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

12 SONXAI RASAKHAMDEE,
13 Petitioner,

14 v.

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

20 Respondents.

21 Civil Case No.: 25-cv-2816-RBM-DEB

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

1 **INTRODUCTION**

2 Having received the government's Return and exhibits, this Court should
3 grant Mr. Rasakhamdee's petition on all three claims. To do so, the Court need
4 only follow the reasoning of recent decisions in this district and around the
5 country.

6 First, this Court should grant the petition on Claim One because the
7 government has not complied with its own regulations. For persons like
8 Mr. Rasakhamdee, those regulations permit re-detention only if ICE:

9 (1) "determines that there is a significant likelihood that the alien may be removed
10 in the reasonably foreseeable future," *id.* § 241.13(i)(2); (2) makes that finding
11 "on account of changed circumstances," *id.*; (3) provides "an initial informal
12 interview promptly," *id.* §§ 241.4(l)(1), 241.13(i)(3); and (4) "affords the [person]
13 an opportunity to respond to the reasons for revocation," *id.* Yet ICE did none of
14 these things when it arrested Mr. Rasakhamdee on September 15, 2025. Although
15 it provided a Notice of Revocation of Release that vaguely claimed there were
16 "changed circumstances," Dkt. 8-2, Exhibit G, it never explained what those
17 changed circumstances were. Nor *have* there been any changed circumstances,
18 since the government admits that it hasn't even submitted a request to Laos for
19 travel documents and thus does not have a travel document for Mr. Rasakhamdee.
20 And ICE did not provide the mandatory interview until six weeks later—on the
21 same day its return was due. Dkt. 8-2, Exh. H. This was not "prompt," as the
22 regulations require. In the last several weeks, multiple judges from this district
23 have ordered release on similar records. *See Constantinovici v. Bondi*, __ F. Supp.
24 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025);
25 *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025);
26 *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025); *Rokhfirooz*
27 *v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025);
28 *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3-*5 (S.D. Cal.

1 Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal.
2 Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3
3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10
4 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC,
5 ECF No. 12 (S.D. Cal. Oct. 9, 2025).

6 Second, this Court should grant the petition on Claim Two because the
7 government provides no independent evidence to satisfy the success element (“a
8 significant likelihood of removal”) or timing element (“in the reasonably
9 foreseeable future”) of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Though
10 Deportation Officer (“DO”) Cole asserts that “ICE has been routinely obtaining
11 travel documents for Laos citizens” and purports to have removed “several”
12 individuals to Laos recently, Dkt. 8-2 at ¶ 17–18, he does not say what proportion
13 of Laotian citizens for whom travel documents are sought actually receive them.
14 Nor does DO Cole even claim that ICE has submitted a request for travel
15 documents for Mr. Rasakhamdee to Laos—only that it has been “diligently
16 preparing a travel document request to send to the Laos embassy.” *Id.* at ¶ 14. Nor
17 does DO Cole explain what is different this time from the last time when ICE was
18 “unable to obtain a travel document to Laos.” Dkt. 8-2 at ¶ 5. As other judges of
19 this district have held, a travel document request alone—with no evidence of
20 likely success or timing—does not satisfy the government’s burden. *See, e.g.*,
21 *Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6,
22 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25,
23 2025); *Alic v. Dep’t of Homeland Sec./Immigr. Customs Enf’t*, No. 25-CV-01749-
24 AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025).

25 Third, the government does not dispute that ICE’s third-country removal
26 policy violates due process. And the Ninth Circuit has squarely rejected the
27 government’s jurisdictional argument, holding that § 1252(g) does not prohibit
28 immigrants from asserting a “right to meaningful notice and an opportunity to

1 present a fear-based claim before [they] [are] removed,” or any other claim
2 asserting a “violation of [ICE’s] mandatory duties.” *Ibarra-Perez v. United States*,
3 __ F.4th __, 2025 WL 2461663, at *7, *9 (9th Cir. Aug. 27, 2025). The contrary
4 position would leave immigrants without protection from ICE’s policy, which
5 allows for a change of plans with minimal or no notice. Multiple judges in this
6 district have granted relief on this ground. *See, e.g., Rebenok v. Noem*, No. 25-cv-
7 2171-TWR at ECF No. 13; *Van Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen*
8 *Tran v. Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025);
9 *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal.
10 Oct. 9, 2025). This Court should therefore grant the petition or a preliminary
11 injunction on all three grounds.

