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**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF CALIFORNIA**

QUOC ANH 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-2792-LL

**Traverse in Support of Petition for Writ of Habeas Corpus**

**&**

**Reply in Support of Motion for a Temporary Restraining Order**

## INTRODUCTION

With the government's Return in hand, this Court should grant this petition on all three grounds, or at least issue a temporary restraining order ("TRO"). First, the government effectively concedes that ICE did not comply with any of 8 C.F.R. § 241.13(i)'s requirements when detaining Mr. Nguyen six months ago. That is dispositive, a sufficient reason to grant this petition outright.

Second, the government does not establish a significant likelihood of removal in the reasonably foreseeable future under *Zadvydas v. Davis*, 533 U.S. 678 (2001). This administration has had six months—an entire *Zadvydas* grace period—to remove Mr. Nguyen, but has proved unable to do so. The Return does not show that that will change. The government's only evidence relevant to the timing element ("in the reasonably foreseeable future") is utterly conclusory. Deportation Officer ("DO") Lara-Ramirez asserts that ICE expects a travel document to issue in November. But he provides no evidence whatsoever to support that claim—no statistics about how long travel document issuance usually take, no examples, no anecdotes, no nothing. Because Respondents must meet their burdens "with evidence," *Zadvydas*, 533 U.S. at 701—not "unsubstantiated belief[s]" that this Court has no way to evaluate, *McKenzie v. Gillis*, No. 5:19-CV-139-KS-MTP, 2020 WL 5536510, at *3 (S.D. Miss. July 30, 2020), *report and recommendation adopted as modified*, No. 5:19-CV-139-KS-MTP, 2020 WL 5535367 (S.D. Miss. Sept. 15, 2020)—that assertion is insufficient.

When it comes to the success element ("significant likelihood of removal"), the government relies exclusively on statistics, stating that Vietnam has issued 324 travel documents for pre-1995 Vietnamese immigrants in this fiscal year. But the number is useless in evaluating Mr. Nguyen's chances of removal, because the government does not say how many requests ICE has made. That makes all the difference: If Vietnam granted 324 out of 324 requests, that's a 100% success rate. If Vietnam granted 324 out of 3,240 requests, that is a 10% success rate.

Without knowing the rate, that number sheds no light on any individual immigrant's chances of getting a travel document.

Third, the government does not even try to defend ICE's third country removal policy, and other courts have rightly rejected the government's justiciability and jurisdictional arguments.

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

## ARGUMENT

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

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

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

First, this Court should grant the petition on Count 1, because the government effectively concedes that ICE did not comply with 8 C.F.R. §§ 241.4, 241.13. Doc. 7 at 10. The government does not claim that ICE initially revoked Mr. Nguyen's release based on a "determin[ation]" that, "on account of changed circumstances," "there is a significant likelihood that [Mr. Nguyen] would be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2); *see infra*, Section A.3 (discussing notice issued six months after the fact). The government does not claim that, "[u]pon revocation," Mr. Nguyen was "notified of the reasons for revocation of his . . . release." 8 C.F.R. § 241.13(i)(3). And the government does not claim that any informal interview was conducted "promptly." *Id.* Thus, the government does not claim that ICE complied with any aspect of 8 C.F.R. § 241.13(i).

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).

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

1. Mr. Nguyen need not show prejudice.

*First*, Mr. Nguyen need not show prejudice in order to win release. *Contra* Doc. 7 at 10. "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*, 781 F. Supp. 3d at 165 n.26. 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 addresses the same due process concerns as 241.4(*l*). Thus, these regulations fall squarely into the first category requiring no prejudice showing.

If Mr. Nguyen did need to show prejudice, however, he could. As this petition shows, he has good reasons to contest that circumstances have changed or that ICE can remove him in the reasonably foreseeable future. And even if changed circumstances justified re-detention, that would give ICE only the *discretion* to detain Mr. Nguyen. 8 C.F.R. § 241.13(i)(2). The 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.[1]

He would have had a very strong argument against re-detention had ICE given him a prompt interview in April. Importantly, 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 it is undisputed that Mr. Nguyen behaved as a model releasee, with no convictions, missed check-ins, or other conditions violations following his release. Doc. 1 at 26 ¶¶ 4–5; *see* Doc. 7 at 1. There is

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[1] 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 that revocation is unnecessary to obtain a travel document. *Id.* And an interviewer could validly "determine[e] [that] the facts" do not "warrant revocation and further denial of release" on that basis. *Id.*

therefore a "plausible scenario[] in which the outcome of the proceedings would have been different if a more elaborate process were provided," *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up): A reasonable interviewer might well have decided not to detain a model releasee when detention was totally unnecessary to effectuate ICE's goals.[2]

2. The regulations are enforceable.

*Second*, Mr. Nguyen may challenge ICE's regulations. *Contra* Doc. 7 at 10–11. 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 v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025).

