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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOC MINH NGUYEN,

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-2441-AGS

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

With the government's Return in hand, this Court should grant this petition on all three grounds. First, the government's evidence confirms that—among other violations—Mr. Nguyen did not receive notice of the reasons for his re-detention "upon revocation" and did not get a "prompt" interview. 8 C.F.R. § 241.13(i). Instead, the government gave him notice and an interview nearly five months after he was re-detained. Doc. 16-1 at ¶¶ 13–14. That warrants release on Count 1.

Second, the government does not establish a significant likelihood of removal in the reasonably foreseeable future under *Zadvydas v. Davis*, 533 U.S. 678 (2001). The government's only evidence relevant to the timing element ("in the reasonably foreseeable future") is utterly conclusory. Deportation Officer ("DO") Lara-Ramirez asserts that "based on [his] experience, there is a high likelihood of Petitioner's removal to Vietnam in the near future." Doc. 1 at ¶ 18. But he provides no facts whatsoever to support that claim—no statistics about how long travel document issuance usually take, no examples, no anecdotes, no nothing. And his efforts thus far do not inspire confidence in a swift removal. It appears that he took no steps to try to effectuate removal between June 4 and October 25, beginning the process shortly before the Return was due. Doc. 16-1 at ¶¶ 12-17. Because Respondents must meet their burdens "with evidence," *Zadvydas*, 533 U.S. at 701—not "unsubstantiated belief[s]" that this Court has no way to evaluate, *McKenzie v. Gillis*, No. 5:19-CV-139-KS-MTP, 2020 WL 5536510, at *3 (S.D. Miss. July 30, 2020), *report and recommendation adopted as modified*, No. 5:19-CV-139-KS-MTP, 2020 WL 5535367 (S.D. Miss. Sept. 15, 2020)—that assertion is insufficient.

When it comes to the success element ("significant likelihood of removal"), the government relies exclusively on statistics, stating that ICE has removed 587 Vietnamese immigrants in this fiscal year. Doc. 16-1 at ¶ 20. But that number is

useless in evaluating Mr. Nguyen's chances of removal, because the government does not provide any statistics particular to pre-1995 Vietnamese immigrants—immigrants who have historically faced unique removal challenges. Nor does the government say how many requests ICE has made. That makes all the difference: If Vietnam granted 587 out of 587 requests, that's a 100% success rate. If Vietnam granted 587 out of 5,870 requests, that is a 10% success rate. Without knowing the rate, that number sheds no light on any individual immigrant's chances of getting a travel document.

Third, the government does not even try to defend ICE's third country removal policy or contest the other TRO factors, and other courts have rightly rejected the government's jurisdictional argument.

This Court should therefore grant this petition, or at least enter a TRO.

ARGUMENT

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

Because the government's evidence is insufficient to justify Mr. Nguyen's detention, his petition should be granted outright, or the Court should grant a TRO.

A. Count 1: As judges in this district have uniformly held, immigrants must be released when ICE does not adhere to the regulations governing re-detention.

This Court should grant the petition on Count 1, because the government's evidence establishes that that ICE did not comply with 8 C.F.R. §§ 241.4, 241.13. That is dispositive. Over a dozen recent decisions from this district grant release for this very reason. *See Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025); *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025); *Nguyen Tran v. Noem*, 25-CV-2391-BTM (S.D. Cal. Oct. 27, 2025); *Ngo v. Noem*, 25-cv-02739-TWR-MMP, ECF. No. 11 (Oct. 23, 2025); *Bui v. Noem*, 25-CV-2111-JES-DEB, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thanh Nguyen v. Noem*,

25-cv-2760-TWR-KSC, ECF. No. 12 (Oct. 23, 2025); *Ho v. Noem*, 25-cv-2453-BAS-BLM, ECF No. 11 (S.D. Cal. Oct. 20, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10, 13 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025).

1. The government violated 8 C.F.R. § 241.13(i).

First, ICE did not comply 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)). But DO Lara-Ramirez avers that Mr. Nguyen's received his interview on October 30—almost five months after his June 4 detention. Doc. 16-1 at ¶¶ 10, 13–14. That does not comply with § 241.13(i)'s requirement to provide a "prompt" interview. *See M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (finding an informal interview given 27 days after petitioner was taken into ICE custody "cannot reasonably be construed as . . . prompt" and granting habeas petition); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (finding "the failure to provide an informal interview during that lengthy [two-month] period of time renders petitioner's re-detention unlawful"); *McSweeney v. Warden*, 25-cv-2488-RBM, Dkt. 22 at 11 (S.D. Cal. Oct. 24, 2025) (interview provided six months after detention did not cure the regulatory violation). That alone is enough to grant the petition.

