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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.: 25-CV_2791-BAS

Traverse in Support of Petition for Writ of Habeas Corpus

&

Reply in Support of Motion for a Temporary Restraining Order

INTRODUCTION

The government's Return confirms that this Court should grant the petition on all three grounds.

First, the government's evidence confirms that—among other violations—Mr. Nguyen did not receive notice of the reasons for his re-detention "upon revocation" and did not get a "prompt" interview. 8 C.F.R. § 241.13(i). Instead, the government gave him notice and an interview six weeks after he was re-detained. Doc. 7-2 at ¶ 8. That warrants release on Count 1.

Second, the government fails to engage at all with the premise of Mr. Nguyen's *Zadvydas* claim. The government's evidence confirms that Mr. Nguyen was "b[orn] in a Philippine refugee camp to Vietnamese citizen parents." Doc. 7-1 at 10. And neither the government nor Deportation Officer ("DO") Townsend counter Mr. Nguyen's evidence that that makes him ineligible for removal by virtue of Filipino citizenship or under the 2008 treaty or 2020 Memorandum of Understanding ("MOU") with Vietnam. **It is therefore uncontroverted that Mr. Nguyen is not subject to removal under any international agreement between the United States and Vietnam or the Philippines.** Mr. Nguyen's petition pointed out that these factors distinguish his case from other pre-1995 Vietnamese immigrants'. Yet, the Return does not even mention Mr. Nguyen's unique circumstances—it relies entirely on generic information about pre-1995 Vietnamese immigrants who are deportable under the MOU. Compounding the problem, DO Townsend gives no estimated removal timeline, asserting without evidence that removal will happen "in the near future." Given these obvious deficiencies, this Court should grant on Count 2 as well.

Third, the government does not try to defend ICE's third-country removal policy on the merits, and the government's justiciability and jurisdictional arguments are meritless.

This Court should therefore grant the petition on all three grounds.

ARGUMENT

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

This petition should be granted on all three grounds.

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

This Court should grant the petition on Count 1, because the government's evidence establishes that that ICE did not comply with 8 C.F.R. §§ 241.4, 241.13. That is dispositive. At least a dozen recent decisions from this district grant release for this very reason. *See Nguyen Tran v. Noem*, 25-CV-2391-BTM (S.D. Cal. Oct. 27, 2025); *Ngo v. Noem*, 25-cv-02739-TWR-MMP, ECF. No. 11 (Oct. 23, 2025); *Bui v. Noem*, 25-CV-2111-JES-DEB, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thanh Nguyen v. Noem*, 25-cv-2760-TWR-KSC, ECF. No. 12 (Oct. 23, 2025); *Ho v. Noem*, 25-cv-2453-BAS-BLM, ECF No. 11 (S.D. Cal. Oct. 20, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10, 13 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025).

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

First, ICE did not comply with 8 C.F.R. §§ 241.4(*l*), 241.13(i)(3)'s interview requirements. "[B]oth [regulations] require ICE to provide 'an initial informal interview promptly . . . to afford the alien an opportunity to respond to the reasons for revocation.'" *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (quoting 8 C.F.R. §§ 241.4(*l*)(2), 241.13(i)(3)). But DO Townsend avers in his

October 29 declaration that Mr. Nguyen's informal interview was not scheduled until October 30—six weeks after his September 18 detention. Doc. 7-2 at ¶¶ 6, 8. Even if that interview took place as scheduled, it would not comply with § 241.13(i)'s requirement to provide a "prompt" interview. *See M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (finding an informal interview given 27 days after petitioner was taken into ICE custody "cannot reasonably be construed as . . . prompt" and granting habeas petition); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (finding "the failure to provide an informal interview during that lengthy [two-month] period of time renders petitioner's re-detention unlawful"); *McSweeney v. Warden*, 25-cv-2488-RBM, Dkt. 22 at 11 (S.D. Cal. Oct. 24, 2025) (interview provided six months after detention did not cure the regulatory violation). That alone is enough to grant the petition.

Second, the government does not establish that the proper findings were made prior to Mr. Nguyen's re-detention. Section 241.13(i) permits ICE to "revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). That "regulation require[s] (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023).

Here, the government has not produced "any documented determination, made prior to Petitioner's arrest," that individualized changed circumstances warranted his re-detention. *Rokhfirooz v. Larose*, 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025). Instead, the government's evidence show that Mr. Nguyen was rearrested because he "had a final order of removal." Doc. 7-1 at 5. That is not a changed circumstance but has been true since 2008. *See id.* ICE has now

issued a Notice of Revocation claiming that "there are changed circumstances in [Mr. Nguyen's] case," but it was created on October 29, almost six weeks after Mr. Nguyen's arrest. Doc. 7-1 at 16. It does not show that ICE made the proper findings prior to revocation.

