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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KHA NGUYEN TRAN,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.: 25-CV-2391-BTM

Traverse in Support of Petition for Writ of Habeas Corpus

&

Reply in Support of Motion for a Preliminary Injunction

INTRODUCTION

With the government's Return in hand, this Court should grant this petition on all three grounds, or at least issue a preliminary injunction ordering immediate release. First, the government agrees that ICE detained Mr. Tran under 8 C.F.R. §§ 241.4(*l*), 241.13(i). But the government does not claim that ICE offered Mr. Tran an opportunity to contest re-detention as required under these regulations. And as Judge Huie explained in *Rokhfirooz v. Larose*, a post-hoc declaration from a deportation officer ("DO") is not evidence of why a petitioner's release was revoked. No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *1 (S.D. Cal. Sept. 15, 2025). With no evidence that ICE complied with any of the governing regulations, this Court must grant the petition outright.

Second, the government does not establish a significant likelihood of removal in the reasonably foreseeable future. Mr. Tran offered evidence that he entered the United States after 1995, meaning that the 2008 treaty governs his repatriation. He also provided evidence that ICE tried and failed to remove him under the 2008 treaty. DO Negrin does not address this evidence at all. He does not offer any contrary date of entry. And he provides no other information about Mr. Tran's immigration history. But even though DO Negrin does not dispute Mr. Tran's version of events, he bases his analysis on the false premise that "Petitioner[] entered the United States before 1995," Doc. 9-1 at ¶ 11, including by relying on a 30-day deadline applicable only to pre-1995 immigrants, *id.* at ¶ 9. Because DO Negrin's declaration does not at all respond to Mr. Tran's evidence, and is based on incorrect information, it cannot meet the government's burden.

Third, the government does not defend ICE's third-country removal policy. And the Ninth Circuit has squarely rejected the government's jurisdictional arguments.

This Court should therefore grant this petition outright, or at least enter a preliminary injunction.

ARGUMENT

I. In light of the government's response, Mr. Tran succeeds on the merits.

Because the government's evidence is insufficient to justify Mr. Tran's detention, his petition should be granted outright, or the Court should at least issue a preliminary injunction.

A. As Judge Huie recently found when granting a habeas petition in *Rokhfirooz*, ICE did not adhere to the regulations governing re-detention.

First, this Court should grant the petition on Count 2, because the government provides no evidence that ICE complied with 8 C.F.R. §§ 241.4, 241.13. The government does not deny that these regulations apply to Mr. Tran, that Mr. Tran may challenge them in this habeas case, or that failure to comply with them is grounds for release. *See* Doc. 9 at 4. To the contrary, the government agrees that Mr. Tran's release was revoked under 8 C.F.R. § 241.4(*l*)(2)(iii) and 8 C.F.R. § 241.13(i)(2). *Id.* But the government says that ICE complied with these regulations, because "ICE revoked Petitioner's Order of Supervision . . . for the purpose of executing his final order of removal." *Id.* That does not begin to satisfy the regulations' requirements.

Start with 8 C.F.R. §§ 241.4(*l*), 241.13(i)(3)'s interview requirements: "[B]oth [regulations] require ICE to provide 'an initial informal interview promptly . . . to afford the alien an opportunity to respond to the reasons for revocation.'" *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (quoting 8 C.F.R. §§ 241.4(*l*)(2), 241.13(i)(3)). Mr. Tran declared that he was not provided with this interview, Doc. 1 at 23 ¶ 7, and DO Negrin does not dispute that.

That is dispositive. "ICE's failure to afford [Mr. Tran] such an interview violated his right to due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164–65 (W.D.N.Y. 2025); *see also Rombot*, 296 F. Supp. 3d at 386–89; *You v. Nielsen*, 321 F. Supp. 3d 451, 463–64 (S.D.N.Y. 2018). And that violation requires release,

because (1) government agencies are required to follow their own regulations, and (2) these particular regulations provide the most "minimal process" that the Constitution would permit before "someone's most basic right of freedom is taken away." *Ceesay*, 781 F. Supp. 3d at 164–65; *see also Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) ("The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." (cleaned up)). That is reason enough to grant this petition.

DO Negrin does not provide evidence of ICE's compliance with other regulations, either. Title 8 C.F.R. § 241.13(i)(2) provides that ICE may "revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service 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). That "regulation require[s] (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023).