12 **ARGUMENT**

13 **I. This Court has jurisdiction to consider Mr. Rasakhamdee’s claims.**

14 To begin, this Court has jurisdiction to consider all of Mr. Rasakhamdee’s
15 claims. Contrary to the government’s arguments, § 1252(g) does not bar review of
16 “all claims arising from deportation proceedings.” *Reno v. Am.-Arab Anti-*
17 *Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts “have
18 jurisdiction to decide a purely legal question that does not challenge the Attorney
19 General’s discretionary authority.” *Ibarra-Perez v. United States*, __ F.4th __,
20 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

21 In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not
22 prohibit immigrants from asserting a “right to meaningful notice and an
23 opportunity to present a fear-based claim before [they] [are] removed,” *id.* at
24 *7¹—the same claim that Mr. Rasakhamdee raises here with respect to third-

25
26 ¹ Mr. Ibarra-Perez raised this claim in a post-removal Federal Tort Claims Act
27 (“FTCA”) case, *id.* at *2, while this is a pre-removal habeas petition. But the
28 analysis under § 1252(g) remains the same, because both Mr. Ibarra-Perez and
Mr. Rasakhamdee 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).

1 country removals. The Court reasoned that “§ 1252(g) does not prohibit
2 challenges to unlawful practices merely because they are in some fashion
3 connected to removal orders.” *Id.* Instead, § 1252(g) is “limited . . . to actions
4 challenging the Attorney General’s discretionary decisions to initiate proceedings,
5 adjudicate cases, and execute removal orders.” *Arce v. United States*, 899 F.3d
6 796, 800 (9th Cir. 2018). It does not apply to arguments that the government
7 “entirely lacked the authority, and therefore the discretion,” to carry out a
8 particular action. *Id.* at 800. Thus, § 1252(g) applies to “discretionary decisions
9 that [the Secretary] actually has the power to make, as compared to the violation
10 of his mandatory duties.” *Ibarra-Perez*, 2025 WL 2461663, at *9.

11 The same logic applies to all of Mr. Rasakhamdee’s claims, because he
12 challenges only violations of ICE’s mandatory duties under statutes, regulations,
13 and the Constitution. Accordingly, “[t]hough 8 U.S.C § 1252(g), precludes this
14 Court from exercising jurisdiction over the executive’s decision to ‘commence
15 proceedings, adjudicate cases, or execute removal orders against any alien,’ this
16 Court has habeas jurisdiction over the issues raised here, namely the lawfulness of
17 [Mr. Rasakhamdee’s] continued detention and the process required in relation to
18 third country removal.” *Y.T.D.*, 2025 WL 2675760, at *5.

19 Other courts agree. *See, e.g., Kong*, 62 F.4th at 617 (“§ 1252(g) does not
20 bar judicial review of Kong’s challenge to the lawfulness of his detention,”
21 including ICE’s “fail[ure] to abide by its own regulations”); *Cardoso v. Reno*, 216
22 F.3d 512, 516 (5th Cir. 2000) (“[S]ection 1252(g) does not bar courts from
23 reviewing an alien detention order[.]”); *Parra v. Perryman*, 172 F.3d 954, 957
24 (7th Cir. 1999) (1252(g) did not apply to a “claim concern[ing] detention”); *J.R. v.*
25 *Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June
26 30, 2025) (1252(g) did not apply to claims that ICE was “failing to carry out non-
27 discretionary statutory duties and provide due process”); *D.V.D. v. U.S. Dep’t of*
28 *Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (§ 1252(g) did not

1 bar review of “the purely legal question of whether the Constitution and relevant
2 statutes require notice and an opportunity to be heard prior to removal of an alien
3 to a third country”).

4 In short, Mr. Rasakhamdee does not challenge whether the government
5 may “execute” his removal under 8 U.S.C § 1252(g)—only whether it may detain
6 him up to the date it does so or remove him to a third country without notice and
7 an opportunity to be heard. This Court thus has jurisdiction.

