Dung Quoc Nguyen
A# [redacted]
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Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DUNG QUOC 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.: '25CV2791 BAS KSC

Petition for Writ of Habeas Corpus

[28 U.S.C. § 2241]

[1] Mr. Nguyen 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 Katie Hurrelbrink in Support of Appointment Motion attaches case examples.

INTRODUCTION

Dung Quoc Nguyen had an unusual journey to the United States, even for a Vietnamese refugee. Like many Vietnamese families, Mr. Nguyen's family fled Vietnam in the aftermath of the war. But Mr. Nguyen's family did not come directly to the United States. They spent time in a refugee camp in the Philippines first. That's where Mr. Nguyen was born. When he was about a month old, the family came to the U.S. Mr. Nguyen and his father believed that they naturalized when Mr. Nguyen was 15. But when Mr. Nguyen was convicted of distributing ecstasy and cocaine, they found out that Mr. Nguyen's father had never been sworn in. He was not a citizen after all. Mr. Nguyen was ordered removed.

Because of Mr. Nguyen's unusual history, however, removing him was no simple task. **Mr. Nguyen does not qualify for removal to Vietnam either under the 2008 repatriation treaty or the 2020 MOU, because he entered the U.S. before 1995 and he never resided in Vietnam. And he is not a natural-born citizen of the Philippines either—only people with Filipino parents are.** Unsurprisingly, then, both Vietnam and the Philippines refused to accept Mr. Nguyen after he was ordered removed. He has remained on supervision for the last 18 years, during which time he checked in as scheduled and sustained only one, dated conviction.

Nevertheless, ICE arrested him at his scheduled check in on September 18, 2025. Contrary to regulation, ICE has never identified any changed circumstances that made his removal more likely or given Mr. Nguyen an opportunity to contest re-detention. Worse yet, on July 9, 2025, ICE adopted a new policy permitting removals to third countries with no notice, six hours' notice, or 24 hours' notice depending on the circumstances, providing no meaningful opportunity to make a fear-based claim against removal.

Mr. Nguyen's detention violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), Mr. Nguyen's statutory and regulatory rights, and the Fifth Amendment.

Mr. Nguyen must be released under *Zadvydas* because—having proved unable to remove him for over 18 years and with no apparent path to removal—the government cannot show that there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. ICE's failure to follow its own regulations provides a second, independent ground for release. Finally, ICE may not remove Mr. Nguyen to a third country without providing an opportunity to assert a fear-based claim before an immigration judge. This Court should grant this petition on all three grounds.

STATEMENT OF FACTS

I. Though Mr. Nguyen's family is Vietnamese, Mr. Nguyen was born in a refugee camp in the Philippines.

Dung Quoc Nguyen came into the world in a liminal space between three countries. His family is Vietnamese. Exh. A at ¶ 1. But by the time Dung Nguyen was born, the family was no longer in Vietnam. They had fled to a refugee camp in the Philippines. *Id.* Mr. Nguyen lived in that refugee camp for the first month of his life. Then, in January 1984, the family immigrated to the United States, where they received their green cards. *Id.* Mr. Nguyen never lived in Vietnam. *Id.*

II. Mr. Nguyen realized that he was not a citizen after a 2007 conviction, and he devoted himself to his parents and daughter for 18 years of supervision.

After several years in the United States, the Nguyens set their sights on naturalization. When Mr. Nguyen was about 15 years old, his father passed the citizenship test. *Id.* at ¶ 2. The family believed that that made both father and son U.S. citizens. *Id.* They did not realize that Mr. Nguyen's father also had to get sworn in. No paperwork for the swearing in ceremony arrived at the house. *Id.* Unbeknownst to them, they remained legal permanent residents. *Id.*

In 2007, Mr. Nguyen was convicted of possession with intent to distribute ecstasy and cocaine. *Id.* at ¶ 3. While in custody, he learned that he was subject to

an ICE hold. And when he finished serving his sentence, he was transferred to ICE custody. *Id.* That is how he learned that he was not a citizen after all. *Id.*

