Bounpheng Soryadvongsa
A[redacted]
Otay Mesa Detention Center
P.O. Box 439049
San Diego, CA 92143-9049

Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BOUNPHENG SORYADVONGSA,

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.: '25CV2663 AGS DDL

Petition for Writ of Habeas Corpus

[28 U.S.C. § 2241]

[1] Mr. Soryadvongsa is filing this petition for a writ of habeas corpus with the assistance of the Federal Defenders of San Diego, Inc., who drafted the instant petition. That same counsel also assisted the petitioner in preparing and submitting his request for the appointment of counsel, which has been filed concurrently with this petition, and all other documents supporting the petition. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Kara Hartzler in Support of Appointment Motion attaches case examples.

INTRODUCTION

Bounpheng Soryadvongsa was born in Laos and came to the United States as a refugee in 1985. Soon after, he became a lawful permanent resident. In 2000, he was convicted of crimes relating to firearms and drugs. After an immigration judge ordered him removed, he spent three months in immigration detention while ICE tried to remove him. In July 2024, after serving time for a subsequent drug conviction, he was again arrested and spent four months with a wrist monitor. When Laos refused to accept him, he was finally released.

ICE officials told Mr. Soryadvongsa to check in one year later, but they never gave him a specific date. Instead, on September 23, 2025, his probation officer told him to come in for a check in. When he did, ICE officers arrested him. They did so without providing any notice or complying with the agency's own regulations. What's more, ICE has adopted a new policy permitting removals to third countries with as little as six hours' notice and no meaningful opportunity to make a fear-based claim against removal.

Mr. Soryadvongsa's detention violates *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), which holds that immigrants must be released if there is "no significant likelihood of removal in the reasonably foreseeable future." His detention also violates ICE's own regulations, which require either a new violation or changed circumstances before a person can be re-detained. 8 C.F.R. §§ 241.4(l), 241.13(i). And under the Fifth Amendment, immigrants cannot be detained indefinitely with no reasonably foreseeable prospect of removal. Finally, ICE may not remove Mr. Soryadvongsa to a third country without providing an opportunity to assert fear of persecution or torture before an immigration judge. This Court should grant Mr. Soryadvongsa's habeas petition.

STATEMENT OF THE CASE

I. In 2000 and 2024, ICE tried and failed to remove Mr. Soryadvongsa because Laos refused to issue travel documents.

Bounpheng Soryadvongsa was born in Laos and came to the United States as a refugee with his family in 1985. Exhibit A, "Soryadvongsa Declaration," at ¶ 1. When they arrived in the U.S., they all became lawful permanent residents. *Id.*

In 2000, Mr. Soryadvongsa was convicted of a crimes relating to a firearm and drugs. As a result of those convictions, Mr. Soryadvongsa was placed in removal proceedings. *Id.* at ¶ 2. An immigration judge ordered him removed on November 27, 2002. *Id.* at ¶ 3.

But ICE was not able to effectuate Mr. Soryadvongsa's removal to Laos. For the next three months, ICE tried and failed to obtain travel documents for him. *Id.* at ¶ 4. Finally, ICE gave up and released him in early 2023. *Id.*

In the years since his removal order, Mr. Soryadvongsa has been convicted of other offenses. *Id.* at ¶ 5. When he was released from his most recent criminal sentence on July 30, 2024, ICE arrested him and held him for three days. ICE then made Mr. Soryadvongsa wear a wrist monitor for the next four months. *Id.* When they finally removed it in approximately November 2024, they told Mr. Soryadvongsa to check in a year later but didn't give him a date to do so.

On September 23, 2025, months before Mr. Soryadvongsa was supposed to have his annual check in, his probation officer told him to come check in. *Id.* at ¶ 6. When he complied, ICE arrested him. *Id.* They did not provide him any notice or give him an interview or an opportunity to contest his detention. *Id.*

II. Laos has no repatriation agreement with the United States, a longstanding policy of refusing to accept deportees, and a longstanding history of discrimination against the Hmong.