In *Rokhfirooz*, Judge Huie determined that these requirements were not met on a record materially indistinguishable from this one. 2025 WL 2646165, at *3. There, the government failed to produce "any documented determination, made prior to Petitioner's arrest, that his release should be revoked." *Id.* at *3. The only documentation was "an arrest warrant, issued on DHS Form I-200, merely recit[ing] that there is probable cause to believe that Petitioner is 'removable from the United States,' that is, subject to removal, which would be accurate whether or not Petitioner's release was revoked." *Id.*

The government has produced materially identical documentation here. The government provides no documented, pre-arrest determination that release should be revoked due to changed circumstances or a significant likelihood of removal, but only an I-213 stating that Mr. Tran was "arrested based on his final order of

removal." Doc. 6-2 at 8; *see also* Doc. 9-1 at ¶ 6 ("At the time [Mr. Tran] was detained, ICE officers informed Petitioner he was being placed under arrest based on his final order of removal.").

Judge Huie also remarked in *Rokhfirooz* that the government had produced "no record constitut[ing] a determination even after Petitioner's arrest that there is a significant likelihood that Petitioner can be removed in the reasonably foreseeable future." 2025 WL 2646165, at *3. "In connection with defending [that] lawsuit, Respondents prepared and filed a declaration from a Supervisory Detention and Deportation Officer assigned to the detention center where Petitioner is housed," which stated that "[ICE Enforcement and Removal Operations] determined that there is a significant likelihood of removal and resettlement in a third country in the reasonably foreseeable future and re-detained Petitioner to execute his warrant of removal." *Id.* Judge Huie deemed that post-hoc determination insufficient, because the declarant did not produce underlying documentation showing that revocation occurred for that reason—let alone that that determination had been made pre-arrest. *Id.* The Court therefore "decline[d] to rely on" those statements. *Id.*

The evidence here is at least as weak. DO Negrin avers that he based his declaration on his "review of government databases and documentation relating to Petitioner Kha Nguyen Tran." Doc. 9-1 at ¶ 2. Like the declarant in *Rokhfirooz*, then, he too purports to characterize underlying documentation without producing it. He then expresses his personal belief that "there is a high likelihood of removal to Vietnam soon." *Id.* at ¶ 10. But he produces no evidence that release was revoked on those grounds. There is therefore "no evidence that DHS has made such a determination as to the revocation of Petitioner's release even after the fact of arrest, up to the present day." *Rokhfirooz*, 2025 WL 2646165, at *4.

Finally, even if ICE had revoked release because of a significant likelihood of removal, that is not enough. The regulation requires that the likelihood of removal arise out of "changed circumstances." 8 C.F.R. § 241.13(i)(2). As noted,

this should be "an individualized determination." *Kong*, 62 F.4th at 619–20. But here, the same treaty has applied to Mr. Tran's removal for the last 18 years. Doc. 1 at 3–4. And ICE (1) re-detained Mr. Tran after that treaty was signed, (2) tried to remove him under that treaty, and (3) failed in that effort. Doc. 1 at 23 ¶ 5. DO Negrin does not identify any changes relevant to that individual situation. To the contrary, he avers—wrongly—that Mr. Tran "entered the United States before 1995," making clear that he is not familiar with Mr. Tran's individual case. Doc. 9-1 at ¶ 11. In short, "Respondents have not provided any details about why a travel document could not be obtained in the past, nor have they attempted to show why obtaining a travel document is more likely this time around." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025). Respondents have announced only that they have "complete[d] a travel document request for Petitioner," which "does not constitute a changed circumstance." *Id.*

This Court should therefore grant the petition, or at least a preliminary injunction, on Count 2.

B. The government has not proved that there is a significant likelihood of removal in the reasonably foreseeable future.

Second, the government provides no evidence that Mr. Tran will likely be removed to Vietnam at all, let alone in the reasonably foreseeable future.

1. The government cites no authority for the proposition that Mr. Tran's year of detention do not satisfy the 6-month *Zadvydas* grace period.

As an initial matter, the government contests that Mr. Tran's year of detention in the mid-2000s, Doc. 1 at 23 ¶¶ 4–5, counts toward the six-month *Zadvydas* grace period—the government contends that the six-month grace period starts over every time ICE re-detains someone. Doc. 9 at 5–6. "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220

(W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen,* No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025). If it were, the government could indefinitely detain petitioners just by releasing them and quickly rearresting them every six months.

