

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Kha Nguyen Tran v. Kristi Noem, et al.

Case No. 3:25-cv-02391-BTM-BLM (S.D. Cal. Oct. 27, 2025) · No. 3:25-cv-02391-BTM-BLM · Decided
October 27, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 KHA NGUYEN TRAN, Case No.: 3:25-cv-02391-BTM-BLM 12 Petitioner,
ORDER GRANTING PETITION 13 v. FOR WRIT OF HABEAS CORPUS 14 [ECF NO. 1] 15
KRISTI NOEM, Secretary of the Department of Homeland Security, 16 PAMELA JO BONDI,
Attorney General, 17 TODD M. LYONS, Acting Director, Immigration and Customs
Enforcement, 18 JESUS ROCHA, Acting Field Office 19 Director, San Diego Field Office,
CHRISTOPHER LAROSE, Warden at 20 Otay Mesa Detention Center, 21 Respondents.

22 Pending before the Court is Kha Nguyen Tran’s petition for a writ of habeas corpus 23
pursuant to 28 U.S.C. § 2241. For the reasons stated below, the Court GRANTS the 24 petition
and orders Tran’s immediate release from custody. 25 A. Background 26 Immigration and
Customs Enforcement (“ICE”) officers took Tran into custody on 27 June 18, 2025. (ECF No. 9,
Ex. 2 (“I-213 R.”), at 3).

They did so to execute a January 28 1 2007 removal order to Vietnam, the country of Tran’s birth.
Tran was admitted to the 2 United States in 2003 as a permanent resident alien. Tran was ordered
removed because 3 of his 2006 conviction for assault with a deadly weapon when he was nineteen
years old. 4 (I-213 R., at 2). 5 Tran was in ICE custody in 2007 for about six months but was
released because 6 Vietnam would not accept him.

(ECF No. 1 (“Pet.”), at 2). The following year, the United 7 States and Vietnam signed a
repatriation agreement. See Agreement on the Acceptance of 8 the Return of Vietnamese Citizens,
U.S.-Viet., Jan. 22, 2008, T.I.A.S. No. 08-322. ICE 9 detained Tran again to remove him under the
new agreement. (ECF No. 1, Ex. A (“Tran 10 Decl.”), ¶ 4). Tran was in custody for about six
months, when he was again released 11 because the government was not able to remove him to
Vietnam.

(Id. ¶ 5). Tran has lived 12 in the United States thereafter under an Order of Supervision without
violation for over 13 fifteen years. (Id. ¶ 6). 14 On September 15, 2025, Tran petitioned the Court
for a writ of habeas corpus on 15 three grounds.

First, he claimed his detention is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and 8 U.S.C. § 1231. (ECF No. 1, at 6). Second, he claimed that he was unlawfully denied an interview when he was re-detained, violating ICE’s own regulations, specifically 8 C.F.R. § 241.13, and his Due Process rights. (Id. at 12).

Third, he claimed that the Government was likely to unlawfully remove him to a third country without notice and an opportunity to be heard. (Id. at 14). Tran also filed a motion for a temporary restraining order. (ECF No. 3).

The Court granted the motion in part and enjoined the Government from removing Petitioner to a third country. (ECF No. 6). Since the filing of the petition, the Government has obtained travel documents for Tran’s removal to Vietnam. (ECF No. 12). Tran has stipulated that claims one (*Zadvydas*) and three (removal to a third country) are moot. (ECF No. 14).

The Court agrees and dismisses as moot counts one and three. The Court rules on the second claim that Respondents violated Tran’s Due Process rights by violating their regulations. 1 B. Discussion i. The Court has jurisdiction. 3 The Court has long had jurisdiction to issue writs of habeas corpus to petitioners held in custody “in violation of the Constitution or laws or treaties of the United States.” 5 28 U.S.C § 2241(c)(3). “In doing so the courts carry out... the ‘historic purpose of the writ,’ namely, ‘to relieve detention by executive authorities without judicial trial.’” 7 *Zadvydas*, 533 U.S. at 699 (quoting *Brown v. Allen*, 344 U.S. 443, 533 (1953) (Jackson, J., concurring in result)).