Second, the government does not establish that the proper findings were made prior to Mr. Nguyen's re-detention. Section 241.13(i) permits ICE to "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).

Here, the government has not produced "any documented determination, made prior to Petitioner's arrest," that individualized changed circumstances warranted his re-detention. *Rokhfirooz v. Larose*, 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025). ICE has now issued a Notice of Revocation claiming that "there are changed circumstances in [Mr. Nguyen's] case," but it was created on October 30, almost five months after Mr. Nguyen's arrest. Doc. 16-2 at 34. It does not show that ICE made the proper findings prior to revocation.

Third, the government's evidence shows that Mr. Nguyen was not provided with the reasons for his re-detention "upon revocation." 8 C.F.R. § 241.13(i)(3). True, ICE showed Mr. Nguyen a warrant for his arrest upon revocation. Doc. 16-2 at 3. But the arrest warrant does not satisfy the regulation, because the warrant merely memorializes that the immigrant is being arrested due to his final removal order. *Tran v. Noem*, 25-cv-2391-BTM, Dkt. No. 16 at 5-6 (S.D. Cal. Oct. 10, 2025). It does not explain why release is being revoked, let alone provide notice of the supposed changed circumstances justifying re-detention. *Id.*

Mr. Nguyen received his first revocation notice not "upon revocation," 8 C.F.R. § 241.13(i)(3), but on October 30, almost five months after his arrest. Doc. 16-2 at 34. But even the October 30 notice is far too vague. It asserts that "changed circumstances" justify re-detention, but without saying what those

changed circumstances are. *Id.* at 16. It therefore did not provide Mr. Nguyen with sufficient information to contest his re-detention. *See Bui v. Warden*, 25-cv-2111-JES, Doc. 18 at 7–8 (S.D. Cal. Oct. 23, 2025).

Any one of those violations demands Mr. Nguyen's release.[1]

2. Mr. Nguyen need not show prejudice, but anyway, he can.

Contrary to the government's arguments, these violations entitle Mr. Nguyen to release without a showing of prejudice. "There are two types of regulations: (1) those that protect fundamental due process rights, and (2) and those that do not." *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first type of regulation . . . implicates due process concerns even without a prejudice inquiry." *Id.* (cleaned up).

Here, "[t]here can be little argument that ICE's requirement that noncitizens be afforded an informal interview—arguably the most bare-bones form of an opportunity to be heard—derives from the fundamental constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. 2025). Indeed, "[w]hen the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(*l*) to

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[1] The government's attempts to defend ICE's regulatory claims all address arguments that Mr. Nguyen never made. Mr. Nguyen does not claim that these regulations must be complied with "before" redetention. *Contra* Doc. 16 at 9. Nor do his arguments necessarily hinge on whether the notice was in written form, *contra id.*—though as Judge Moskowitz has explained, notice must be in writing under the regulations and due process. *Tran v. Noem*, 25-cv-2391-BTM, Dkt. No. 16 at 5-6 (S.D. Cal. Oct. 10, 2025). The government provides no evidence that ICE provided proper notice in writing or orally.

govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). Thus, these regulations fall squarely into the first category requiring no prejudice showing.

If Mr. Nguyen did need to show prejudice, however, he could. As his petition shows, he has good reason to contest that circumstances have changed or that ICE can remove him in the reasonably foreseeable future. And even if changed circumstances justified re-detention, that would give ICE only the *discretion* to detain Mr. Nguyen. 8 C.F.R. § 241.13(i)(2). The informal interview process gave Mr. Nguyen a chance to persuade ICE not to exercise that option.[2]

He would have had a strong argument against re-detention had ICE given him a prompt interview. ICE was fully capable of trying to get a travel document while Mr. Nguyen remained at liberty. ICE agents could simply have asked Mr. Nguyen to check in whenever they need additional signatures or information from him. There is therefore a "plausible scenario[] in which the outcome of the proceedings would have been different if a more elaborate process were provided," *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up): A reasonable interviewer might well have decided not to detain a long-time releasee when detention was unnecessary to effectuate ICE's goals.

