

1 **Sonxai Rasakhamdee**

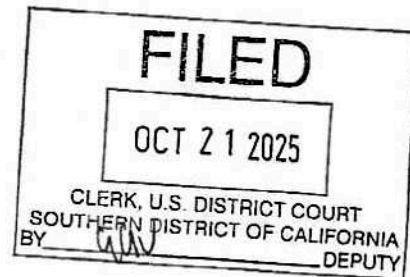
2 A# [REDACTED]

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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **SONXAI RASAKHAMDEE,**

11 **Petitioner,**

12 **v.**

13 **KRISTI NOEM, Secretary of the**
14 **Department of Homeland Security,**
15 **PAMELA JO BONDI, Attorney General,**
16 **TODD M. LYONS, Acting Director,**
17 **Immigration and Customs Enforcement,**
18 **JESUS ROCHA, Acting Field Office**
19 **Director, San Diego Field Office,**
20 **CHRISTOPHER LAROSE, Warden at**
21 **Otay Mesa Detention Center,**

22 **Respondents.**

CIVIL CASE NO.: '25CV2816 RBM DEB

Petition for Writ
of
Habeas Corpus

[Civil Immigration Habeas,
28 U.S.C. § 2241]

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

INTRODUCTION

Mr. Rasakhamdee was born in a refugee camp in Thailand, the son of Laotian immigrants. He came to the United States in 1990 and soon after became a lawful permanent resident. In 2011, he was ordered removed. But when Laos would not accept him after about four months of detention, Mr. Rasakhamdee was released on an order of supervision.

Mr. Rasakhamdee remained on supervision for the next 14 years. He checked in with ICE every year without incident. He accrued no new criminal convictions. When he went for his annual check-in on September 15, 2025, ICE re-detained him. Contrary to regulation, ICE did not notify Mr. Rasakhamdee of any changed circumstances that made his removal more likely. Nor did it give Mr. Rasakhamdee an informal interview or an opportunity to contest his re-detention. He has now been detained for over a month, with no information about whether ICE has sought a travel document or even begun the process of seeking his deportation. 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. Rasakhamdee's detention violates his statutory and regulatory rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. Courts in this district have agreed in similar circumstances as to each of Mr. Rasakhamdee's three claims. Specifically:

(1) *Regulatory and due process violations*: Mr. Rasakhamdee must be released because ICE's failure to follow its own regulations about notice and an opportunity to be heard violate due process. *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) (all either granting temporary restraining orders releasing noncitizens, or granting habeas petitions outright, due to ICE regulatory violations during recent re-detentions of released noncitizens previously ordered removed).

(2) *Zadvydas* violations: Mr. Rasakhamdee must also be released under *Zadvydas* because—having proved unable to remove him for the last 14 years—the government cannot show that there is a “significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. *See, e.g., Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas petitions releasing noncitizens due to *Zadvydas* violations).

(3) *Third-country removal statutory and due process violations*: This Court should enjoin ICE from removing Mr. Rasakhamdee to a third country without providing an opportunity to assert fear of persecution or torture before an immigration judge. *See, e.g., Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025) (all either granting temporary restraining orders or habeas petitions ordering the government to not remove petitioners to third countries pending litigation or reopening of their immigration cases).

This Court should grant this habeas petition and issue appropriate injunctive relief on all three grounds.

STATEMENT OF FACTS

I. **Mr. Rasakhamdee is ordered removed, held in ICE custody, and released as ICE proves unable to deport him for the next 14 years, until he is arrested at his annual ICE check-in.**

Sonxai Rasakhamdee was born in a refugee camp in Thailand and came to the United States as a refugee with his father in 1990. Exhibit A, "Rasakhamdee Declaration," at ¶ 1. When they arrived in the U.S., they became lawful permanent residents. *Id.*

In 1996, when he was about 17 years old, Mr. Rasakhamdee was convicted of second-degree murder. *Id.* at ¶ 2. His conviction was overturned on appeal, and he then pleaded guilty to manslaughter in 2001 or 2002. *Id.* at ¶ 2. As a result of this conviction, Mr. Rasakhamdee was placed in removal proceedings. *Id.* at ¶ 2. An immigration judge ordered him removed on July 20, 2011. *Id.* at ¶ 3.