8 **II. Mr. Rasakhamdee’s claims succeed on the merits.**

9 This Court need not speculate about whether Mr. Rasakhamdee may
10 succeed on the merits. Because the government’s evidence is insufficient to
11 justify Mr. Rasakhamdee’s detention, his petition should be granted outright, or
12 the Court should at least release him on a TRO pending further briefing.

13 **A. Claim One: ICE did not adhere to the regulations governing re-
14 detention.**

15 ICE’s regulatory violations alone are sufficient to grant the habeas petition
16 or TRO. First, ICE did not provide Mr. Rasakhamdee sufficient notice under 8
17 C.F.R. § 241.13 of the reasons for the revocation of his release. The Notice of
18 Revocation of Release simply states that this revocation was “based on a review
19 of your official alien file and a determination that there are changed circumstances
20 in your case.” Dkt. 8-2, Exhibit G. But “[s]imply to say that circumstances had
21 changed or there was a significant likelihood of removal in the foreseeable future
22 is not enough.” *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D.
23 Minn. Sept. 3, 2025). Rather, “Petitioner must be told *what* circumstances had
24 changed or *why* there was now a significant likelihood of removal in order to
25 meaningfully respond to the reasons and submit evidence in opposition, as
26 allowed under § 241.13(i)(3).” *Id.* By “identif[ying] the category—‘changed
27 circumstances’—but fail[ing] to notify [Petitioner] of the reason—the

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1 circumstances that changed and created a significant likelihood of removal in the
2 reasonably foreseeable future—[ICE] failed to follow the relevant regulation.” *Id.*

3 Nor *have* there been any “changed circumstances.” The government argues
4 that “ICE’s revived ability to obtain travel documents from the Laotian
5 government and to schedule routine removal flights to Laos” constitutes “changed
6 circumstances.” Dkt. 8 at 11. But DO Cole’s statement does not suggest that a
7 high *proportion* of Laotian citizens are successfully removed when ICE seeks
8 travel documents. “[I]f the total number of requests that were made to [Laos] was
9 disclosed, [this Court] might be able to gauge how likely it is that Petitioner
10 would be removed to [Laos]. If DHS submitted 350 requests and [Laos] issued
11 travel documents for 328 individuals, Respondents may very well have shown
12 that removal is significantly likely in the reasonably foreseeable future. On the
13 other hand, if DHS submitted 3,500 requests and only 328 individuals received
14 travel documents, Respondents would not be able to meet their burden.” *Nguyen*,
15 2025 WL 1725791, at *4; *accord Hoac*, 2025 WL 1993771, at *5. DO Cole
16 provides no ratio of requests to travel documents issued, precluding this kind of
17 analysis.

18 Just as importantly, courts have “demanded an individualized analysis” of
19 why *this* person—Mr. Rasakhamdee—will likely be removed. *Nguyen*, 2025 WL
20 2419288, at *17 (citing *Nguyen*, 2025 WL 1725791, at *4). Because “[t]he
21 government has not provided any evidence of [Laos’] eligibility criteria or why it
22 believes *Petitioner* now meets it,” the government’s evidence is insufficient. *Id.* at
23 *18 (emphasis added). Absent a travel document specific to Mr. Rasakhamdee—
24 which the government has not even requested from Laos yet, Dkt. 8-2 at ¶ 14—
25 nothing is different from the last time ICE has tried to remove him.²

27 _____
28 ² The government also argues that Mr. Rasakhamdee’s original habeas
petition “claims that his detention is unlawful because the agency failed to comply
with its regulations *before* re-detaining him” and argues in rebuttal that the