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[2] The government has sometimes claimed that a re-detained individual can contest only whether there is a significant likelihood of removal in the reasonably foreseeable future. But that limitation appears nowhere in the regulation. To the contrary, the regulation provides an "opportunity to respond to the reasons for revocation stated in the notification" and charges the interviewer with making "a determination whether the facts as determined warrant revocation and further denial of release." 8 C.F.R. § 241.13(i)(3). A valid "respon[se] to the reasons for revocation" is to ask for discretionary release. *Id.* And an interviewer could validly "determine[e] [that] the facts" do not "warrant revocation and further denial of release" based on the immigrants reasons for requesting a favorable exercise of discretion. *Id.*

This Court should therefore reject the government's reasons for opposing release.

3. The regulations are enforceable.

Finally, Mr. Nguyen may challenge ICE's regulations. *Contra* Doc. 16 at 10-11. It is true that litigants may enforce only regulations that "prescribe substantive rules—not interpretive rules, general statements of policy or rules of agency organization, procedure or practice." *Jane Doe 1 v. Nielsen*, 357 F. Supp. 3d 972, 1000 (N.D. Cal. 2018) (quoting *United States v. Fifty-Three (53) Eclectus Parrots*, 685 F.2d 1131, 1136 (9th Cir. 1982)). But that standard is met as long as that "rule [is] legislative in nature, affecting individual rights and obligations." *Eclectus Parrots*, 685 F.2d at 1136.

Here, as just explained, 8 C.F.R. §§ 241.4(*l*), 241.13(i) are both intended to implement basic due process. The procedures in § 241.4 and § 241.13 therefore "are not meant merely to facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees." *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R. §§ 241.4, 241.13 are "intended to provide due process to individuals in [Mr. Nguyen's] position," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025), they are enforceable.[3]

[3] *Rodriguez v. Hayes,* 578 F.3d 1032, 1043–44 (9th Cir. 2009), has nothing to do with any of the issues in this case. Doc. 7 at 13. *Rodriguez* held that the government did not moot a challenge to immigration detention by releasing an immigrant under 8 C.F.R. § 241.4, because § 241.4(*l*) allowed ICE to re-detain the immigrant. *Id.* *Rodriguez* said nothing about § 241.13(i)—a regulation that does impose "meaningful substantive limits," *Rodriguez*, 578 F.3d at 1044, on re-detention by mandating a pre-arrest changed circumstances finding. And it did not at all address what happens when ICE fails to adhere to its regulations' procedural and substantive requirements.

B. Count 2: The government has not proved that there is a significant likelihood of removal in the reasonably foreseeable future.

Second, the government does not establish a significant likelihood of removal in the reasonably foreseeable future. Vietnam's decades-long pattern of refusing to repatriate pre-1995 Vietnamese immigrants provides "good reason" to doubt Mr. Nguyen's reasonably foreseeable removal. *See* Doc. 1 at 4-6. 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.

1. Apart from DO Lara-Ramirez's unsupported assertions, the government provides no evidence that Mr. Nguyen will be removed in the "reasonably foreseeable future."

First off, the government provides no actual evidence showing that removal will happen in the "reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. The government provides zero hard facts about how often it typically takes to get a travel document—no statistics, no examples, no anecdotes, no nothing. Instead, DO Lara-Ramirez baldly asserts that "[b]ased on [his] experience, there is a high likelihood of Petitioner's removal to Vietnam in the near future." Doc. 16-1 at ¶ 18. *Zadvydas* requires the government to meet its burden "with evidence," 533 U.S. at 701, not an "unsubstantiated belief" that this Court has no way of evaluating, *McKenzie*, 2020 WL 5536510, at *3. DO Lara-Ramirez's conclusory statement—which does not even estimate when removal will occur—therefore does not meet the government's burden.

That deficiency is fatal. "[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 v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *6 (W.D.N.Y. Jan. 2, 2019). "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). For this reason alone, *Zadvydas* demands release.

2. The government's statistics do not show that Mr. Nguyen's removal is significantly likely.

Additionally, the government had not shown Mr. Nguyen's removal to Vietnam is "significant[ly] like[ly]," *Zadvydas*, 533 U.S. at 701, for several reasons.