The Lao People's Democratic Republic is an authoritarian state and one of the poorest nations in Asia. *See* Congressional Research Service, *In Focus: Laos* (Dec. 2, 2024) ("2024 CRS").[2] When the communist party came to power in Laos in 1975, hundreds of thousands of refugees fled, including many who had fought alongside the U.S. government in the Vietnam War. *Id.*; *see* The Economist, *America's secret war in Laos* (Jan. 21, 2017).[3] During the war, the United States had dropped over 2.5 million tons of bombs on Laos in what remains the largest bombardment of any country in history. *Id.*

No repatriation agreement exists between Laos and the United States. Laos has also been historically unwilling to accept deportees from the United States through informal negotiations. As a result, there are around 4,800 nationals of Laos living in the United States with final removal orders who have not been removed. Asian Law Caucus, *Status of Ice Deportations to Southeast Asian Countries: Laos* (July 29, 2025).[4] Last year, zero people were removed to Laos; in the five years before that, between 0 and 11 people were removed per year. *See* U.S. Immigration and Customs Enforcement, *Annual Report: Fiscal Year 2024,* at 100 (Dec. 19, 2024).[5]

---

[2] https://www.congress.gov/crs-product/IF10236.

[3] https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-laos.

[4] https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation.

[5] https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf.

In 2018, the United States issued visa sanctions on Laos "due to lack of cooperation in accepting their citizens who have been ordered removed."[6] The federal government explained that Laos had not "established repeatable processes for issuing travel documents to their nationals ordered removed from the United States." *Id.*

In June of this year, President Trump reiterated, "Laos has historically failed to accept back its removable nationals." *See* Presidential Proclamation, *Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats*, § 3(c)(i) (June 4, 2025).[7] As a result, he included Laos as one of 19 countries in his travel ban, banning all Lao immigrant, tourist, student, and exchange visitors from the United States. *Id.*; *see* American Immigration Council, *Trump's 2025 Travel Ban* (Aug. 6, 2025).[8] In response, the Lao government has issued travel documents to a few dozen nationals of Laos with final removal orders. *See* Ben Warren, *Hmong refugees from Michigan among those deported to Laos, despite calls for release*, The Detroit News (Aug. 15, 2025) (noting 32 Laotian nationals were deported on a flight in August).[9]

Since then, at least one court has rejected the Trump administration's efforts to re-detain a Laotian immigrant without following its own regulations. *See Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL 2579569 (W.D. Wash. Sept. 5, 2025) (granting TRO to Laotian national in light of the

---

[6] https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions.

[7] https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/

[8] https://www.americanimmigrationcouncil.org/report/trump-2025-travel-ban/.

[9] https://www.detroitnews.com/story/news/local/michigan/2025/08/15/hmong-refugees-among-those-deported-to-laos/85680464007/.

government's failure to follow its regulations regarding re-detention and questions regarding the validity of his underlying criminal conviction).

III. The government is carrying out deportations to third countries without providing sufficient notice and opportunity to be heard.

When immigrants cannot be removed to their home country, ICE has begun deporting those individuals to third countries without adequate notice or a hearing. The Trump administration reportedly has negotiated with at least 58 countries to accept deportees from other nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York Times reported that seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are not their own citizens. *Id.* Since then, ICE has carried out highly publicized third country deportations to South Sudan and Eswatini.

The Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men to South Sudan. *See* Wong, *supra.* On July 15, ICE deported five men to the tiny African nation of Eswatini; they are reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human rights

abuses or instability. For instance, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first. *See* Wong, *supra.*

On June 23 and July 3, 2025, the Supreme Court issued a stay of a national class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional requirements before removing an individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025). On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a "'meaningful opportunity' to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country" like the ones just described. Exhibit B, ICE Memorandum on Third Country Removals, July 9, 2025.

Under the new guidance, ICE may remove any immigrant to a third country "without the need for further procedures," as long as—in the view of the State Department—the United States has received "credible" "assurances" from that country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours' notice. But "[i]n exigent circumstances," a removal may take place in as little as six hours, "as long as the alien is provided reasonably means and opportunity to speak with an attorney prior to the removal." *Id.*

Upon serving notice, ICE "will not affirmatively ask whether the alien is afraid of being removed to the country of removal." *Id.* (emphasis original). If the noncitizen "does not affirmatively state a fear of persecution or torture if removed

to the country of removal listed on the Notice of Removal within 24 hours, [ICE] may proceed with removal to the country identified on the notice." *Id.* at 2. If the noncitizen "does affirmatively state a fear if removed to the country of removal" then ICE will refer the case to U.S. Citizenship and Immigration Services ("USCIS") for a screening for eligibility for withholding of removal and protection under the Convention Against Torture ("CAT"). *Id.* at 2. "USCIS will generally screen within 24 hours." *Id.* If USCIS determines that the noncitizen does not meet the standard, the individual will be removed. *Id.* If USCIS determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal proceedings "for the sole purpose of determining eligibility for [withholding of removal protection] and CAT" or designate another country for removal. *Id.*