Mr. Nguyen was ordered removed on June 17, 2008. *Id.* At that point, ICE began trying to remove him. As he understood it, ICE tried without success to remove him both to the Philippines and to Vietnam. *Id.* at ¶ 4. The Philippines would not take him because he is not Filipino, and Vietnam would not take him because he was not born there. *Id.* Because ICE could not remove him, he was released on an order of supervision after 90 days in custody. *Id.*

Generally speaking, Mr. Nguyen performed well on supervision. He never missed a check in, even during COVID. *Id.* at ¶ 7. He did sustain one more criminal conviction: In 2010, he was convicted of distributing ecstasy, for which he received a 12-month sentence. *Id.* at ¶ 5; *United States v. Nguyen*, 10-CR-798-LAB (S.D. Cal. 2010). Because of that offense, ICE revoked Mr. Nguyen's supervision and kept him in detention for 90 days. Exh. A at ¶ 5. He has not sustained any other convictions while on release. *Id.* at ¶ 6. He has worked to give back to the community, volunteering to feed children and the elderly at the San Diego Food Bank. *Id.* at ¶ 13.

In 2025, ICE began re-detaining people on orders of supervision at their check ins. By the time Mr. Nguyen's check-in rolled around on June 28, 2025, he knew that there was at significant risk of re-detention. *Id.* at ¶ 8. He went anyway. *Id.* ICE was so busy that agents told Mr. Nguyen to come back in three months, on September 18, 2025. *Id.* This time, Mr. Nguyen was almost sure that he would be detained, but he appeared as ordered. *Id.* He asked his wife to accompany him so that she could drive his car home. *Id.* As expected, agents detained him, telling him that it was because of the new administration. *Id.*

Apart from that explanation, no one has ever told Mr. Nguyen why he was re-detained. *Id.* at ¶ 10. No one has given him a check to contest his re-detention. *Id.* No one has ever told him what changed to make his removal more likely. *Id.*

In fact, he has not seen an ICE agent at all since his arrest. *Id.* at ¶ 9. Despite having detained him for over a month, ICE has not asked Mr. Nguyen to sign travel document forms. *Id.*

In the meantime, Mr. Nguyen's detention is a great hardship for his family. Following a kidney transplant, Mr. Nguyen's father became unable to work. *Id.* at ¶ 11. And Mr. Nguyen's mother works only part time—the rest of the time, she must act as Mr. Nguyen's father's caretaker. *Id.* Both parents live with and receive significant financial support from Mr. Nguyen, who works as a master mechanic. *Id.* While Mr. Nguyen is in detention, Mr. Nguyen's parents have to rent out any extra space in their shared home to make rent. *Id.* His dad even has to recycle and sell boxes to make extra money. *Id.*

Mr. Nguyen also has a five-year-old daughter, who lives with him from Thursdays to Sundays. *Id.* at ¶ 12. His daughter misses him terribly, and while detained, he cannot share childcare responsibilities. *Id.*

III. Vietnam's repatriation treaties do not apply to Mr. Nguyen, and he is not a citizen of the Philippines.

There is an obvious reason why ICE has proved unable to remove Mr. Nguyen for the last 18 years: Neither of Vietnam's repatriation treaties apply to him, and he is not a citizen of the Philippines. As explained further below, the 2008 repatriation treaty between the United States and Vietnam applies only to post-1995 immigrants. Mr. Nguyen immigrated here before 1995. A 2020 Memorandum of Understanding ("MOU") applies only to those who resided in Vietnam before arriving in the U.S. Mr. Nguyen never did. And the Philippines does not have birthright citizenship, meaning that he is not a citizen of the Philippines either. There is therefore no reason to think that Mr. Nguyen can be repatriated to either of those countries.

IV. 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—including Vietnamese immigrants—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, including one pre-1995 Vietnamese refugee, to South Sudan. *See* Wong, *supra*. On July 15, ICE deported five men to the tiny African nation of Eswatini, including one man from Vietnam, where 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).[2] 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. Exh. B.

