

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Phan v. Noem

Phan · No. 3:25-cv-02422-RBM-MSB · Decided October 10, 2025

SUMMARY

The Southern District of California granted Minh Nhat Phan’s petition for a writ of habeas corpus challenging his renewed detention by ICE. The court held that ICE violated applicable regulations and due process by revoking his release without providing required notice, a prompt informal interview, and an opportunity to respond, and by failing to demonstrate changed circumstances supporting a significant likelihood of removal. The court ordered Phan’s immediate release subject to his preexisting Order of Supervision and denied his motion for a temporary restraining order as moot.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Ruth Bermudez Montenegro
JURISDICTION	United States District Court for the Southern District of California
DECIDED	October 10, 2025
DOCKET	3:25-cv-02422-RBM-MSB
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for a writ of habeas corpus under 28 U.S.C. § 2241 challenging immigration detention; the court granted the petition and ordered release.
STANDARD OF REVIEW	The petitioner bears the burden of showing custody in violation of the Constitution, laws, or treaties of the United States under 28 U.S.C. § 2241(c)(3). The court independently determined its jurisdiction before reaching the merits.
PRECEDENTIAL VALUE	unpublished district court opinion; persuasive authority only
PARTIES	Minh Nhat Phan v. Kristi Noem, Secretary of the Department of Homeland Security, et al.

TOPICS

- immigration detention
- procedural due process
- removal proceedings
- immigration
- remedies

PRACTICE AREAS

immigration

habeas corpus

constitutional law

civil rights

remedies

QUESTIONS PRESENTED

1. Whether 8 U.S.C. § 1252(g) deprived the district court of jurisdiction over a habeas petition challenging the manner of ICE's execution of a removal order and the legality of detention.
2. Whether ICE's failure to provide notice, a prompt informal interview, and an opportunity to respond after revoking Phan's release violated 8 C.F.R. §§ 241.4(l) and 241.13(i) and the Fifth Amendment Due Process Clause.
3. Whether ICE established under 8 C.F.R. § 241.13(i)(2) that changed circumstances created a significant likelihood of removal in the reasonably foreseeable future.

HOLDINGS

1. Section 1252(g) did not bar jurisdiction because Phan challenged the manner in which ICE executed his removal order and the legality of his detention, rather than the validity of the removal order or one of the three discrete actions covered by § 1252(g).
2. When ICE revokes release under 8 C.F.R. § 241.4(l), it must notify the noncitizen of the reasons for revocation and promptly provide an informal interview and an opportunity to respond; failure to do so renders the resulting detention unlawful.
3. Under 8 C.F.R. § 241.13(i), ICE may revoke release and return a noncitizen to custody only upon a determination, based on changed circumstances, that there is a significant likelihood of removal in the reasonably foreseeable future, and it must also provide notice, a prompt informal interview, and an opportunity to respond.
4. ICE's failure to comply with the procedural requirements governing revocation of release violated Phan's Fifth Amendment due process rights and made his detention unlawful.

KEY QUOTATIONS

“The Court finds that it has jurisdiction because the Petition challenges the manner in which ICE executed the removal order rather than the removal order itself” (at 5)

“Under either regulation, however, ICE failed to comply with the required procedures, thereby violating Petitioner’s due process rights.” (at 6)

“ICE’s failure to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 violated Petitioner’s due process rights.” (at 10)

FACTUAL BACKGROUND

Phan, a Vietnamese refugee who entered the United States as a child in 1981, was convicted of attempted second-degree murder and ordered removed in 1996. He was detained for several years while the government attempted, unsuccessfully, to obtain Vietnamese travel documents, and he was released in 2000 on an Order of Supervision, with which he complied for approximately 25 years. ICE re-detained him on September 5, 2025,

but did not provide the informal interview and opportunity to respond required after revocation of release, while the government had not yet submitted a new travel-document request or identified changed circumstances showing a significant likelihood of removal.

PROCEDURAL HISTORY

Phan filed a § 2241 habeas petition and a motion for a temporary restraining order after ICE re-detained him. The court ordered respondents to show cause, received their opposition and Phan's reply, declined to hold an evidentiary hearing because the relevant facts were undisputed, granted habeas relief, and denied the TRO motion as moot.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

No remand was ordered. Respondents were ordered to immediately release Phan from custody subject to his preexisting Order of Supervision.

CASES CITED

- Hamdi v. Rumsfeld, 542 U.S. 507, 525 (2004)
- Preiser v. Rodriguez, 411 U.S. 475, 484 (1973)
- Owino v. Napolitano, 575 F.3d 952, 954 (9th Cir. 2009)
- Lance v. Coffman, 549 U.S. 437, 439 (2007)
- Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94-95 (1998)
- Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 482 (1999)
- Ceesay v. Kurzdorfer, 781 F. Supp. 3d 137 (W.D.N.Y. 2025)
- Sanchez v. LaRose, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025)
- Jennings v. Rodriguez, 583 U.S. 281, 294 (2018)
- Zadvydas v. Davis, 533 U.S. 678, 693-94, 699 (2001)
- Alegria Palma v. LaRose, Case No. 3:25-cv-1942-BJC-MMP (S.D. Cal. Aug. 11, 2025), Dkt. No. 14
- Rokhfirooz v. LaRose, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025)
- Santamaria Orellana v. Baker, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025)
- M.S.L. v. Bostock, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025)
- Hoac v. Becerra, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025)
- Liu v. Carter, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)
- United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954)
- United States v. Ramos, 623 F.3d 672, 683 (9th Cir. 2010)
- Ramon-Sepulveda v. INS, 743 F.2d 1307, 1310 (9th Cir. 1984)
- Rombot v. Souza, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017)

- K.E.O. v. Woosley, 2025 WL 2553394, at *7 (W.D. Ky. Sept. 4, 2025)
- Grigorian v. Bondi, 2025 WL 2604573, at *10 (S.D. Fla. Sept. 9, 2025)
- Medina v. Noem, 2025 WL 2306274, at *11-12 (D. Md. Aug. 11, 2025)
- Diaz, 2025 WL 2581575, at *7

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