CLAIMS FOR RELIEF

This Court should order Mr. Soryadvongsa's immediate release on conditions. *Zadvydas* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Soryadvongsa, for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001). ICE's own regulations require a violation or changed circumstances before re-detention, as well as a chance to contest a re-detention decision. Finally, Mr. Soryadvongsa cannot be ordered removed to a third country without adequate notice and an opportunity to move for reopening before an IJ. These claims are taken in turn.

I. First claim: Mr. Soryadvongsa's detention violates *Zadvydas* and 8 U.S.C § 1231.

A. Legal background

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered the issue of indefinite immigration detention. Federal law requires ICE to detain an immigrant during the "removal period," which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks.

But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives.

If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting the federal detention statute to incorporate implicit limits. *Id.* at 689.

As an initial matter, *Zadvydas* held that detention is "presumptively reasonable"—and therefore, authorized—for at least six months. *Id.* at 701. This acts as a kind of grace period for effectuating removals.

Following the six-month grace period, courts must use a burden-shifting framework to decide whether detention remains authorized. First, the petitioner

must make a prima facie case for relief: He must prove that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

If he does so, the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.* Ultimately, then, the burden of proof rests with the government: The government must prove that there is a "significant likelihood of removal in the reasonably foreseeable future," or the immigrant must be released. *Id.*

Using this framework, Mr. Soryadvongsa already has made all the threshold showings needed to shift the burden to the government, given that he has been detained for a total of seven months. He can make them again today.

B. The six-month grace period has expired.

As an initial matter, the six-month grace period has long since ended. The *Zadvydas* grace period lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Soryadvongsa was in custody for three months in 2002 and four months in 2024. Exh. A at ¶ 4, 5. Thus, this threshold requirement is met.

The government has sometimes proposed calculating the removal period differently where, as here, an immigrant is released and then rearrested. But these proposed alternative calculations contradict the statute and *Zadvydas*.

First, the government has sometimes argued that release and rearrest resets the six-month grace period completely, taking the clock back to zero. "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). This proposal would create an obvious end run around

Zadvydas, because ICE could detain an immigrant indefinitely by releasing and quickly rearresting them every six months.

Second, the government has sometimes claimed that rearrest at least resets the 90-day removal period under 8 U.S.C. § 1231(a)(1). *See, e.g.*, *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (adopting this view). But as a court explained in *Bailey v. Lynch*, that view cannot be squared with the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). "Pursuant to the statute, the removal period, and in turn the [six-month] presumptively reasonable period, begins from the latest of 'the date the order of removal becomes administratively final,' the date of a reviewing court's final order where the removal order is judicially removed and that court orders a stay of removal, or the alien's release from detention or confinement where he was detained for reasons other than immigration purposes at the time of his final order of removal." *Id.* None of these statutory starting points have anything to do with whether or when an immigrant is detained. *See id.* Because the statutorily-defined removal period has nothing to do with release and rearrest, releasing and rearresting the immigrant cannot reset the removal period.

C. Laos' refusal to accept Mr. Soryadvongsa, along with its longstanding policy of not accepting deportees, provides good reason to believe that he will not likely be removed in the reasonably foreseeable future.

Because the six-month grace period has passed, this Court must evaluate Mr. Soryadvongsa's *Zadvydas* claim using the burden-shifting framework. At the first stage of the framework, Mr. Soryadvongsa must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

"Good reason to believe." The "good reason to believe" standard is a relatively forgiving one. "A petitioner need not establish that there exists no possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "'[g]ood reason to believe' . . . place a burden upon the detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or show that his detention is indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says: Petitioners need only give a "good reason"—not prove anything to a certainty.

"Significant likelihood of removal." This component focuses on whether Mr. Soryadvongsa will likely be removed: Continued detention is permissible only if it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities, but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words, even if "there remains *some* possibility of removal," a petitioner can still meet their burden if there is good reason to believe that successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

"In the reasonably foreseeable future." This component of the test focuses on when Mr. Soryadvongsa will likely be removed: Continued detention is permissible only if removal is likely to happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's removal efforts. If the Court has "no idea of when it might reasonably expect [Petitioner] 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." *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3

(S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Soryadvongsa "would *eventually* receive" a travel document, he can still meet his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

Mr. Soryadvongsa readily satisfies this standard for two reasons.