But ICE was not able to effectuate Mr. Rasakhamdee's removal to Laos. For approximately the next four months, ICE tried and failed to obtain travel documents for him. *Id.* at ¶ 4. Finally, ICE gave up and released him on an order of supervision in 2011. *Id.* In the years since his removal order, Mr. Rasakhamdee has complied with all the conditions of his release and has not been convicted of any other offenses. *Id.* at ¶ 5.

On September 15, 2025, ICE officials arrested Mr. Rasakhamdee during his annual check in appointment. *Id.* at ¶ 6. They did not provide him any notice or give him an interview or an opportunity to contest his detention. *Id.*

Mr. Rasakhamdee owns and operates his own trucking business. *Id.* at ¶ 7. He also cares for his 82-year-old father, who has dementia. *Id.* Because he is also the main provider for his family, they are struggling in his absence. *Id.*

1 **II. Laos has no repatriation agreement with the United States and a**
 2 **longstanding policy of refusing to accept deportees.**

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

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

20 In 2018, the United States issued visa sanctions on Laos "due to lack of
 21 cooperation in accepting their citizens who have been ordered removed."⁶ The
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 24 ² <https://www.congress.gov/crs-product/IF10236>.

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

26 ⁴ <https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation>.

27 ⁵ <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

28 ⁶ <https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions>.

1 federal government explained that Laos had not “established repeatable processes
2 for issuing travel documents to their nationals ordered removed from the United
3 States.” *Id.*

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

16 Since then, several courts have rejected the Trump administration’s efforts
17 to re-detain a Laotian immigrant without following its own regulations. See
18 *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal.
19 Oct. 9, 2025) (granting habeas for Laotian citizen and ordering immediate
20 release); *Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL 2579569 (W.D.
21 Wash. Sept. 5, 2025) (granting TRO to Laotian national in light of the
22 government’s failure to follow its regulations regarding re-detention and
23 questions regarding the validity of his underlying criminal conviction).

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

28 ⁸ <https://www.americanimmigrationcouncil.org/report/trump-2025-travel-ban/>.

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

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

When immigrants cannot be removed to their home country, ICE has begun deporting those individuals to third countries without adequate notice or a hearing. See Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025. This summer and fall, ICE has carried out highly publicized third country deportations to prisons in South Sudan, Eswatini, Ghana, and Rwanda. Nokukhanya Musi & Gerald Imray, *10 more deportees from the US arrive in the African nation of Eswatini*, Associated Press (Oct. 6, 2025).¹⁰ At least four men deported to Eswatini have remained in a maximum-security prison there for nearly three months without charge and without access to counsel; another six are detained incommunicado in South Sudan, and another seven are being held in an undisclosed facility in Rwanda. *Id.*

In February, Panama and Costa Rica imprisoned hundreds of deportees in hotels, a jungle camp, and a detention center. Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025)¹¹; Human Rights Watch, *'Nobody Cared, Nobody Listened': The US Expulsion of Third-Country Nationals to Panama*, Apr. 24, 2025.¹²

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. Instead, under new guidance, ICE may remove any immigrant to a third country “without the need for further

¹⁰ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

¹¹ Available at <https://www.bbc.com/news/articles/cwyrn42kp7no>.

¹² Available at <https://www.hrw.org/report/2025/04/24/nobody-cared-nobody-listened/the-us-expulsion-of-third-country-nationals-to>.

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 reasonable means and opportunity to speak with an attorney prior to the removal.” *Id.*

Under this policy, the United States has deported noncitizens to prisons and military camps in Rwanda, Eswatini, South Sudan, and Ghana. Many are still detained to this day, in countries to which they have never been, without charge. See Musi & Gerald Imray, *supra*.