First, DO Lara-Rodriguez's statistical evidence is not probative. According to DO Lara-Rodriguez, "[c]ompared to fiscal year 2024, where ICE removed 58 Vietnamese citizens, ICE has removed at least 587 Vietnamese citizens this fiscal year as of October 2025." Doc. 16-1 at ¶ 20. "Mo[st] glaring[ly]," DO Lara-Rodriguez "does not identify how many of the . . . individuals were *pre-1995 Vietnamese refugees*, like Mr. [Nguyen]." *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *4 (D. Mass. June 20, 2025); *accord Nguyen*, 2025 WL 2419288, at *17 (finding statistics insufficient when declarant "did not note how many were pre-1995 arrivals"). As the petition showed without contradiction, pre-1995 arrivals face unique removal challenges: They are exempted from the 2008 treaty entirely, and only some are eligible for removal under the 2020 Memorandum of Understanding ("MOU"). Doc. 1 at 4-6. And statistics provided in the petition show that the vast majority of ICE's travel document requests for pre-1995 Vietnamese immigrants have historically been denied, even under the MOU. *Id.* Without knowing whether DO Lara-Rodriguez's statement encompasses these pre-1995 immigrants, his statement does not establish likely success.

Furthermore, DO Lara-Rodriguez's statistics does not even suggest that a high *proportion* of Vietnamese citizens are successfully removed when ICE seeks travel documents. That makes all the difference "If DHS submitted 350 requests

and Vietnam issued travel documents for 328 individuals," that would be a success rate of over 95% with a failure rate of only 5%. *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151 (D. Mass. 2025). "On the other hand, if DHS submitted 3,500 requests and only 328 individuals received travel documents," that would be a success rate of around 10%, with a failure rate of 90%. *Nguyen*, 2025 WL 1725791, at *4. Here, the government has not disclosed "the total number of requests that were made to Vietnam." *Id.* This Corut therefore cannot use the government's statistic to evaluate any individual person's chances of removal. *Id.*; *accord Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025).

Just as importantly, though DO Lara-Rodriguez offers a generalization about Vietnamese removals, courts have "demanded an individualized analysis" of why *this* person—Mr. Nguyen—will likely be removed. *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025) (citing *Nguyen*, 2025 WL 1725791, at *4). This Court cannot know if Mr. Nguyen qualifies at all under the MOU, because (1) the MOU applies only to persons meeting certain criteria, but (2) the government has never disclosed in full what those criteria are. *Id.* at *6. And even for those who qualify, the MOU provides only that Vietnam has "discretion whether to issue a travel document," which it exercises "on a case-by-case basis." *Hoac*, 2025 WL 1993771, at *5. By itself, then, "the MOU has repeatedly been deemed insufficient to show a significant likelihood of remova[l] in the reasonably foreseeable future." *Nguyen*, 2025 WL 2419288, at *17. Because "[t]he government has not provided any evidence of Vietnam's eligibility criteria or why it believes Petitioner now meets it," the government's evidence is insufficient. *Id.* at *18.

Second, ICE's inexcusable lack of diligence in seeking removal reinforces this conclusion. ICE arrested Mr. Nguyen on June 4. Doc. 16-1 at ¶ 10. As far as DO Lara-Rodriguez's declaration shows, ICE did not do a single thing to try to effectuate removal until October 25, nearly five months later. *Id.* at ¶ 17. ICE's

apparent "lack of effort only reinforces the conclusion that the Petitioner's removal is not likely to occur in the reasonably foreseeable future." *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002); *see also Conchas-Valdez v. Casey*, 25-CV-2469-DMS, Kt. No. 9 (S.D. Cal. Oct. 6, 2025) ("[T]he Government's minimal work on this case . . . do not instill confidence that it will be able to secure Petitioner's removal in the reasonably foreseeable future.").

Third, though ICE is in the process of requesting a travel document for Mr. Nguyen, Doc. 16-1 at ¶ 17, good faith efforts to secure a travel document do not themselves satisfy *Zadvydas*. The petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "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). Here, then, "[w]hile the respondent asserts that [Mr. Nguyen'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).

C. Count 3: The government's Return does not address this count.

The government's Return does not address Count 3, except through the jurisdictional argument discussed next. This Court should therefore grant on that count.

D. Section 1252(g) does not deprive this Court of jurisdiction on any issue in this petition.

Finally, contrary to the government's arguments, Doc. 16 at 3-4, § 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[4]—the same claim that Mr. Nguyen 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

[4] 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. Nguyen 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).

compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

The same logic applies to all of Mr. Nguyen'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, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Nguyen'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 government does not contest the remaining TRO factors.

This Court need not evaluate the other TRO factors—the Court should grant the petition outright. But in any event, the government does not contest that they are met in this case.

Conclusion

For all these reasons, this Court should grant the petition, or at least enter a temporary restraining order.

Respectfully submitted,

Dated: November 4, 2025

s/ Katie Hurrelbrink

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