First, as explained above, Laos generally does not accept deportees. Last year, zero people were removed to Laos; in the five years before that, between 0 and 11 people were removed per year. *See* U.S. Immigration and Customs Enforcement, *Annual Report: Fiscal Year 2024,* at 100 (Dec. 19, 2024).[10] Although President Trump has pressured Laos to begin accepting deportees, that has resulted in Laos issuing travel documents for only a few dozen nationals out of thousands of Laotians. And since then, at least one court has rejected the Trump administration's efforts to re-detain a Laotian immigrant without following its own regulations. *See Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL 2579569 (W.D. Wash. Sept. 5, 2025) (granting TRO to Laotian national in light of the government's failure to follow its regulations regarding re-detention and questions regarding the validity of his underlying criminal conviction).

Second, Mr. Soryadvongsa's own experience bears this out. ICE has now had 23 years to deport him—including the four months of custody in 2024—yet ICE has proved unable to do so.

Thus, Mr. Soryadvongsa has met his initial burden, and the burden shifts to the government. Unless the government can prove a "significant likelihood of removal in the reasonably foreseeable future," Mr. Soryadvongsa must be released. *Zadvydas*, 533 U.S. at 701.

[10] https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf.

D. *Zadvydas* unambiguously prohibits this Court from denying Mr. Soryadvongsa's petition because of his criminal history.

If released on supervision, Mr. Soryadvongsa poses no risk of danger or flight. But even if the government did try to argue that Mr. Soryadvongsa posed a danger or flight risk, *Zadvydas* squarely holds that those are not grounds for detaining an immigrant when there is no reasonable likelihood of removal in the reasonably foreseeable future.

The two petitioners in *Zadvydas* both had significant criminal history. Mr. Zadvydas himself had "a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft," as well as "a history of flight, from both criminal and deportation proceedings." *Id.* at 684. The other petitioner, Kim Ho Ma, was "involved in a gang-related shooting [and] convicted of manslaughter." *Id.* at 685. The government argued that both men could be detained regardless of their likelihood of removal, because they posed too great a risk of danger or flight. *Id.* at 690–91.

The Supreme Court rejected that argument. The Court appreciated the seriousness of the government's concerns. *Id.* at 691. But the Court found that the immigrant's liberty interests were weightier. *Id.* The Court had never countenanced "potentially permanent" "civil confinement," based only on the government's belief that the person would misbehave in the future. *Id.*

The Court also noted that the government was free to use the many tools at its disposal to mitigate risk: "[O]f course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions." *Id.* at 700. The Ninth Circuit later elaborated, "All aliens ordered released must comply with the stringent supervision requirements set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration officer periodically, answer certain questions, submit to medical or psychiatric

testing as necessary, and accept reasonable restrictions on [their] conduct and activities, including severe travel limitations. More important, if [they] engage[ ] in any criminal activity during this time, including violation of [their] supervisory release conditions, [they] can be detained and incarcerated as part of the normal criminal process." *Ma*, 257 F.3d at 1115. These conditions have proved sufficient to protect the public over the last 23 years and will continue to.

II. Second claim: ICE failed to comply with its own regulations before re-detaining Mr. Soryadvongsa, violating his rights under the Fifth Amendment and the Administrative Procedures Act.

In addition to *Zadvydas*'s protections, a series of regulations provide extra process for someone who, like Mr. Soryadvongsa, is re-detained following a period of release. Under 8 C.F.R. § 241.4(l), ICE may re-detain an immigrant on supervision only with an interview and a chance to contest a re-detention. When an immigrant is specifically released after giving good reason why they cannot be removed, additional regulations apply. ICE may revoke a noncitizen's release and return them to ICE custody due to failure to comply with conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances, the Service determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." *Id.* § 241.13(i)(2).

The regulations further provide noncitizens with a chance to contest a re-detention decision. ICE must "notif[y] [the person] of the reasons for revocation of his or her release." *Id.* § 241.13(i)(3). ICE must then "conduct an initial informal interview promptly" after re-detention "to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* During the interview, the person "may submit any evidence or information" showing that the prerequisites to re-detention have not been met, and the interviewer must evaluate "any contested facts." *Id.* Neither regulation allows ICE to re-detain someone with no interview and no chance to contest the decision. *Zhu v. Genalo*, No. 1:25-CV-

06523 (JLR), 2025 WL 2452352, at *8 n.3 (S.D.N.Y. Aug. 26, 2025) (finding that either § 241.4 or § 241.13 led to the same result).