None of the government's cited cases support that view, either. Doc. 9 at 5–6. Three involve petitioners who were *not* detained for a cumulative 6 months. *Ghamelian v. Baker*, No. CV SAG-25-02106, 2025 WL 2049981, at *1 (D. Md. July 22, 2025) (indicating in the statement of facts that petitioner was not detained until 2025); *Guerra-Castro v. Parra*, No. 1:25-CV-22487, 2025 WL 1984300, at *4 & n.5 (S.D. Fla. July 17, 2025) ("Even if the Court counted Petitioner's previous ICE detention, Petitioner's cumulative amount of detention would not total 6 months."); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *8 (S.D. Fla. July 8, 2025) ("[Petitioner] was not in ICE post-removal-period detention until his detention on June 23, 2025."). A fourth holds that detention *is* cumulative, supporting Mr. Tran. *Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL 2437268, at *2 (D. Minn. May 2, 2017), *report and recommendation adopted*, No. CV 17-28 (PAM/FLN), 2017 WL 2437246 (D. Minn. June 5, 2017).[1]

A fifth cited case contends that the statutorily-defined 90-day removal period under 8 U.S.C. § 1231(a)(1)(B) starts over on re-detention. *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013). But even a cursory review of § 1231(a)(1)(B) shows that that is not true. The statute defines three, specific starting dates for the removal period, none of which involve re-detention. *See Bailey v. Lynch*, No. CV 16-2600 (JLL), 2016 WL 5791407, at *2

[1] All of these courts were wrong to tie the *Zadvydas* period to the length of detention, rather than the time since the removal order become final. *See, e.g.*, *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025) (collecting cases). But that does not matter in this case, because Mr. Tran was detained for much more than 6 cumulative months.

(D.N.J. Oct. 3, 2016) (explaining this). The six-month grace period has therefore ended, and so—contrary to the government's claims—Mr. Tran need not "rebut[] the presumptively reasonable period of detention." Doc. 9 at 6.

2. The government presents no individualized evidence to support a "significant likelihood of removal," because DO Negrin ignores Mr. Tran's previous rejection under the 2008 treaty and wrongly assumes that Mr. Tran is a pre-1995 Vietnamese immigrant.

Because the six-month grace period has passed, this court moves on to the burden-shifting framework. The government does not deny that Mr. Tran has provided "good reason" to doubt his reasonably foreseeable removal, thereby forfeiting the issue. *See Moallin v. Cangemi*, 427 F. Supp. 2d 908, 928 (D. Minn. 2006). The burden therefore shifts to the government to prove that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. That standard has a success element ("significant likelihood of removal") and a timing element ("in the reasonably foreseeable future"). The government meets neither.

First, the government has not shown that Mr. Tran's removal to Vietnam is "significant[ly] like[ly]," *Zadvydas*, 533 U.S. at 701, for a simple reason: ICE already tried and failed to remove Mr. Tran under the 2008 treaty, the same treaty that applies to his case today. Doc. 1 at 3–4, 23 ¶ 5. That denial is highly probative of his chances this time around. Article 4 of the 2008 treaty provides that "[i]f it is determined that a person" for whom travel documents are requested "meets the requirements" for repatriation under the treaty, "the Vietnamese Government *will* issue a travel document authorizing the person's return to Vietnam." Agreement Between the United Staes of America and Vietnam (Jan. 22, 2008) (emphasis added).[2] Vietnam's prior refusal to issue travel documents, then, strongly suggests

[2] *Available at* https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf

that—in Vietnam's view—Mr. Tran does not qualify for repatriation under the treaty. The only other repatriation agreement signed since 2008 is a Memorandum of Understanding ("MOU"), which "appl[ies] to individuals who arrived in the United States before July 12, 1995." Memorandum of Understanding (Nov. 21, 2020).[3] But the MOU clarifies that "[i]ndividuals" like Mr. Tran "who arrived on or after that date are covered by the [2008 treaty]," *id.*, the same treaty under which Mr. Tran was previously rejected.