CLAIMS FOR RELIEF

This Court should grant this petition and order two forms of relief.

First, it should order Mr. Rasakhamdee’s immediate release. ICE failed to follow its own regulations requiring changed circumstances before re-detention, as well as a chance to promptly contest a re-detention decision. And *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Rasakhamdee, for whom there is “no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

Second, it should enjoin the Respondents from removing Mr. Rasakhamdee to a third country without first providing notice and a sufficient opportunity to be heard before an immigration judge.

I. Claim One: ICE failed to comply with its own regulations before re-detaining Mr. Rasakhamdee, violating his rights under applicable regulations and due process.

Two regulations establish the process due to someone who is re-detained in immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to

1 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
2 framework to persons released upon good reason to believe that they will not be
3 removed in the reasonably foreseeable future, as Mr. Rasakhamdee was. *See Phan*
4 *v. Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct.
5 10, 2025) (explaining this regulatory framework and granting a habeas petition for
6 ICE’s failure to follow these regulations); *Rokhfirooz*, No. 25-CV-2053-RSH-
7 VET, 2025 WL 2646165 at *2 (same as to an Iranian national).

8 These regulations permit an official to “return [the person] to custody” only
9 when the person “violate[d] any of the conditions of release,” 8 C.F.R.
10 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official
11 “determines that there is a significant likelihood that the alien may be removed in
12 the reasonably foreseeable future,” and makes that finding “on account of
13 changed circumstances,” 8 C.F.R. § 241.13(i)(2).

14 No matter the reason for re-detention, the re-detained person is entitled to
15 certain procedural protections. For one, “[u]pon revocation,’ the noncitizen ‘will
16 be notified of the reasons for revocation of his or her release or parole.’” *Phan*,
17 2025 WL 2898977 at *3, *4 (quoting 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3)).
18 Further, the person “‘will be afforded an initial informal interview promptly after
19 his or her return’ to be given ‘an opportunity to respond to the reasons for
20 revocation stated in the notification.’” *Id.*

21 In the case of someone released under § 241.13(i), the regulations also
22 explicitly require the interviewer to allow the re-detained person to “submit any
23 evidence or information that he or she believes shows there is no significant
24 likelihood he or she be removed in the reasonably foreseeable future, or that he or
25 she has not violated the order of supervision.” § 241.13(i)(3).

26 ICE is required to follow its own regulations. *United States ex rel. Accardi*
27 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
28 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to

1 abide by certain internal policies is well-established.”). A court may review a re-
2 detention decision for compliance with the regulations, and “where ICE fails to
3 follow its own regulations in revoking release, the detention is unlawful and the
4 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at *4
5 (collecting cases); *accord Phan*, 2025 WL 2898977 at *5.

6 ICE followed none of its regulatory prerequisites to re-detention here.

7 First, ICE did not identify a proper reason under the regulations to re-detain
8 Mr. Rasakhamdee. Mr. Rasakhamdee was not returned to custody because of a
9 conditions violation, and there was apparently no determination before or at his
10 arrest that there are “changed circumstances” such that there is “a significant
11 likelihood that [Mr. Rasakhamdee] may be removed in the reasonably foreseeable
12 future.” 8 C.F.R. § 241.13(i)(2).

13 Second, ICE did not notify Mr. Rasakhamdee of the reasons for his re-
14 detention upon revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He
15 was re-detained on September 15, 2025. Exh. A at ¶ 5. As he has explained,
16 “[t]hey did not tell me why they were revoking my supervision.” *Id.* at ¶ 6.