ICE is required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established."). A court may review a re-detention decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

None of the prerequisites to detention apply here. Mr. Soryadvongsa has not violated the conditions of his release since last fall when ICE tried to remove him. And there are no changed circumstances that justify re-detaining him. No repatriation agreement has been signed. Absent any evidence for "why obtaining a travel document is more likely this time around[,] Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Mr. Soryadvongsa received the interview required by regulation. No one from ICE has ever invited him to contest his detention. *Id.*

Numerous courts have released re-detained immigrants after finding that ICE failed to comply with applicable regulations. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT,

2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025). "[B]ecause officials did not properly revoke petitioner's release pursuant to the applicable regulations, that revocation has no effect, and [Mr. Soryadvongsa] is entitled to his release (subject to the same Order of Supervision that governed his most recent release)." *Liu*, 2025 WL 1696526, at *3.

III. Claim 3: ICE may not remove Mr. Soryadvongsa to a third country without adequate notice and an opportunity to be heard.

In addition to unlawfully detaining him, ICE's policies threaten Mr. Soryadvongsa's removal to a third country without adequate notice and an opportunity to be heard. These policies violate the Fifth Amendment, the Convention Against Torture, and implementing regulations.

A. Legal background

U.S. law enshrines protections against dangerous and life-threatening removal decisions. By statute, the government is prohibited from removing an immigrant to any third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

Similarly, Congress codified protections prohibiting the government from removing a person to a country where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to

a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

To satisfy due process, the government must provide notice of the third country removal and an opportunity to respond. Due process requires "written notice of the country being designated" and "the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

The government must also "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation . . . violates both INS regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041.

If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. The amount and type of notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the

government to move to reopen the noncitizen's immigration proceedings if the individual demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

"[L]ast minute" notice of the country of removal will not suffice, *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and for good reason: To have a meaningful opportunity to apply for fear-based protection from removal, immigrants must have time to prepare and present relevant arguments and evidence. Merely telling a person where they may be sent, without giving them a chance to look into country conditions, does not give them a meaningful chance to determine whether and why they have a credible fear.

B. The June 6, 2025 memo's removal policies violate the Fifth Amendment, 8 U.S.C. § 1231, the Conviction Against Torture, and Implementing Regulations.

The policies in the June 6, 2025, memo do not adhere to these requirements. First, under the policy, ICE need not give immigrants *any* notice or *any* opportunity to be heard before removing them to a country that—in the State Department's estimation—has provided "credible" "assurances" against persecution and torture. By depriving immigrants of any chance to challenge the State Department's view, this policy violates "[t]he essence of due process," "the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

Second, even when the government has obtained no credible assurances against persecution and torture, the government can still remove the person with

between 6 and 24 hours' notice, depending on the circumstances. That is not enough time for a detained person to assess their risk in the third country and evidence to support a credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know nothing about a third country, but if given the opportunity to investigate, immigrants would find credible reasons to fear persecution or torture—like patterns of holding deportees indefinitely without charge in solitary confinement or extreme instability raising a high likelihood of death—in many of the third countries that have agreed to removal thus far. Due process requires an adequate chance to identify and raise these threats to health and life. This Court must prohibit the government from removing Mr. Soryadvongsa without these due process safeguards.

IV. This Court must hold an evidentiary hearing on any disputed facts.

Resolution of a prolonged-detention habeas petition may require an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr. Soryadvongsa hereby requests such a hearing on any disputed facts.

Conclusion

For those reasons, this Court should grant this habeas petition.

DATED: 10/6/25

Respectfully submitted,

Bounpheng S

BOUNPHENG SORYADVONGSA
Petitioner

PROOF OF SERVICE

I, the undersigned, caused to be served this Petition for Writ of Habeas Corpus by e-mail to:

U.S. Attorney's Office, Southern District of California
Civil Division
880 Front Street
Suite 6253
San Diego, CA 92101

Date: 10-7-25

Kara Hartzler

EXHIBIT A

Bounpheng Soryadvongsa
A[redacted]
Otay Mesa Detention Center
P.O. Box 439049
San Diego, CA 92143-9049

Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BOUNPHENG SORYADVONGSA,

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.:

Declaration of Bounpheng Soryadvongsa in Support of Petition for a Writ of Habeas Corpus

[1] Mr. Soryadvongsa is filing this petition for a writ of habeas corpus and all associated documents with the assistance of the Federal Defenders of San Diego, Inc. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Kara Hartzler in Support of Appointment Motion attaches case examples.