"The government has not addressed [Mr. Tran's] evidence" on this score, "let alone provided any explanation for why these factors are no longer a barrier to his removal." *Nguyen*, 2025 WL 2419288, at *18. DO Negrin does not deny that Mr. Tran was previously denied under the 2008 treaty—he says nothing specific about ICE's past removal efforts at all. Nor does DO Negrin provide a contrary account of when Mr. Tran entered. But though DO Negrin provides no evidence contradicting Mr. Tran's version of events, he bases his declaration on the false premise that Mr. Tran is a pre-1995 immigrant. *See* Doc. 9-1 at ¶ 11 ("ICE has been routinely obtaining travel documents for Vietnamese citizens, including those who, *like Petitioner, entered the United States before 1995.*"). It is therefore apparent that DO Negrin is not actually familiar with the facts of Mr. Tran's case. It seems likely that he copy/pasted this declaration from one prepared for a different, pre-1995 immigrant.

Because DO Negrin plainly is not familiar with the facts of Mr. Tran's case, this Court cannot trust DO Negrin's assessment that "there is a high likelihood of removal to Vietnam soon." *Id.* at ¶ 10. Nor is it meaningful that DO Negrin is "aware of no barrier to the consulate's issuance of a travel document for Petitioner," *id.*, given that DO Negrin appears to have erroneously evaluated Mr. Tran's removal chances as though he were a pre-1995 immigrant eligible under the MOU.

[3] *available at* https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/Pre-95-Vietnam-Deportation-Advisory.pdf

Finally, generalized statistics are not informative in Mr. Tran's case, because those generalized "numbers still fail to rebut the evidence presented by [Mr. Tran] that his individual circumstances make removal unlikely." *Nguyen*, 2025 WL 2419288, at *17. True, DO Negrin asserts that ICE has removed 587 Vietnamese citizens in FY2025. Doc. 9-1 at ¶ 12. But how many of the 587 persons receiving travel documents were applying for the second time? Did any of them re-apply after a previous rejection under the 2008 treaty? If not, those acceptances are not probative in Mr. Tran's unusual circumstances. Faced with case-specific reasons to doubt the likelihood of removal, other courts have eschewed reliance on statistics alone, "demand[ing] an individualized analysis." *Nguyen*, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025) (citing *Nguyen*, 2025 WL 1725791, *4).

In the end, the only accurate information DO Negrin provides relevant to Mr. Tran's individual case is that ICE has requested a travel document for him. But "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Thus, "[w]hile the respondent[s] assert[] that [Mr. Tran's] travel document request[] with [the Vietnamese] Consulate[] remain[s] pending . . . , this is insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty. Jail*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019)

Many courts have agreed that requesting travel documents does not itself make removal reasonably likely. *See, e.g.*, *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case was "still under review and pending a decision" did not meet respondents' burden);

Islam v. Kane, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might be forthcoming or why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

3. The government cannot show that removal will occur "in the reasonably foreseeable future," because DO Negrin relies on a 30-day timeline applicable only to pre-1995 Vietnamese immigrants.

Second, the government has not proved that any removal will happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Besides DO Negrin's assertion that removal will happen "soon," Doc. 9-1 at ¶ 10, the government provides only one piece of timing evidence: DO Negrin says that "[t]he Vietnamese government has thirty days within which to issue a travel document." *Id.* at ¶ 9.

Once again, that assertion stems from DO Negrin's erroneous belief that Mr. Tran is a pre-1995 Vietnamese immigrant. The 2020 MOU commits Vietnam to answering pre-1995 immigrants' travel document requests within 30 days. *See* Memorandum of Understanding (Nov. 21, 2020), *available at* https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/Pre-95-Vietnam-Deportation-Advisory.pdf ("Within thirty (30) calendar days from the receiving date of a request for a travel document from DHS, MPS intends to issue the travel document when the individual meets the eligibility criteria listed in Section 4 of this MOU."). But the 2008 treaty contains no such time limit. The treaty's Article 3 says only that Vietnam will answer "prompt[ly]." Agreement

Between the United States of America and Vietnam (Jan. 22, 2008). Because DO Negrin wrongly assumes that the 2020 treaty's 30-day deadline applies to Mr. Tran, this Court also cannot trust his prediction about Mr. Tran's removal.

Even if the 30-day deadline did apply to Mr. Tran's case, other immigrants' experiences suggest that Vietnam is not adhering to that deadline. As noted, the 30-day deadline has applied under the MOU since 2020. But government reports[4] reveal that between 2021 and 2023, Vietnam never issued a travel document within 30 days. Instead, in the 4 cases in which Vietnam issued travel documents, the issuance time ranged from 2 months to over 15 months.