17 Third, Mr. Rasakhamdee has yet to receive the informal interview required
18 by regulation. Nor has he been afforded a meaningful opportunity to respond to
19 the reasons for revocation or submit evidence rebutting his re-detention. Exh. A at
20 ¶ 6. No one from ICE has ever invited him to contest his detention. *Id.*

21 Numerous courts have released re-detained immigrants after finding that
22 ICE failed to comply with applicable regulations this summer and fall. These have
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1 included courts in this district,¹³ as well as courts outside this district.¹⁴

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

6 **II. Claim Two: Mr. Rasakhamdee’s detention violates *Zadvydas* and 8**
7 **U.S.C. § 1231.**

8 **A. Legal background**

9 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
10 a problem affecting people like Mr. Rasakhamdee: Federal law requires ICE to
11 detain an immigrant during the “removal period,” which typically spans the first
12 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After
13 that 90-day removal period expires, detention becomes discretionary—ICE may
14 detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6).
15 Ordinarily, this scheme would not lead to excessive detention, as removal
16 happens within days or weeks. But some detainees cannot be removed quickly.
17 Perhaps their removal “simply require[s] more time for processing,” or they are

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19 ¹³ *Constantinovici v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 2898985, No. 25-cv-
20 2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-
21 RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL
22 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v.*
23 *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).

24 ¹⁴ *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v.*
25 *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.
26 Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387
27 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at
28 *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).

1 “ordered removed to countries with whom the United States does not have a
2 repatriation agreement,” or their countries “refuse to take them,” or they are
3 “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v.*
4 *Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances,
5 detained immigrants can find themselves trapped in detention for months, years,
6 decades, or even the rest of their lives. If federal law were understood to allow for
7 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
8 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
9 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.
10 *Id.* at 689.

11 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to
12 detain an immigrant for 180 days after his or her removal order becomes final.
13 After those 180 days have passed, the immigrant must be released unless his or
14 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six
15 months have passed, the petitioner must only make a prima facie case for relief—
16 there is “good reason to believe that there is no significant likelihood of removal
17 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the
18 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*¹⁵
19 Mr. Rasakhamdee can make all the threshold showings needed to shift the burden
20 to the government.

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24 ¹⁵ Further, even before the 180 days have passed, the immigrant must still be
25 released if he *rebutts* the presumption that his detention is reasonable. *See, e.g.,*
26 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases
27 on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar*,
28 2025 WL 2592543 at *6 (finding the presumption rebutted for a person who was
released and, years later, re-detained for less than six months).

B. The six-month grace period has expired.

The six-month grace period has long since ended. The *Zadvydas* grace period is linked to the date the final order of removal is issued. It 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). Indeed, the statute defining the beginning of the removal period is linked to the latest of three dates, all of which relevant here are tied to when the removal order is issued. 8 U.S.C. § 1231(a)(1)(B).¹⁶

Here, Mr. Rasakhamdee’s order of removal was entered in July 2011. Exh. A at ¶ 3.¹⁷ Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in January 2012, three months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-4108(EP), *2–*3.

Regardless, Mr. Rasakhamdee was detained for about four months after he was ordered removed, and he has been detained for more than a month this year. Exh. A at ¶¶ 4, 6. By the time this Court resolves this case, Mr. Rasakhamdee will have been detained for a total of six months, if not more; ICE will also, of course, have had 14 years since his removal order issued to remove him.¹⁸

¹⁶ Those dates are, specifically, (1) “[t]he date the order of removal becomes administratively final;” (2) “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order;” or (3) “[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.” *Id.*

¹⁷ EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

¹⁸ The government has sometimes argued that release and rearrest resets the six-month grace period completely, taking the clock back to zero. “Courts . . . broadly agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

1 **C. Laos's refusal to accept Mr. Rasakhamdee, along with its**
2 **longstanding policy of not accepting deportees, provides good**
3 **reason to believe that Mr. Rasakhamdee will not likely be**
4 **removed in the reasonably foreseeable future.**

5 This Court uses a burden-shifting framework to evaluate
6 Mr. Rasakhamdee's *Zadvyas* claim. At the first stage of the framework,
7 Mr. Rasakhamdee must "provide[] good reason to believe that there is no
8 significant likelihood of removal in the reasonably foreseeable future." *Zadvyas*,
9 533 U.S. at 701. This standard can be broken down into three parts.