Third, the government's evidence shows that Mr. Nguyen was not provided with the reasons for his re-detention "upon revocation." 8 C.F.R. § 241.13(i)(3). True, ICE showed Mr. Nguyen a warrant for his arrest upon revocation. Doc. 7-1 at 7. But the arrest warrant does not satisfy the regulation, because the warrant merely memorializes that the immigrant is being arrested due to his final removal order. *Tran v. Noem*, 25-cv-2391-BTM, Dkt. No. 16 at 5-6 (S.D. Cal. Oct. 10, 2025). It does not explain why release is being revoked, let alone provide notice of the supposed changed circumstances justifying re-detention. *Id.*

Mr. Nguyen received his first revocation notice not "upon revocation," 8 C.F.R. § 241.13(i)(3), but on October 29, almost six weeks after his arrest. Doc. 7-1 at 16. But even the October 29 notice is far too vague. It asserts that "changed circumstances" justify re-detention, but without saying what those changed circumstances are. *Id.* at 16. It therefore did not provide Mr. Nguyen with sufficient information to contest his re-detention. *See Bui v. Warden*, 25-cv-2111-JES, Doc. 18 at 7–8 (S.D. Cal. Oct. 23, 2025).

All of these lapses are especially concerning in Mr. Nguyen's case, because he has a very strong argument against re-detention. The only changed circumstances cited in the government's Return involve increased removals for pre-1995 Vietnamese immigrants under the 2020 MOU. Doc. 7 at 12. But Mr. Nguyen does not qualify for removal under the 2020 MOU. If ICE had bothered to (1) determine whether individualized changed circumstances justified detention, (2) immediately and specifically identify the changed circumstances, and (3) give Mr. Nguyen a chance to contest those changed circumstances,

everyone involved may have realized that there was no basis to detain Mr. Nguyen after all.[1]

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

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

Here, "[t]here can be little argument that ICE's requirement that noncitizens be afforded an informal interview—arguably the most bare-bones form of an opportunity to be heard—derives from the fundamental constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. 2025). Indeed, "[w]hen the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(*l*) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it

[1] The government's attempts to defend ICE's regulatory claims all address arguments that Mr. Nguyen never made. Mr. Nguyen does not claim that these regulations must be complied with "before" redetention. *Contra* Doc. 7 at 11. Nor do his arguments necessarily hinge on whether the notice was in written form, *contra id.* at 11-12—though as Judge Moskowitz has explained, notice must be in writing under the regulations and due process. *Tran v. Noem*, 25-cv-2391-BTM, Dkt. No. 16 at 5-6 (S.D. Cal. Oct. 10, 2025). The government provides no evidence that ICE provided proper notice in writing or orally.

addresses the same due process concerns as 241.4(*l*). Thus, these regulations fall squarely into the first category requiring no prejudice showing.

If Mr. Nguyen did need to show prejudice, however, he could. He has extremely good reason to contest that circumstances have changed or that ICE can remove him in the reasonably foreseeable future, as he is not removable under any international treaty between the United States and Vietnam. And even if changed circumstances justified re-detention, that would give ICE only the *discretion* to detain Mr. Nguyen. 8 C.F.R. § 241.13(i)(2). The whole point of the informal interview process was to give Mr. Nguyen a chance to persuade ICE not to re-detain him while they worked on getting his travel document.[2]

He would have had a very strong argument against re-detention had ICE given him a prompt interview. On the one hand, ICE was fully capable of trying to get a travel document while Mr. Nguyen remained at liberty. ICE agents could simply have asked Mr. Nguyen to check in whenever they need additional signatures or information from him. And the government does not dispute that Mr. Nguyen had a perfect record of checking in during release. Doc. 1 at 27 ¶ 7. On the other hand, detention imposes severe hardships on Mr. Nguyen's family, as he provides critical financial support his elderly and disabled parents and shares custody over his five-year-old daughter. *Id.* at 11-12. There is therefore a "plausible

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

scenario[] in which the outcome of the proceedings would have been different if a more elaborate process were provided," *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up): A reasonable interviewer might well have decided not to detain a model releasee, for whom detention would prove an immense hardship, when detention was totally unnecessary to effectuate ICE's goals.[3]

This Court should follow these decisions' lead and reject the government's reasons for opposing release.

