 due process under the United States Constitution unless it is reasonably related to the
20 government's purposes of preventing flight and protecting the community. *Zachrydas*, 533 U.S. at
21 690-91.

22 67. Respondents are subjecting Petitioner to months of detention without any
23 individualized determination that he poses a danger or flight risk that would justify his detention.

24 68. To the best of counsel's knowledge, the government has not provided any
administrative post-order custody review in compliance with its own regulations.

69. Respondents may not continue to detain Petitioner without individualized determination by impartial adjudicators of whether detention is justified based on danger or flight risk.

X. PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Declare that Respondents have violated the rights of the Petitioner;
- c. Order immediate release of the Petitioner for whom Respondents lack individualized evidence that removal is significantly likely to occur in the reasonably foreseeable future;
- d. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;
- e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- f. Grant any other and further relief that this Court deems just and proper.

DATED this 7th of April, 2026.

Respectfully Submitted,

David Kennedy & Associates, Attorneys at Law, P.C.

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, MARCHIEL DUONG, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Submitted this 7th of April, 2026.

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