10 **"Good reason to believe."** The "good reason to believe" standard is a
11 relatively forgiving one. "A petitioner need not establish that there exists no
12 possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
13 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "[g]ood reason to
14 believe' . . . place a burden upon the detainee to demonstrate no reasonably
15 foreseeable, significant likelihood of removal or show that his detention is
16 indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW,
17 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401

18
19 It has also sometimes argued that rearrest creates a new three-month grace
20 period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with
21 the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV
22 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). "Pursuant to the
23 statute, the removal period, and in turn the [six-month] presumptively reasonable
24 period, begins from the latest of 'the date the order of removal becomes
25 administratively final,' the date of a reviewing court's final order where the
26 removal order is judicially removed and that court orders a stay of removal, or the
27 alien's release from detention or confinement where he was detained for reasons
28 other than immigration purposes at the time of his final order of removal." *Id.*
None of these statutory starting points have anything to do with whether or when
an immigrant is detained. *See id.* Because the statutorily-defined removal period
has nothing to do with release and rearrest, releasing and rearresting the
immigrant cannot reset the removal period.

1 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
2 Petitioners need only give a “good reason”—not prove anything to a certainty.

3 **“Significant likelihood of removal.”** This component focuses on whether
4 Mr. Rasakhamdee will likely be removed: Continued detention is permissible
5 only if it is “significant[ly] like[ly]” that ICE will be able to remove him.
6 *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of
7 untapped possibilities, but also [the] probability of *success* in such possibilities.”
8 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis
9 added). In other words, even if “there remains *some* possibility of removal,” a
10 petitioner can still meet its burden if there is good reason to believe that
11 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
12 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

13 **“In the reasonably foreseeable future.”** This component of the test
14 focuses on when Mr. Rasakhamdee will likely be removed: Continued detention
15 is permissible only if removal is likely to happen “in the reasonably foreseeable
16 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
17 removal efforts. If the Court has “no idea of when it might reasonably expect
18 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
19 is likely to occur—or even that it might occur—in the reasonably foreseeable
20 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
21 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
22 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
23 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that
24 Mr. Rasakhamdee “would *eventually* receive” a travel document, he can still meet
25 his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes*
26 *v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

27 Mr. Rasakhamdee satisfies this standard for two reasons.
28

1 First, as explained above, Laos generally does not accept deportees. Last
2 year, zero people were removed to Laos; in the five years before that, between 0
3 and 11 people were removed per year. *See* U.S. Immigration and Customs
4 Enforcement, *Annual Report: Fiscal Year 2024*, at 100 (Dec. 19, 2024).¹⁹
5 Although President Trump has pressured Laos to begin accepting deportees, that
6 has resulted in Laos issuing travel documents for only a few dozen nationals out
7 of thousands of Laotians. And since then, multiple courts have rejected the Trump
8 administration's efforts to re-detain Laotian immigrants without following its own
9 regulations. *See, e.g., Khambounheuang*, No. 25-cv-02575-JO-SBC, ECF No. 12
10 (S.D. Cal. Oct. 9, 2025); *Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL
11 2579569 (W.D. Wash. Sept. 5, 2025).

12 Second, Mr. Rasakhamdee's own experience bears this out. ICE has now
13 had 14 years to deport him. He has cooperated with ICE's removal efforts
14 throughout that time, including by attending yearly check-ins. Exh. A at ¶ 5. Yet
15 ICE has proved unable to remove him.

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

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

22 If released on supervision, Mr. Rasakhamdee poses no risk of danger or
23 flight. He has been on supervision for 14 years. Exh. A at ¶ 4. He has sustained no
24 new convictions. *Id.* at ¶ 5. And he has checked in regularly with ICE during this
25 time. *Id.* at ¶ 5.