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.*

[2] Though the Supreme Court's order was unreasoned, the dissent noted that the government had sought a stay based on procedural arguments applicable only to class actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). Thus, "even if the Government [was] correct that classwide relief was impermissible" in *D.V.D.*, Respondents still "remain[] obligated to comply with orders enjoining [their] conduct with respect to individual plaintiffs" like Mr. Nguyen. *Id.* Thus, the Supreme Court's decision does not override courts' authority to grant individual injunctive relief. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

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 grant this petition and order Mr. Nguyen's immediate release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Nguyen, 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 changed circumstances before re-detention, as well as a chance to contest a re-detention decision. And due process requires ICE to provide notice and an opportunity to be heard before any removal to a third country.

I. Count 1: ICE failed to comply with its own regulations before re-detaining Mr. Nguyen, violating his rights under the Fifth Amendment and the Administrative Procedures Act.

The Department of Homeland Security has enacted a series of regulations to protect the due process rights of someone who, like Mr. Nguyen, is re-detained following a period of release. Title 8 C.F.R. § 241.4(*l*) applies to re-detention generally, while 8 C.F.R. § 241.13(i) applies to persons released after providing good reason to believe that they will not be removed in the reasonably foreseeable future, *see Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025), as Mr. Nguyen was, Exh. A at ¶ 2.

Under these regulations, ICE may "return [a releasee] to custody" because they "violate[d] any of the conditions of release." 8 C.F.R. § 241.13(i)(1); *see also id.* § 241.4(*l*)(1). Otherwise, § 241.13(i) permits revocation of release only if the appropriate official (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2), and (2) makes that finding "on account of changed circumstances." *Id.*

No matter the reason for re-detention, the re-detained person is entitled to "an initial informal interview promptly," during which they "will be notified of the reasons for revocation." *Id.* §§ 241.4(*l*)(1), 241.13(i)(3). The interviewer must "afford[] the [person] an opportunity to respond to the reasons for revocation," allowing them to "submit any evidence or information" relevant to re-detention and evaluating "any contested facts." *Id.*

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)). Many judges in this district have granted habeas petitions or temporary restraining orders when ICE failed to follow these regulations. *See, e.g.*, *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 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).[3]

None of the prerequisites to detention apply here. Mr. Nguyen was not returned to custody because of a conditions violation. And there are no changed circumstances that justify re-detaining him. Mr. Nguyen still is not subject to repatriation to Vietnam under any current agreements, and he still is not a citizen of the Philippines. Of course, ICE may be planning to try again to remove Mr. Nguyen. But 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*

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[3] Courts in other districts have done the same. *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. 3fd 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).

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. Nguyen received the interview required by regulation. Exh. A at ¶ 10. No one from ICE has ever invited him to contest his detention. *Id.*

"[B]ecause officials did not properly revoke petitioner's release pursuant to the applicable regulations, that revocation has no effect, and [Mr. Nguyen] is entitled to his release (subject to the same Order of Supervision that governed his most recent release)." *Liu*, 2025 WL 1696526, at *3.

II. Count 2: Mr. Nguyen's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

Beyond these regulatory violations, Mr. Nguyen's detention violates the statute authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Nguyen: 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 § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

As an initial matter, *Zadvydas* held that detention is "presumptively reasonable" 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. Nguyen can make all the threshold showings needed to shift the burden to the government.

B. The six-month grace period expired long ago, and he has been detained for another, full six-month *Zadvydas* grace period in 2025.

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. Nguyen's order of removal was entered on June 17, 2008. Exh. A at ¶ 4. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six

months after he was ordered removed and three months after the removal period expired, both of which occurred in December 2007. Not only that, but Mr. Nguyen has been detained for a total of 7 months since he was ordered removed. *Id.* at ¶¶ 4, 5, 8.

The government has sometimes argued that release and rearrest resets the six-month grace period, taking the clock back to zero. But "[c]ourts . . . 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. On a correct understanding of *Zadvydas*, then, this requirement is met.

C. There is very good reason to think that Mr. Nguyen will not soon be removed because he does not qualify for removal under any agreement with Vietnam, he is not a Filipino citizen, and both countries have rejected him for removal.