I, Bounpheng Soryadvongsa, declare:

1. I came to the United States from Laos with my family in 1985 as a refugee fleeing the Vietnam War. We all became lawful permanent residents soon after we arrived.

2. In 2000, I was convicted of crimes relating to a firearm and drugs. As a result of those convictions, I was put into removal proceedings.

3. On November 27, 2002, an immigration judge ordered me removed on the basis of these convictions.

4. After I was ordered removed, ICE tried to deport me to Laos. However, Laos did not issue me travel documents. ICE continued to detain me for about three months.

5. Since 2002, I have been convicted of several other crimes relating to drugs. When I was released from my most recent criminal sentence on July 30, 2024, I went into ICE custody for three days. ICE then made me wear a wrist monitor for four months. When they finally removed it in approximately November 2024, they told me to check in a year later but didn't give me a date to do so.

6. On September 23, 2025, before I was supposed to have my annual check in, my probation officer told me to come check in. When I did, ICE arrested me. ICE did not give me advance notice or tell me why they were detaining me, nor did they give me an informal interview or a chance to contest my detention.

7. In the time I have been out of custody, I have worked as a welder. I live with my sister and brother and my brother-in-law. My parents are deceased. Neither myself nor my siblings have sufficient funds to hire a lawyer for me.

8. I have no legal education or training. I also do not have free access to the internet in custody.

I declare under penalty of perjury that the foregoing is true and correct, executed on 10/6/25, in San Diego, California.

BOUNPHENG SORYADVONGSA
Declarant

EXHIBIT B

PLAINTIFFS' EXHIBIT NO. 2
CASE NO. PX 25-951
IDENTIFICATION: JUL 10 2025
ADMITTED: JUL 10 2025

To All ICE Employees
July 9, 2025

Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the district court's nationwide preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required certain procedures related to providing a "meaningful opportunity" to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country. Accordingly, all previous guidance implementing the district court's preliminary injunction related the third country removals issued in *D.V.D.* is hereby rescinded. Absent additional action by the Supreme Court, the stay will remain in place until any writ of certiorari is denied or a judgment following any decision issues.

Effective immediately, when seeking to remove an alien with a final order of removal—other than an expedited removal order under section 235(b) of the Immigration and Nationality Act (INA)—to an alternative country as identified in section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, as detailed below. A "third country" or "alternative country" refers to a country other than that specifically referenced in the order of removal.

If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures. ICE will seek written confirmation from the Department of State that such diplomatic assurances were received and determined to be credible. HSI and ERO will be made aware of any such assurances. In all other cases, ICE must comply with the following procedures:

- An ERO officer will serve on the alien the attached Notice of Removal. The notice includes the intended country of removal and will be read to the alien in a language he or she understands.
- ERO will not affirmatively ask whether the alien is afraid of being removed to the country of removal.
- ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal.
    - Any determination to execute a removal order under exigent circumstances less than 24 hours following service of the Notice of Removal must be approved by the DHS General Counsel, or the Principal Legal Advisor where the DHS General Counsel is not available.

- If the alien does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, ERO may proceed with removal to the country identified on the notice. ERO should check all systems for motions as close in time as possible to removal.
- If the alien does affirmatively state a fear if removed to the country of removal listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS will generally screen the alien within 24 hours of referral.
    - USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.
    - If USCIS determines that the alien has not met this standard, the alien will be removed.
    - If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the immigration court, USCIS will refer the matter to the immigration court for further proceedings. In cases where the alien was previously in proceedings before the immigration court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform ICE. In such cases, ERO will alert their local Office of the Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with the immigration court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under section 241(b)(3) of the INA and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.

Notably, the Supreme Court's stay of removal does not alter any decisions issued by any other courts as to individual aliens regarding the process that must be provided before removing that alien to a third country.

Please direct any questions about this guidance to your OPLA field location.

Thank you for all you continue to do for the agency.

Todd M. Lyons
Acting Director
U.S. Immigration and Customs Enforcement

Attachments:

- U.S. Supreme Court Order
- Secretary Noem's Memorandum
- Notice of Removal