TD request date	**TD issuance date**	**Delay**
11/4/21	1/6/22	2 m, 2 d
10/18/21	3/4/22	4 m, 14 d
2/14/22	4/14/22	2 m
4/13/21	8/5/22	1 y, 3 m, 23 d

The experiences of the 14 immigrants who did not receive travel documents provide further evidence of delay. Snapshot reports about these immigrants' status reveal that at least 12[5] of the 14 were held for over a month after ICE requested their travel documents, presumably awaiting an answer.

TD request date	**Snapshot report date**	**Delay as of report**
10/29/21	12/21/21	1 m, 22 d
2/24/22	3/14/22	18 d
12/17/21	3/14/22	2 m, 25 d
4/14/22	6/12/22	1 m, 29 d
3/10/22	6/12/22	3 m, 2 d

[4] All quarterly reports are linked here: https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports

[5] The other two may also have been detained for over a month awaiting an answer, but the reports happened to come out less than 30 days after ICE submitted travel document requests on their behalf.

9/30/22	12/14/22	2 m, 14 d
10/5/22	12/14/22	2 m, 10 d
10/18/22	12/14/22	1 m, 27 d
10/25/22	12/14/22	1 m, 20 d
1/23/23	3/5/23	1 m, 11 d
10/25/22	3/5/23	4 m, 9 d
4/12/23	6/11/23	2 m
5/31/23	9/10/23	3 m, 11 d
8/25/23	9/10/23	17 d

More recent experience reveals that delay continues to plague the process. For example, Julie Valencia of the Western District of Washington's Federal Public Defender Office has fielded requests for habeas services from about 30 pre-1995 Vietnamese immigrants since March 2025. Exh. A at ¶ 2. None have been removed, mostly because ICE has not expeditiously sought travel documents for them. *Id.* at ¶¶ 2–3. (For example, one immigrant detained in March 2025 was not even asked to fill out travel document paperwork until August. *Id.* at ¶ 3.) ICE finally requested travel documents for one of her clients on August 23, 2025, according to a declaration filed in one of her habeas cases. *Id.* at ¶ 4. The client was released on September 11. *Id.* To date—a month-and-a-half later—neither he nor Ms. Valencia has received word that Vietnam issued a travel document. *Id.*

Jennie Pasquerella has seen similar delays in two cases for pre-1995 Vietnamese citizens. In one case, an ICE official submitted a sworn declaration stating that a travel document request went out on April 8, 2025. Exh. B at ¶ 5. In another, an ICE official swore that a client's travel document request was already actively "under review" by Vietnam by July 26, 2025. *Nguyen*, 2025 WL 2419288, at *4. Ms. Pasquerella has yet to see a travel document for either client. Exh. B at ¶¶ 5–10. When confronted about the over-30-day delay, ICE officials changed the

story, claiming that ICE actually had not submitted the travel document request on the dates provided in the previous declarations. *Id.* at ¶¶ 6, 8. In one case, the inconsistency caused the court to find that an ICE official had made a "false representation," "reflect[ing] adversely on the [official's] overall credibility." *Nguyen*, 2025 WL 2419288, at *4. (Seen in this light, the known inaccuracies in DO Negrin's declaration do not instill confidence.)

These stories also accord with Tin Thanh Nguyen's experience. Mr. Nguyen has spent nearly two decades assisting Vietnamese citizens with deportation and immigration matters. Exh. C at ¶ 5. As part of that work, he has dealt directly with the Government of Vietnam to facilitate the issuance of travel documents, meaning that he is familiar with the process. *Id.* at ¶ 6. This year, he has specifically worked with or assisted on the cases of almost a hundred pre-1995 individuals whom ICE is trying to deport. *Id.* at ¶ 7.

In all that experience, Mr. Nguyen "ha[s] yet to see Vietnam issue a travel document within 30 days or less." *Id.* "Rather, in [his] experience, it can take many months to get any answer from Vietnam about whether it will issue a travel document." *Id.* The delay stems from the Vietnamese government's process for travel document issuance, which involves interviews and site-visits with the person's relatives in Vietnam. *Id.* The process "takes even longer" for many pre-1995 immigrants, because many such immigrants have no relatives in Vietnam who can verify their identity. *Id.*

Finally, these delays provide important context for DO Negrin's claim that "[s]ince mid-February of 2025, the Government of Vietnam has not denied any ICE requests for TDs." Doc. 9-1 at ¶ 11. DO Negrin does not say that Vietnam has *accepted* all requests—only that Vietnam has *not denied* them. But the evidence above suggests that when Vietnam does not want to accept an immigrant, Vietnam can simply delay, not rejecting a request but not accepting it either. This may provide political cover for Vietnam in the face of intense pressure to accept its

nationals. *See* Kimmy Yam, *How the Fall of Saigon Fueled a Refugee Crisis That's Still Felt Today*, NBC News (May 20, 2025) (describing threatened visa sanctions and tariffs). From an immigrant's perspective, though, the result is the same: They remain in indefinite detention.