Because the six-month grace period has passed, this Court must evaluate Mr. Nguyen's *Zadvydas* claim using the burden-shifting framework. At the first stage of the framework, Mr. Nguyen 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. Nguyen 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 its 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. Nguyen 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. Nguyen "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. Nguyen readily satisfies this standard, for several reasons.

First, Mr. Nguyen is not subject to repatriation to Vietnam under the 2008 treaty or the 2020 MOU. In 2008, Vietnam and the United States signed a repatriation treaty under which Vietnam agreed to consider accepting certain Vietnamese immigrants for deportation. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-1995 Vietnamese immigrants, providing, "Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995." Agreement Between the United States of America and Vietnam, at 2 (Jan. 22, 2008).[4] Because Mr. Nguyen's family immigrated before 1995, this agreement does not apply to him.

In 2020, the United States secured a Memorandum of Understanding ("MOU") with Vietnam, which created a process through which the Vietnamese government could consider some pre-1995 Vietnamese immigrants for removal.[5] The MOU provides that pre-1995 immigrants will be considered for removal if, among other things, the person "[r]esided in Viet Nam prior to arriving to the United States."[6] Because Mr. Nguyen was born in the refugee camp in the Philippines, he never resided in Vietnam. Exh. A at ¶ 1. The MOU therefore does not apply to him, either.

Second, Mr. Nguyen is not a citizen of the Philippines. A person is "a natural-born Filipino if born on or after January 17, 1973, with either parent being a Filipino citizen at the time of birth." Embassy of the Republic of the Philippines, *Frequently Asked Questions*, *available at* https://philippineembassy-

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

[5] https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf.

[6] https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf.

dc.org/frequently-asked-questions-faqs/. Mr. Nguyen's parents are not Filippino—they are Vietnamese. Exh. A at ¶ 1. Mr. Nguyen therefore is not a citizen of the Philippines.

Third, ICE already asked Vietnam and the Philippines to take Mr. Nguyen for removal. *Id.* at ¶ 4. Both countries refused. *Id.*

Because he is not eligible for removal to either country and both countries have rejected him, Mr. Nguyen has met his initial burden. The burden therefore shifts to the government. Unless the government can prove a "significant likelihood of removal in the reasonably foreseeable future," Mr. Nguyen must be released. *Zadvydas*, 533 U.S. at 701.

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

If released on supervision, Mr. Nguyen poses no risk of danger or flight. He has been on supervision for going on two decades. Exh. A at ¶ 4. He has reported every year as scheduled, even when he believed that he would be detained. *Id.* at ¶¶ 7, 8. And he has committed only one offense while on supervision. *Id.* at ¶¶ 5–6. That was 15 years ago, and he has already served his time in both criminal and immigration custody. *Id.* at ¶ 5.

Even if the government did try to argue that Mr. Nguyen posed a danger or flight risk, however, *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. 533 U.S. at 684–91.

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 for almost two decades. They will continue to do so while ICE keeps trying to deport Mr. Nguyen.

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

In addition to unlawfully detaining him, ICE's policies threaten his 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 enshrined in the CAT 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 comport with the requirements of 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 was 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 to the country to which they will be deported 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 hearing before removing them to a country that—in the State Department's estimation—has provided "credible" "assurances" against persecution and torture. Exh. B. 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. Exh. B. Practically speaking, there is not nearly enough time for a detained person to assess their risk in the third country and martial evidence to support any credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know nothing about a third country, like Eswatini or South Sudan, when they are scheduled for removal there. Yet if given the opportunity to investigate conditions, immigrants would find credible reasons to fear persecution or torture—like patterns of keeping deportees indefinitely and 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. Nguyen 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. Nguyen hereby requests such a hearing on any material, disputed facts.

V. Prayer for relief

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(*l*), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to any country other than Vietnam, unless they provide the following process, *see 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):
    a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
    b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
    c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
    d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a

minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.