9 The Respondents argue that 8 U.S.C. § 1252(g) “removes district court jurisdiction” 10 over this case. (ECF No. 9, at 2). But the Supreme Court has consistently rejected “the Government’s suggestion that § 1252(g) covers ‘all claims arising from deportation proceedings’ or imposes ‘a general jurisdictional limitation.’” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)).

Tran is not challenging Respondents’ 15 decision to execute a removal order, which would bar this Court’s review. He only contests 16 his detention resulting from “violations of [Respondents’] mandatory duties under statutes, 17 regulations, and the Constitution.” (ECF No. 11, at 15). This Court thus has jurisdiction 18 to determine the lawfulness of Petitioner’s detention.

Arce v. United States, 899 F.3d 796, 800 (9th Cir. 2018) (“[W]e have limited [1252(g)]’s jurisdiction-stripping power to actions 20 challenging the Attorney General’s discretionary decisions to initiate proceedings, 21 adjudicate cases, and execute removal orders.”); accord *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (interpreting 1252(g) to allow jurisdiction over detention 23 challenges).

24 ii. Petitioner was unlawfully detained. 25 Tran argues that his continued detention is in violation of 8 C.F.R. § 241.13(i)(2) 26 and (3), which provide: 27 (2) Revocation for removal. The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed 28 1 circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future....

2 (3) Revocation procedures. Upon revocation, the alien will be notified 3 of the reasons for revocation of his or her release. The Service will conduct 4 an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation 5 stated in the notification.

The alien may submit any evidence or information 6 that he or she believes shows there is no significant likelihood he or she be [sic] removed in the reasonably foreseeable future, or that he or she has not 7 violated the order of supervision.

The revocation custody review will include 8 an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further 9 denial of release. 10 The Respondents have failed to follow these provisions in three material respects. 11 First, subsection 241.13(i)(2) requires ICE to determine that the detainee is likely to be 12 removed in the reasonably foreseeable future “on account of changed circumstances.” 13 Respondents assert that they have determined that there are changed circumstances and 14 that Tran will be removed to Vietnam in the reasonably foreseeable future.

While that may 15 certainly be the case now, § 241.13(i)(2) requires that this determination is made before 16 the removable alien has had his release revoked. See Continued Detention of Aliens 17 Subject to Final Orders of Removal, 66 Fed. Reg. 56967, 56971 (Nov. 14, 2001) (codified 18 at 8 C.F.R. pts. 3, 241) (“[I]n any case where, based on a change of circumstances, the 19 Service later makes a determination that there is a significant likelihood that the Service 20 subsequently will be able to remove the alien... in the reasonably foreseeable future, the 21 custody provisions of § 241.4 will again apply.

In that event, the Service may return the 22 alien to detention in connection with the removal....” (emphasis added)). As in 23 Rokhfirooz, there is no record here that such a determination was made on or before the 24 revocation of Tran's release on June 18, 2025. Rokhfirooz v. LaRose, 2025 WL 2646165, 25 at *3 (S.D. Cal. Sept. 15, 2025).

Therefore, in Rokhfirooz, Judge Huie ordered the alien's 26 release. 27 Even if ICE made a determination on the likelihood of Tran's removal before 28 1 Indeed, the Respondents did not even submit a request to Vietnam for travel documents 2 until September 18, 2025—three months after taking Tran into custody.

The Respondents 3 provide no evidence of an actual determination of changed circumstances that justified the 4 initial revocation of Tran’s release. 5 Second, subsection 241.13(i)(3) requires that the alien “will be notified of the 6 reasons for revocation of his or her release.” There was no written notice given to Tran. 7 The Respondents assert that written notice is not required and the Department of Homeland 8 Security’s I-213 form sufficed.

Yet the record is absent as to whether Tran was given a 9 copy of the I-213 at or reasonably close to his arrest. Furthermore, the I-213 form merely 10 states that Tran’s arresting officers informed him that “he was being placed under arrested 11 [sic] based on his final order of removal.” (I-213 R., at 3).

The Court disagrees with the 12 Respondents that the I-213 form satisfies the due-process notification requirement of 13 § 241.13(i)(3). The I-213 memorializes that Tran was advised that he was arrested based 14 on his previous order of removal but does not state that he was advised of the reasons 15 supporting the revocation of release. 16 The Court holds that the notice must be in writing and contain all the reasons for the 17 revocation of the alien’s release.