1 Next, the government suggests that it complied with the regulations
2 requiring an informal interview because it provided one on October 29, 2025—six
3 weeks after his re-detention (and the same day the government’s return was due).
4 Dkt. 8 at 13. But the regulations require that a person be “afforded an initial
5 informal interview *promptly* after his or her return to Service custody.” 8 C.F.R.
6 §§ 241.4(l)(1) (emphasis added). Here, ICE did not provide Mr. Rasakhamdee an
7 interview until six weeks after his rearrest. Dkt. 8-2, Exh. H. In *M.S.L. v. Bostock*,
8 Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025), a
9 district court recently granted a habeas petition because an informal interview
10 given 27 days after petitioner was taken into ICE custody “cannot reasonably be
11 construed as . . . prompt.” *See also Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC
12 (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (finding “the failure to
13 provide an informal interview during that lengthy [two-month] period of time
14 renders petitioner’s re-detention unlawful”); *Sayvongsa v. Noem*, 25-cv-2867-
15 AGS-DEB (S.D. Cal. Oct. 31, 2025) (holding that a three-week delay was not
16 “prompt”). Here, as in these cases., a six-week delay “cannot reasonably be
17 construed as . . . prompt.” 2025 WL 2430267. Thus, the government has yet to
18 comply with its own regulations.

19 Other judges in this district have reached similar conclusions. In
20 *Rokhfirooz*, Judge Huie determined the fourth requirement was not met on a
21 record materially indistinguishable from this one. 2025 WL 2646165, at *3 (S.D.
22 Cal. Sept. 15, 2025). There, the government failed to produce “any documented
23 determination, made prior to Petitioner’s arrest, that his release should be
24 revoked.” *Id.* at *3. The only documentation was “an arrest warrant, issued on
25 DHS Form I-200, merely recit[ing] that there is probable cause to believe that

26 _____
27 regulations do not require this. Dkt. 8 at 10–11 (citing “ECF No. 1 at 8:25”). But
28 Mr. Rasakhamdee’s habeas petition nowhere mentioned or made this argument.
See Dkt. 1.

1 Petitioner is ‘removable from the United States,’ that is, subject to removal, which
2 would be accurate whether or not Petitioner’s release was revoked.” *Id.*

3 Here, similarly, the government provides no documented, pre-arrest
4 determination that release should be revoked; it only references an arrest warrant
5 stating that Mr. Rasakhamdee is removable. Dkt. 8-2, Exh. C & D. The I-213
6 confirms that his arrest was premised entirely on his status as a person who had a
7 final order of removal—not a determination that release should be revoked due to
8 changed circumstances making removal significantly likely. Dkt. 8-2, Exh. F.

9 Judge Huie also remarked in *Rokhfirooz* that the government had produced
10 “no record constitut[ing] a determination even after Petitioner’s arrest that there is
11 a significant likelihood that Petitioner can be removed in the reasonably
12 foreseeable future.” 2025 WL 2646165, at *3. “In connection with defending
13 [that] lawsuit, Respondents prepared and filed a declaration from a Supervisory
14 Detention and Deportation Officer assigned to the detention center where
15 Petitioner is housed,” which stated that “[ICE Enforcement and Removal
16 Operations] determined that there is a significant likelihood of removal and
17 resettlement in a third country in the reasonably foreseeable future and re-detained
18 Petitioner to execute his warrant of removal.” *Id.* Judge Huie deemed that post-
19 hoc determination insufficient, because the declarant did not produce underlying
20 documentation showing that any such determination had actually been made—let
21 alone that it had been made pre-arrest. *Id.* The Court therefore “decline[d] to rely
22 on” those statements. *Id.*

23 Here, the evidence is even weaker. DO Cole acknowledges that ICE has
24 been unable to deport Mr. Rasakhamdee in the past. Dkt. 8-2 at ¶ 5. Other than
25 unsupported assertions that it is preparing a new request for travel documents, DO
26 Cole does not say what has changed since the last time ICE tried to remove
27 Mr. Rasakhamdee. There is therefore “no evidence that DHS has made such a
28 //

1 determination as to the revocation of Petitioner's release even after the fact of
2 arrest, up to the present day." *Rokhfirooz*, 2025 WL 2646165, at *4.

3 **B. Claim Two: The government has not proved that there is a
4 significant likelihood of removal in the reasonably foreseeable
future.**

5 Second, the government provides no evidence that Mr. Rasakhamdee will
6 likely be removed to Laos at all, let alone in the reasonably foreseeable future.