All this makes it impossible for this Court to find that removal will happen in the reasonably foreseeable future. "[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun*, 2019 WL 78984, at *6. "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). "[I]f DHS has no idea of when it might reasonably expect [Mr. Tran] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it *might* occur—in the reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

C. The government does not deny that ICE's third-country removal policy violates due process.

This Court should also grant the petition on Mr. Tran's third-country removal claims. The government does not try to defend ICE's third-country removal policy on the merits. And as explained next, the government's jurisdictional argument fails for all claims. This Court should therefore grant the petition on Count 3 and order the government not to remove Mr. Tran to a third country without complying with procedures set forth in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025). *See also Y.T.D.*, 2025 WL 2675760, at *8–11 (providing additional reasons why this kind of order is procedurally proper).

D. Section 1252(g) does not deprive this Court of jurisdiction.

Finally, this Court has jurisdiction. Contrary to the government's arguments, § 1252(g) does not bar review of "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed," *id.* at *7[6]—the same claim that Mr. Tran raises here with respect to third-country removals. The Court reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

The same logic applies to all of Mr. Tran's claims, because he challenges only violations of ICE's mandatory duties under statutes, regulations, and the Constitution. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings,

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[6] Mr. Ibarra-Perez raised this claim in a post-removal Federal Tort Claims Act ("FTCA") case, *id.* at *2, while this is a pre-removal habeas petition. But the analysis under § 1252(g) remains the same, because both Mr. Ibarra-Perez and Mr. Tran are challenging the same kind of agency action. *See Kong*, 62 F.4th at 616–17 (explaining that a decision about § 1252(g) in an FTCA case would also affect habeas jurisdiction).

adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Tran's] continued detention and the process required in relation to third country removal." *Y.T.D.*, 2025 WL 2675760, at *5. Many courts agree. *See, e.g.*, *Kong*, 62 F.4th at 617 ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing] detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard prior to removal of an alien to a third country").

II. The remaining preliminary injunction factors decidedly favor Mr. Tran.

This Court need not evaluate the other preliminary injunction factors—the Court should grant the petition outright. But if the Court does decide to evaluate irreparable harm and balance of harms/public interest, Mr. Tran should prevail.

On the irreparable harm prong, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments,[7] the Ninth Circuit has specifically recognized the "irreparable harms

[7] The government cites two cases to support the position that illegal immigration detention is not irreparable harm. Doc. 9 at 7. But both cases involved immigrants who (1) had already received a bond hearing and (2) were actively appealing to the BIA, but (3) wanted a federal court to intervene before the appeal was done. *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *1 (W.D. Wash. Feb. 19, 2021), and *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *1–5

imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Furthermore, "[i]t is beyond dispute that Petitioner would face irreparable harm from removal to a third country." *Nguyen*, 2025 WL 2419288, at *26.

On the balance-of-equities/public-interest prong, the government is correct that there is a "public interest in prompt execution of removal orders." *Nken v. Holder*, 556 U.S. 418, 436 (2009). But it is equally "well-established that 'our system does not permit agencies to act unlawfully even in pursuit of desirable ends.'" *Nguyen*, 2025 WL 2419288, at *28 (quoting *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021)). It also "would not be equitable or in the public's interest to allow the [government] to violate the requirements of federal law" with respect to detention and re-detention, *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (cleaned up), or to imperil the "public interest in preventing aliens from being wrongfully removed," *Nken*, 556 U.S. 418, 436.

Conclusion

For all these reasons, this Court should grant the petition, or at least enter a preliminary injunction.