26
27
28 ¹⁹ <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

1 Regardless, *Zadvydas* squarely holds that danger or flight are not grounds for
2 detaining an immigrant when there is no reasonable likelihood of removal in the
3 reasonably foreseeable future. 533 U.S. at 684–91.

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

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

17 The Court also noted that the government was free to use the many tools at
18 its disposal to mitigate risk: “[O]f course, the alien’s release may and should be
19 conditioned on any of the various forms of supervised release that are appropriate
20 in the circumstances, and the alien may no doubt be returned to custody upon a
21 violation of those conditions.” *Id.* at 700. The Ninth Circuit later elaborated, “All
22 aliens ordered released must comply with the stringent supervision requirements
23 set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration
24 officer periodically, answer certain questions, submit to medical or psychiatric
25 testing as necessary, and accept reasonable restrictions on [their] conduct and
26 activities, including severe travel limitations. More important, if [they] engage[]
27 in any criminal activity during this time, including violation of [their] supervisory
28

1 release conditions, [they] can be detained and incarcerated as part of the normal
2 criminal process.” *Ma*, 257 F.3d at 1115.

3 These conditions have proved sufficient to protect the public over the last
4 14 years. They will continue to do so while ICE keeps trying to deport
5 Mr. Rasakhamdee.

6 **III. Claim Three: ICE may not remove Mr. Rasakhamdee to a third**
7 **country without adequate notice and an opportunity to be heard.**

8 In addition to unlawfully detaining him, ICE’s policies threaten his removal
9 to a third country without adequate notice and an opportunity to be heard. These
10 policies violate the Fifth Amendment, the Convention Against Torture, and
11 implementing regulations.

12 **A. Legal background**

13 U.S. law enshrines protections against dangerous and life-threatening
14 removal decisions. By statute, the government is prohibited from removing an
15 immigrant to any third country where they may be persecuted or tortured, a form
16 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
17 The government “may not remove [a noncitizen] to a country if the Attorney
18 General decides that the [noncitizen’s] life or freedom would be threatened in that
19 country because of the [noncitizen’s] race, religion, nationality, membership in a
20 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
21 1208.16. Withholding of removal is a mandatory protection.

22 Similarly, Congress codified protections enshrined in the CAT prohibiting
23 the government from removing a person to a country where they would be
24 tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be
25 the policy of the United States not to expel, extradite, or otherwise effect the
26 involuntary return of any person to a country in which there are substantial
27 grounds for believing the person would be in danger of being subjected to torture,
28 regardless of whether the person is physically present in the United States.”); 28

1 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
2 mandatory.

3 To comport with the requirements of due process, the government must
4 provide notice of the third country removal and an opportunity to respond. Due
5 process requires “written notice of the country being designated” and “the
6 statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).”
7 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v.*
8 *U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1
9 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
10 1999).

11 The government must also “ask the noncitizen whether he or she fears
12 persecution or harm upon removal to the designated country and memorialize in
13 writing the noncitizen’s response. This requirement ensures DHS will obtain the
14 necessary information from the noncitizen to comply with section 1231(b)(3) and
15 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.
16 3d at 1019. “Failing to notify individuals who are subject to deportation that they
17 have the right to apply for asylum in the United States and for withholding of
18 deportation to the country to which they will be deported violates both INS
19 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at
20 1041.

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

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

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

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

18 The policies in the June 6, 2025 memo do not adhere to these requirements.
19 The memo "contravenes Ninth Circuit law." *Nguyen v. Scott*, No. 25-CV-1398,
20 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9,
21 2025 ICE memo contravenes Ninth Circuit law on the process due to noncitizens
22 in detail); *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-
23 MSB (S.D. Cal. Sept. 29, 2025) (granting temporary restraining order preventing
24 a noncitizen's deportation to a third country pending litigation in light of due
25 process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.
26 6 (S.D. Cal. Sept. 18, 2025) (same).