*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. 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.

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[2] *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 11, but those cases were wrongly decided for the reasons given in this section. Both are also distinguishable because Mr. Nguyen can show prejudice.

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*.[3]

Because the regulations are enforceable, Mr. Nguyen need not separately establish a standalone liberty interest in being free from detention. *Contra* Doc.7 at 10. But if he did have to, he could. As the court in *Pinchi v. Noem* put it when deciding a similar issue,

> "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491. Generally, the Due Process Clause "requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("The fact that a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest."); *Hurd v. D.C., Gov't*, 864 F.3d 671, 683 (D.C. Cir. 2017) (holding that re-detention after pre-parole conditional supervision requires a pre-deprivation hearing); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S.

[3] *Rodriguez v. Hayes*, 578 F.3d 1032, 1043–44 (9th Cir. 2009), has nothing to do with any of the issues in this case. *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 the regulation 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.

471, 482 (1972) (same, in parole context). . . . .

> Thus, even when ICE has the initial discretion to detain or release a noncitizen . . ., after that individual is released from custody she has a protected liberty interest in remaining out of custody. *See Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ("[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention."); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega*, 415 F. Supp. 3d at 969 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.").

*Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025).

3. A notice issued six months after the fact does not cure the violation.

Finally, the Notice of Revocation of Release from October 21, 2025, Doc. 7-2 at 27, does not cure the violation. Among other issues,

- The notice does not even parrot the regulation's standard for revocation, *compare* 8 C.F.R. § 241.13(i) (permitting revocation "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"), *with* Doc. 7-2 at 27 (revoking based on "a determination that there are changed circumstances in your case"), let alone explain ICE's determination sufficient to let Mr. Nguyen contest it, *see Bui v. Noem*, 25-cv-2111-JES, Dkt. No. 18, at 7–8 (Oct. 23, 2025 S.D. Cal.);
- The notice was not given "upon revocation," 8 C.F.R. § 241.13(i)(3), but comes over six months after Mr. Nguyen was detained;

- The October notice does not show that a determination under § 241.13(i) was made prior to the April arrest, *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025) (noting the government's failure to provide "any documented determination, made prior to Petitioner's arrest, that his release should be revoked");
- Though the notice claims that Mr. Nguyen will receive an interview, the government does not claim that a § 241.13(i)(3)-compliant interview has taken place[4]; and
- Any interview now would be insufficient, because a "six-month delay violate[s] § 241.4(l) and § 241.13(i)'s requirement that the interview occur 'promptly' after Petitioner's re-detention." *McSweeney v. Warden*, 25-cv-2488-RBM, Dkt. 22 at 11 (S.D. Cal. Oct. 24, 2025) (collecting cases).

In the end, to excuse the regulatory violation based on this late-made notice would be antithetical to the whole point of § 241.13. That regulation is intended to give immigrants notice and an opportunity to be heard when an immigrant is detained, providing a chance to avoid the kind of life-altering detention that Mr. Nguyen has faced. Any attempt to provide that process six months later—when the damage is already long since done—does not begin to cure ICE's violation. For this reason alone, Mr. Nguyen must be immediately released.

**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

[4] DO Lara-Rodriguez's declaration asserts that an interview took place but provides no details or supporting evidence. Doc. 7-1 at ¶ 16. The government does not try to argue that this statement proves a § 241.13(i)-compliant interview, conceding that it is "unclear whether Petitioner's conversations with ICE officers to date amount to an informal interview." Doc. 7 at 11.

removal in the reasonably foreseeable future. Vietnam's decades-long pattern of refusing to repatriate pre-1995 Vietnamese immigrants provides "good reason" to doubt Mr. Nguyen's reasonably foreseeable removal. *See* Doc. 1 at 3-5. The burden therefore shifts to the government to prove that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. That standard has a success element ("significant likelihood of removal") and a timing element ("in the reasonably foreseeable future"). The government meets neither.

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

First off, the government provides no actual evidence showing that removal will happen in the "reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. That standard is especially demanding here because of the extraordinary delays in this case. "[F]or detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701. Here, the government was unable to remove Mr. Nguyen in three months of post-removal-order detention in 2007; 18 years of release between 2007 and April 2025; and six months of re-detention under this administration. Doc. 7-1 at ¶¶ 4-6. At this point, the "reasonably foreseeable future" has shrunk to imminence.