3. The regulations are enforceable.

Finally, Mr. Nguyen may challenge ICE's regulations. *Contra* Doc. 7 at 13–14. Contrary to *Morales-Sanchez v. Bondi*, that is not because ICE regulations "override the statutory grant of detention authority." No. 25-cv-02530-AB-DTB, at *4 (C.D. Cal. Oct. 3, 2025). To quote *Jane Doe 1 v. Nielsen*—the only case on which *Morales-Sanchez* relies—it is because even when "DHS retains an enormous amount of authority and discretion . . .[,] they do not have the discretion to violate the law." 357 F. Supp. 3d 972, 996 (N.D. Cal. 2018). "The government's argument" therefore "confuses [Mr. Nguyen's] right to an order of supervision, which ICE indeed has discretion to grant or deny, with his right not to be detained without adequate—in fact, without *any*—process." *Ceesay*, 781 F. Supp. 3d at 166.

Jane Doe conflicts with rather than supporting *Morales-Sanchez*, because *Morales-Sanchez* misinterpreted the principle of law on which *Jane Doe* is based. It is true that litigants may enforce only regulations that "prescribe substantive rules—not interpretive rules, general statements of policy or rules of agency organization, procedure or practice." *Jane Doe*, 357 F. Supp. 3d at 1000 (quoting *United States v. Fifty-Three (53) Eclectus Parrots*, 685 F.2d 1131, 1136 (9th Cir.

[3] *Ahmad v. Whitaker*, 2018 WL 6928540 (W.D. Wash. Dec. 4, 2018), and *Doe v. Smith*, 2018 WL 4696749 (D. Mass. Oct. 1, 2018), denied on prejudice, *see* Doc. 7 at 12-13, but those cases were wrongly decided for the reasons given in this section. Both are also distinguishable because Mr. Nguyen can show prejudice.

1982)). But that standard is met as long as that "rule [is] legislative in nature, affecting individual rights and obligations." *Eclectus Parrots*, 685 F.2d at 1136.

Here, as just explained, 8 C.F.R. §§ 241.4(*l*), 241.13(i) are both intended to implement basic due process. The procedures in § 241.4 and § 241.13 therefore "are not meant merely to facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees." *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R. §§ 241.4, 241.13 are "intended to provide due process to individuals in [Mr. Nguyen's] position," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025), they are enforceable under *Eclectus Parrots*.[4]

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

Second, the government does not establish a significant likelihood of removal in the reasonably foreseeable future.

The petition provided a very good reason to think that removal is not significantly likely: Mr. Nguyen is not eligible for removal to Vietnam under the 2008 treaty or 2020 MOU, and he cannot be removed to the Philippines because he is not a citizen of that country. Doc. 1 at 14-15. That distinguishes him from other pre-1995 Vietnamese immigrants who have been removed under the 2020 MOU.

The burden therefore shifts to the government to rebut that evidence. The government does not try to do so. It does not even mention any of the unique facts

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

in Mr. Nguyen's case. Having utterly failed to address the basic premise of this habeas petition, the government has not met its burden.

1. Generic arguments about pre-1995 Vietnamese immigrants do not show that Mr. Nguyen's removal is "significant[ly] likel[y]," because he faces unique barriers to removal.

First, the government does not show that removal is "significant[ly] likel[y]" in spite of the unique challenges to Mr. Nguyen's removal. *Zadvydas*, 533 U.S. at 701.

The government does not dispute any of the facts or law showing that Mr. Nguyen is not removable. Evidence attached to the Return confirms Mr. Nguyen's account that he was "b[orn] in a Philippine refugee camp to Vietnamese citizen parents" and that he "last entered the United States on or about January 16, 1984." Doc. 7-1 at 10. The government does not dispute that, due to his entry date, Mr. Nguyen is not subject to repatriation under the 2008 treaty. Doc. 1 at 14. The government does not dispute that, because he never lived in Vietnam, Mr. Nguyen is not subject to repatriation under the 2020 MOU. *Id.* The government does not dispute that, because his parents are not Filipino, he is not a citizen of the Philippines. *Id.* (ICE is not even trying to remove him to the Philippines—their efforts are concentrated solely on Vietnam. Doc. 7-2 at ¶¶ 6, 9-11.)

Finally, the government does not provide any reason whatsoever to think that Vietnam or the Philippines will take Mr. Nguyen in spite of these obstacles. In fact, neither the government nor DO Townsend discuss the facts unique to Mr. Nguyen's case at all. It is not even clear that DO Townsend is aware that Mr. Nguyen falls outside of the 2020 MOU, casting grave doubt on his vague promises of imminent removal. Doc. 7-1 at ¶ 19.

Rather than address any of the facts of Mr. Nguyen's case, the government makes generic arguments about pre-1995 Vietnamese citizens writ large. Doc. 7 at 12. Specifically, the government notes that ICE has removed 324 pre-1995 Vietnamese citizens in fiscal year 2025. Doc. 7-2 at ¶ 15. As a general matter, courts

have not deferred to such statistics but have "demanded an individualized analysis" of why *this* person—Mr. Nguyen—will likely be removed. *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025) (citing *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151 (D. Mass. 2025)). But here, relying on statistics would be even more inappropriate than usual, because the government provides zero evidence that these individuals were similarly situated to Mr. Nguyen. The government does not claim that a single one of the 324 deportees was explicitly excluded from the 2020 MOU. These statistics therefore are not evidence that ICE can repatriate someone like Mr. Nguyen, who falls outside of every repatriation agreement between the United States and Vietnam.