27 First, under the policy, ICE need not give immigrants *any* notice or *any*
28 opportunity to be heard before removing them to a country that—in the State

Department's estimation—has provided “credible” “assurances” against persecution and torture. 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 marshal 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. Rasakhamdee 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. Rasakhamdee 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 and enjoin 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(I), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to any country other than Laos, 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.

Conclusion

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

DATED: 10-¹⁹-~~25~~-25

Respectfully submitted,



SONXAI RASAKHAMDEE

Petitioner

PROOF OF SERVICE

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

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

Date: 10-21-25



Kara Hartzler

EXHIBIT A

1 **Sonxai Rasakhamdee**

2 **A** 
3 Otay Mesa Detention Center
4 P.O. Box 439049
5 San Diego, CA 92143-9049

6 Pro Se¹

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **SONXAI RASAKHAMDEE,**

11 **Petitioner,**

12 **v.**

13 **KRISTI NOEM, Secretary of the**
14 **Department of Homeland Security,**
15 **PAMELA JO BONDI, Attorney General,**
16 **TODD M. LYONS, Acting Director,**
17 **Immigration and Customs Enforcement,**
18 **JESUS ROCHA, Acting Field Office**
19 **Director, San Diego Field Office,**
20 **CHRISTOPHER LAROSE, Warden at**
21 **Otay Mesa Detention Center,**

22 **Respondents.**

Civil Case No.:

Declaration of
Sonxai Rasakhamdee
in Support of Petition
for a Writ of Habeas Corpus

23
24
25
26 ¹ Mr. Rasakhamdee is filing this petition for a writ of habeas corpus and all
27 associated documents with the assistance of the Federal Defenders of San Diego,
28 Inc. Federal Defenders has consistently used this procedure in seeking
appointment for immigration habeas cases. The Declaration of Kara Hartzler in
Support of Appointment Motion attaches case examples.

1 I, Sonxai Rasakhamdee, declare:

- 2
- 3 1. I was born in a refugee camp in Thailand; my parents were originally from
- 4 Laos. I entered the United States with my father as a refugee on December
- 5 12, 1990. We became lawful permanent residents soon after we arrived.
- 6 2. In approximately 1996, when I was about 17, I was convicted of second-
- 7 degree murder. However, my conviction was overturned on appeal. I then
- 8 pleaded guilty to manslaughter in 2001 or 2002. As a result of this
- 9 conviction, I was put into removal proceedings.
- 10 3. On July 20, 2011, an immigration judge ordered me removed on the basis
- 11 of this conviction.
- 12 4. After I was ordered removed, ICE tried to deport me to Laos. However,
- 13 Laos did not issue me travel documents. ICE continued to detain me for
- 14 about four months before releasing me on an order of supervision.
- 15 5. Since my release from ICE custody, I have not violated the conditions of
- 16 my supervised release and have no new criminal convictions.
- 17 6. On September 15, 2025, I went to the ICE office for my annual check in. At
- 18 that appointment, ICE took me into custody. They did not tell me why they
- 19 were revoking my supervision, nor did they give me an informal interview
- 20 or a chance to contest my detention.
- 21 7. When I was out of custody between 2011 and 2025, I started my own
- 22 trucking business. I also live with and care for my 82-year-old father, who
- 23 has dementia. I am the main provider for my household, and my
- 24 incarceration is putting a heavy strain on my family. Neither myself nor my
- 25 family have sufficient funds to hire a lawyer for me.
- 26 8. I have no legal education or training. I also do not have free access to the
- 27 internet in custody.
- 28

1 I declare under penalty of perjury that the foregoing is true and correct,
2 executed on 10-19-25, in San Diego, California.
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4 
5 **SONXAI RASAKHAMDEE**
6 Declarant
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EXHIBIT B

CASE NO. PX 25-951

IDENTIFICATION: JUL 10 2025

ADMITTED: JUL 10 2025

To All ICE Employees
July 9, 2025

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

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

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

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

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

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

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

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

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

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

Attachments:

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