Yet, the government provides no evidence that Mr. Nguyen will be imminently removed. The government provides zero hard facts about how often it typically takes to get a travel document—no statistics, no examples, no anecdotes, no nothing. Instead, DO Lara-Ramirez baldly asserts that "ICE expects to receive Petitioner's TD by the end of next month, November 2025." Doc. 7-1 at ¶ 14. *Zadvydas* requires the government to meet its burden "with evidence," 533 U.S. at 701, not an "unsubstantiated belief" that this Court has no way of evaluating, *McKenzie*, 2020 WL 5536510, at *3. DO Lara-Ramirez's conclusory statement therefore does not meet the government's burden.

ICE's timing evidence here is particularly suspect because it has not been borne out in other cases. In connection with prior Returns involving pre-1995 Vietnamese immigrants, ICE declarants asserted that Vietnam was required to make a decision about whether to issue travel documents within 30 days. *See, e.g.*, *Ho v. Noem*, 25-CV-2453-BAS, Dkt. No. 6-1 at ¶ 9 (S.D. Cal. Oct. 1, 2025). It soon became clear that Vietnam was not honoring that timetable. *See, e.g.*, *Ho v. Noem*, 25-CV-2453-BAS, Dkt. No. 11, at 7 (S.D. Cal. Oct. 20, 2025) (noting that the government had provided no evidence of travel document issues over 30 days after the request and ordering release). Now, the government has resorted to individual ICE agents' unsupported speculation about when travel document will arrive. This Court has even less reason to believe that those baseless estimates will prove true.

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 alone, *Zadvydas* demands release.

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

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

*First*, the government's statistics do not show that Mr. Nguyen will likely be removed. DO Lara-Rodriguez attests that 324 pre-1995 Vietnamese citizens have been removed in fiscal year ("FY") 2025. Doc. 7-1 at ¶ 20. But without knowing

what *proportion* of travel document requests have been accepted, that statistic says nothing about Mr. Nguyen's chances of receiving a travel document. "If DHS submitted 350 requests and Vietnam issued travel documents for 32[4] individuals," that would be a success rate of over 95% with a failure rate of only 5%. *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151 (D. Mass. 2025). "On the other hand, if DHS submitted 3,500 requests and only 32[4] individuals received travel documents," that would be a success rate of around 10%, with a failure rate of 90%. *Nguyen*, 2025 WL 1725791, at *4. Here, the government has not disclosed "the total number of requests that were made to Vietnam." *Id.* This Corut therefore cannot use the government's statistic to evaluate any individual person's chances of removal. *Id.*; *accord Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025).

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

*Second*, ICE's inexcusable lack of diligence in seeking removal reinforces this conclusion. ICE arrested Mr. Nguyen in April. Doc. 7-1 at ¶ 6. ICE did not do a single thing to try to effectuate his removal until June, when—in DO Lara-Rodriguez cryptic description—ICE "started the process for obtaining information for a travel document application." *Id.* at ¶ 8. Yet ICE did not even ask Mr. Nguyen to fill out a travel document application until two months later, on August 7, 2025. *Id.* at ¶ 9. ICE's remaining efforts to remove Mr. Nguyen began the day after Mr. Nguyen met with counsel about his habeas petition, almost six months after he was detained. *Compare* Doc. 1 (October 15, 2025 signature), *with* Doc. 7-1 at ¶¶ 10–11 (October 16, 2025 efforts). ICE's apparent "lack of effort only reinforces the conclusion that the Petitioner's removal is not likely to occur in the reasonably foreseeable future." *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002); *see also Conchas-Valdez v. Casey*, 25-CV-2469-DMS, Kt. No. 9 (S.D. Cal. Oct. 6, 2025) ("[T]he Government's minimal work on this case . . . do not instill confidence that it will be able to secure Petitioner's removal in the reasonably foreseeable future.").

*Third*, though ICE is in the process of requesting a travel document for Mr. Nguyen, Doc. 7-1 at ¶ 13, good faith efforts to secure a travel document do not themselves satisfy *Zadvydas*. The petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to

bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Here, then, "[w]hile the respondent asserts that [Mr. Nguyen's] travel document request[] with [the Vietnamese] Consulate[] remain[s] pending . . ., this is insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty. Jail*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019).

**C. Count 3: The 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 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

[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).

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.

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

On the irreparable harm prong, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres*

*v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments, 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, or at least enter a temporary restraining order.

Respectfully submitted,

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