The government therefore has not rebutted Mr. Nguyen's evidence on the success element, and Count 2 must be granted on those grounds alone.

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

Additionally, the government provides no evidence showing that removal will happen in the "reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

First off, the government provides zero hard facts about how often it typically takes to get a travel document for a pre-1995 Vietnamese immigrant—no statistics, no examples, no anecdotes, no nothing. The only timing evidence in the government's whole petition is this bald assertion from DO Townsend: "Based on my experience, ICE's success with obtaining TDs from Vietnam, and knowledge of this case, there is a significant likelihood of Petitioner's removal to Vietnam in the near future." Doc. 7-1 at ¶ 19. *Zadvydas* requires the government to meet its burden "with evidence," 533 U.S. at 701, not an "unsubstantiated belief" that this Court has no way of evaluating, *McKenzie*, 2020 WL 5536510, at *3. DO Townsend's conclusory statement—which does not even offer up an estimated date of removal—is not evidence.

Furthermore, DO Townsend's conclusory assertion is based solely off of ICE's prior experience with obtaining travel documents for pre-1995 Vietnamese immigrants. Doc. 7-1 at ¶ 19. Once again, Mr. Nguyen is not similarly situated to the average pre-1995 Vietnamese immigrant, because he falls outside of every repatriation treaty between the United States and Vietnam. There is therefore no evidence that DO Townsend's assessment is reliable here.

These deficiencies are fatal. "[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *6 (W.D.N.Y. Jan. 2, 2019). "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). For this reason, too, *Zadvydas* demands release.

C. Count 3: The third-country removal claim is justiciable.

This Court should also prohibit ICE from removing Mr. Nguyen to a third country without adequate notice. The government does not try to defend ICE's third-country removal policy on the merits. Instead, the government says that a third-country removal challenge is nonjusticiable under Article III because ICE professes no current plans to remove Mr. Nguyen to a third country. Doc. 7 at 2-3.

But "[t]here, so to speak, lies the rub." *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 389 n.44 (D. Mass. 2025). "[A]ccording to [Respondents], an individual must await notice of removal before his claim is ripe[.]" *Id.* But under ICE's policy, "there is no notice" for certain removals and inadequate notice for others. *Id.* And if Mr. Nguyen "is removed" before he can

raise this challenge, Respondents will then argue that "there is no jurisdiction" to bring him back to the United States. *Id.*

This Court need not adopt that Kafkaesque view. The government has not denied that "the default procedural structure without an injunction" is "set forth in DHS's March 30 and July 9, 2025 policy memoranda," which provide for third-country removal with little or no notice. *Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025). And Mr. Nguyen has "point[ed] to numerous examples of cases involving individuals who DHS has attempted to remove to third countries with little or no notice or opportunity to be heard." *Id.*; *see* Doc. 1 at 15-17. "On balance," then, "there is a sufficiently imminent risk that [Mr. Phan] will be subjected to improper process in relation to any third country removal to warrant imposition of an injunction requiring additional process." *Y.T.D.*, 2025 WL 2675760, at *11.

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

Finally, contrary to the government's arguments, Doc. 7 at 3-4, § 1252(g) does not bar review of "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed," *id.* at *7[5]—the same

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

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

The same logic applies to all of Mr. Nguyen's claims, because he challenges only violations of ICE's mandatory duties under statutes, regulations, and the Constitution. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Nguyen's] continued detention and the process required in relation to third country removal." *Y.T.D.*, 2025 WL 2675760, at *5. Many courts agree. *See, e.g.*, *Kong*, 62 F.4th at 617 ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing] detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025)

(1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard prior to removal of an alien to a third country").

II. The remaining TRO factors decidedly favor Mr. Nguyen.

Because this Court intends to resolve the petition without separately evaluating the TRO, this Court need not evaluate the other TRO factors. But if the Court does decide to evaluate irreparable harm and balance of harms/public interest, Mr. Nguyen would prevail.

On the irreparable harm prong, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments, the Ninth Circuit has specifically recognized the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Furthermore, "[i]t is beyond dispute that Petitioner would face irreparable harm from removal to a third country." *Nguyen*, 2025 WL 2419288, at *26.

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

Conclusion

For all these reasons, this Court should grant the petition on all three grounds.

Respectfully submitted,

Dated: November 4, 2025

s/ Katie Hurrelbrink

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