Respectfully submitted,

Dated: October 9, 2025

s/ Katie Hurrelbrink

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(N.D. Cal. Dec. 24, 2018). These courts indicated only that post-bond-hearing detention pending an ordinary BIA appeal was not irreparable harm. *Reyes*, 2021 WL 662659, at *3; *Lopez Reyes*, 2018 WL 7474861, at *10.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KHA NGUYEN TRAN,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.: 25-CV-2391-BTM

Declaration of Julie Valencia

I, Julie Valencia, declare:

1. I am a paralegal employed by the Federal Public Defender office in the Western District of Washington. I have been assigned to work on §2241 petitions for ICE detainees since June, 2021.
2. Our local ICE detention center has received a large influx of pre-1995 detainee from Vietnam since about March 2025. I am aware of 30 pre-1995

Vietnamese detainees that ICE arrested since March. To the best of my knowledge, none of these detainees have been deported to Vietnam.

3. ICE did not even request travel documents for most of these detainees until mid- or late September 2025. One detainee who was detained since March 1, 2025 on a final order of deportation from 2015 was not even asked to fill out paperwork requesting travel documents until August. He still has not received any notice of a travel document being issued for him.

4. Another detainee with a final order of deportation was detained on May 21, 2025. A deportation officer declared in that case that he requested the travel document on August 23, 2025. On September 11, 2025, the District Court Judge ordered that the detainee be released from custody. As of the date of this petition, neither counsel nor petitioner has received word that the travel document has been issued or has arrived in the United States.

I declare under penalty of perjury that the foregoing is true and correct to the best of knowledge and understanding, executed on October 8, 2025, in Tacoma, Washington.

/s/ Julie Valencia
JULIE VALENCIA
Declarant

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Respondents.

CIVIL CASE NO.: 25-CV-2391-BTM

Declaration of Jennifer Pasquarella

I, Jennifer Pasquarella, declare:

1. I am the Legal Director of the Seattle Clemency Project in Kent, Washington. I am licensed to practice law in the State of Washington and California.

2. My practice focuses on individuals with immigration consequences from criminal convictions.

3. I represent several Vietnamese nationals who have been detained by ICE at their supervision check-ins in recent months.

4. I am currently representing Mong Tuyen Thi Tran in habeas litigation. She is a Vietnamese national who immigrated to the United States as a lawful permanent resident in 1993. ICE detained her on May 12, 2025 when she attended her annual check-in. She has been detained ever since.

5. Ms. Tran filed a habeas petition with different counsel on May 27, 2025 in federal district court for the district of Maryland challenging her re-detention. *See Tran v. Baker*, 2025 WL 2085020, at *2 (D.Md. July 24, 2025). On July 18, 2025, the Assistant Field Officer Director Joseph Burki signed a declaration filed in her habeas case stating that ICE submitted a request for a travel document from Vietnam on April 8, 2025. A true and correct copy of the Burki declaration is attached hereto. As of today's date, Vietnam has not issued a travel document.

6. Instead, in response to the habeas petition I filed for Ms. Tran in the district court for the Western District of Washington, ICE Deportation Officer Daniel Strzelczyk filed a declaration on October 7, 2025. In that declaration, he states that he contacted an ICE headquarters office called Removal and International Operations on October 1, 2025 to inquire about her travel document request. He states that the headquarters office responded that they did not have her travel document request and asked for him to re-submit it. Attached hereto is a true and correct copy of the Strzelczyk declaration.

7. At no time has ICE asked Ms. Tran to complete the self-declaration form required under the U.S.-Vietnam Memorandum of Understanding Agreement for processing a travel document from Vietnam for a pre-1995 arrival.

8. I also represented Phong Nguyen in his habeas petition in the district court for the Western District of Washington. ICE re-detained Mr. Nguyen at his check in on July 16, 2025. I filed his habeas petition on July 24, 2025. ICE did not request a travel document from Vietnam for Mr. Nguyen until August 7, 2025.

9. On September 9, 2025, counsel for the government, Assistant United States Attorney Brian Kipnis, told me by phone that Vietnam had issued a travel document for Mr. Nguyen. However, Mr. Kipnis told me that he had not seen the travel document, nor had ICE received a copy. He claimed the travel document was "in the mail." He told me this because his return on the habeas was due the following day, September 10, 2025.

10. The government never produced a copy of the travel document for Mr. Nguyen, and I do not believe one was even issued. Given misrepresentations made by ICE during the litigation of Mr. Nguyen's habeas petition, I think the claim that an unseen and unverified travel document was "in the mail" was disingenuous.

I declare under penalty of perjury that the foregoing is true and correct to the best of knowledge and understanding, executed on October 8, 2025, in Kent, Washington.

/s/ Jennifer Pasquarella
JENNIFER PASQUARELLA
Declarant