The immigration regulation provides that the alien be 18 afforded “an opportunity to respond to the reasons for revocation stated in the notification.” 19 8 C.F.R. § 241.13(i)(3) (emphasis added). In the stressful context of an alien’s arrest and 20 revocation of release, in order to give effectual notice of the reasons for renewed detention, 21 due process requires written notice so that the alien can prepare for the post deprivation 22 informal interview.

See *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 23 (1950) (“This [Due Process] right to be heard has little reality or worth unless one is 24 informed that the matter is pending and can choose for himself whether to appear or default, 25 acquiesce or contest.”).

The regulation recognizes that by noting that the alien can respond 26 to the reasons “stated in the notification.” *Id.* That is a clear indication that the regulation 27 28 1 requires a written notification. The Respondents failed to provide that here. 2 Third, subsection 241.13(i)(3) requires, after the alien’s detention for revocation of 3 release, a prompt initial informal interview at which Tran could respond to the reasons for 4 revocation.

Although “[t]he fundamental requisite of due process of law is the opportunity 5 to be heard,” Tran was not provided that opportunity. *Grannis v. Ordean*, 234 U.S. 385, 6 394 (1914); see *Alexander v. U.S. Parole Com.*, 721 F.2d 1223, 1227–28 (9th Cir. 1983) 7 (“The very purpose of notice and a hearing is to permit an accused the opportunity to 8 present a defense or mitigating factors.”).

9 A government agency is required to follow its own regulations. *United States ex rel. Accordi v. Shaughnessy*, 347 U.S. 260, 268 (1954). This is especially so when the 11 regulation provides for procedural due process. See *Niz-Chavez v. Garland*, 593 U.S. 155, 12 172 (2021) (“If men

must turn square corners when they deal with the government, it 13 cannot be too much to expect the government to turn square corners when it deals with 14 them.”).

The Respondents violated 8 C.F.R. § 241.13(i)(2) and (3) in the three ways set 15 forth above. As other judges in this district have held, when the immigration authorities 16 are holding an alien in custody in violation of these immigration regulations, the writ of 17 habeas corpus must issue. Rokhfirooz, 2025 WL 2646165, at *4; Truong v. Noem, 2025 18 WL 2988357, at *6 (S.D.

Cal. Oct. 22, 2025); Ngo v. Noem, No. 25-cv-02739 (S.D. Cal. 19 Oct. 23, 2025). 20 The Respondents note that Vietnam has issued a travel document and will accept 21 Tran. They point out that they will have a plane reservation for Tran to depart in about two 22 weeks.

Therefore, they argue, the Court should not issue the writ. But Tran is being 23 presently detained on the June 18th revocation and not based on the new circumstances. 24 25 26 1 During oral argument, the Respondents claimed that § 241.13(i)(3) does not mandate written notice because other subsections of the regulation use the term “written notice.” They argue that the expression 27 of “written notice” elsewhere excludes a written notice requirement here.

But that principle of interpretation does not overcome the plain text that the reasons for an alien’s revocation are “stated in the 28 1 || Thus, as held in the Southern District cases of Truong, 2025 WL 2988357, and Ngo, No. 2 || 25-cv-02739, the writ should issue without prejudice to the remedies that the Respondents 3 ||may otherwise have.

In this case, since Tran has had an apparently unblemished record in 4 || following the conditions of supervision for fifteen years and has family here including a 5 || United States citizen minor daughter, the Respondents may exercise their discretion to 6 || allow him to say goodbye to his family, settle his affairs, and report for his removal. 7 C. Conclusion 8 The petition for a writ of habeas corpus is GRANTED on the second claim and the 9 || writ is ISSUED.

The Respondents shall immediately release Tran from custody on the 10 18, 2025, revocation and arrest. Tran shall comply with all the conditions in effect 11 || before his June 18, 2025, revocation of release. The parties shall file a statement as to the 12 || satisfaction of the writ within twenty-four (24) hours of the entry of this order. 13 IT IS SO ORDERED.

14 || Dated: October 27, 2025, 15 uy Fee Meebo Honorable Barry Ted Moskowitz 16 United States District Judge 17 18 19 20 21 22 23 24 25 26 27 28 7 □ □ □