5. Order all other relief that the Court deems just and proper.

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Conclusion

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

DATED: 10/16/25

Respectfully submitted,

DUNG QUOC NGUYEN
Petitioner

PROOF OF SERVICE

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to Janet Cabral, janet.cabral@usdoj.gov, when I receive the court-stamped copy.

Date: 10/20/2025

/s/ *Katie Hurrelbrink*
Katie Hurrelbrink

Exhibit A

Dung Quoc Nguyen
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

DUNG QUOC 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.:

First Declaration of Dung Quoc Nguyen

I, Dung Quoc Nguyen, declare:

1. I came to the United States in January 1984, when I was about a month old. My family is Vietnamese but I was born in a refugee camp in the Philippines.

[1] Mr. Nguyen 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 Katie Hurrelbrink in Support of Appointment Motion attaches case examples.

I never lived in Vietnam. My family came to the U.S. as refugees. We got green cards.

2. My dad believed he had naturalized in 1995, when I was still a minor (about 15 years old). He shook hands and everything, but they never sent him the paperwork to go get sworn in. Because he was not sworn in, he did not officially become a citizen.
3. In 2007, I was convicted of possession with intent to distribute (ecstasy and cocaine). At the time, I believed that I was a U.S. citizen. But I learned that I had an ICE hold. I was transferred from criminal custody to ICE custody. That is how I learned that I was not a citizen after all.
4. I was ordered removed on June 17, 2008. I stayed in ICE custody for 90 days after I was ordered removed. ICE tried to remove me to the Philippines. From what I understood, the Philippines would not take me because the refugee camp where I was born was considered U.S. soil, and the Philippines does not consider me Filipino. I also understood that ICE tried to remove me to Vietnam, but because I was not born in Vietnam, Vietnam would not take me. After 90 days, ICE released me because they could not deport me.
5. In 2010 or 2011, I was convicted of possession with intent to distribute (ecstasy). ICE put me back in detention for 90 days, then let me go.
6. I had no other convictions after that.
7. I have never missed a check in since I was released back in 2008, not even

during COVID.

8. On June 28, 2025, I checked in with ICE. I had already heard stories about people being detained at their check-in, and I expected to be detained too. I still checked in. ICE gave me three more months of release because ICE was so busy. I was ordered to check in again on September 18, 2025. I asked my wife to come with me so she could drive the car home, because I was almost sure I would be detained then. I was right. ICE detained me, telling me that it was because of the new administration.

9. When I was arrested, I was asked whether I wanted to see a judge or whether I wanted to sign and deport. I said that I wanted to see a judge. I haven't seen another ICE officer since then. No one has asked me to sign travel document forms.

10. No one has ever given me the opportunity to talk about why I was detained, other than the arresting officer's statement that it was because of the change in administration. I have never gotten the chance to contest my redetention. No one ever told me what changed to make my removal more likely.

11. My dad lost both kidneys, so he had to have a kidney transplant. He doesn't work any more. He lives with us. Mom acts as his caretaker part time and works part time. I have to help support both of them. I work at BT Auto Wrench as a master mechanic. I do whatever I can to help support my family. While I'm in detention, my parents are having to rent out all possible extra

space in the house to make rent. My dad is recycling and selling boxes to make some extra money.

12. I also have a five-year-old daughter. Her mom and I have joint custody. She's with me Thursday to Sunday. My daughter misses me very much, and I am not around to help her mom take care of her.

13. I volunteer for San Diego Food Bank. We feed the elderly and hungry children. I've been a volunteer for years.

14. I have no savings. I have about $20,000 in credit card debt. I do not own a house. I have a car, but it is not paid off. I have $7,000 in stock that I'm saving for retirement. I have no assets other than that. I do not think that I can afford an attorney.

15. I have no legal education or training. I know nothing about immigration law. I do not have unrestricted access to the internet in custody, so I cannot look up Vietnam's and ICE's latest policies toward people like me.

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I declare under penalty of perjury that the foregoing is true and correct, executed on Oct 16th 2025, in San Diego, California.

DUNG QUOC NGUYEN
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 <u>not</u> 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