7 **1. The government cites no authority for the proposition that
8 Mr. Rasakhamdee has not satisfied the six-month *Zadvydas*
grace period.**

9 As an initial matter, the government appears to contend that the six-month
10 grace period starts over every time ICE re-detains someone. Dkt. 8 at 6–7.

11 "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL
12 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation*
13 *adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*,
14 No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018)
15 (collecting cases); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at
16 *13 (W.D. Wash. Aug. 21, 2025).

17 None of the government's cited cases support that view, either. Dkt. 8 at 6–
18 7. Two of the cases involve petitioners who were *not* detained for a cumulative 6
19 months. *Ghamelian v. Baker*, No. CV SAG-25-02106, 2025 WL 2049981, at *1
20 (D. Md. July 22, 2025) (indicating in the statement of facts that petitioner was not
21 detained until 2025); *Guerra-Castro v. Parra*, No. 1:25-CV-22487, 2025 WL
22 1984300, at *4 & n.5 (S.D. Fla. July 17, 2025) ("Even if the Court counted
23 Petitioner's previous ICE detention, Petitioner's cumulative amount of detention
24 would not total 6 months."). A third cited case contends that the statutorily-
25 defined 90-day removal period under 8 U.S.C. § 1231(a)(1)(B) starts over on re-
26 detention. *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5
27 (D. Minn. Jan. 29, 2013). But even a cursory review of § 1231(a)(1)(B) shows
28 that that is not true. The statute defines three, specific starting dates for the

1 removal period, none of which involve re-detention. *See Bailey v. Lynch*, No. CV
2 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (explaining this).
3 The six-month grace period has therefore ended, and so—contrary to the
4 government’s claims—Mr. Rasakhamdee need not rebut the “presumptively
5 reasonable period of detention.” Dkt. 8 at 6.

6 **2. The government provides no evidence to support a
7 “significant likelihood of removal” to Laos.**

8 Because the six-month grace period has passed, this court moves on to the
9 burden-shifting framework. The government does not deny that Mr. Rasakhamdee
10 has provided “good reason” to doubt his reasonably foreseeable removal, thereby
11 forfeiting the issue. *See* Dkt. 8 at 7. *Moallin v. Cangemi*, 427 F. Supp. 2d 908, 928
12 (D. Minn. 2006). The burden therefore shifts to the government to prove that there
13 is a “significant likelihood of removal in the reasonably foreseeable future.”
14 *Zadvydas*, 533 U.S. at 701. That standard has a success element (“significant
15 likelihood of removal”) and a timing element (“in the reasonably foreseeable
16 future”). The government meets neither.

17 As an initial matter, the government has not shown that Mr. Rasakhamdee’s
18 removal to Laos is “significant[ly] like[ly].” *Zadvydas*, 533 U.S. at 701.

19 *First*, DO Cole’s assertion that “ICE has been routinely obtaining travel
20 documents for Laos citizens,” Dkt. 8-2 at ¶ 17, does not show that
21 Mr. Rasakhamdee’s removal is significantly likely. Again, the mere fact that ICE
22 may have picked up the pace of its deportations to Laos does not mean that a *high*
23 *proportion* of Laotians with final removal orders will be deported in the
24 reasonably foreseeable future. *See Nguyen*, 2025 WL 1725791, at *4; *accord*
25 *Hoac*, 2025 WL 1993771, at *5. What’s more, the government still has not
26 provided an “individualized analysis” of why *Mr. Rasakhamdee* can be removed.
27 *Nguyen*, 2025 WL 2419288, at *17.

28 //

1 Moreover, even if ICE *had* submitted a request for travel documents to
2 Laos—and, to date, it has not, Dkt. 8-2 at ¶ 14, 15—good faith efforts to secure a
3 travel document do not themselves satisfy *Zadvydas*. In fact, the petitioner in
4 *Zadvydas* appealed a “Fifth Circuit holding [that] [the petitioner’s] continued
5 detention [was] lawful as long as good faith efforts to effectuate deportation
6 continue and [the petitioner] failed to show that deportation will prove
7 impossible.” 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding
8 that the Fifth Circuit’s good-faith-efforts standard “demand[ed] more than our
9 reading of the statute can bear.” *Id.*

10 Thus, “under *Zadvydas*, the reasonableness of Petitioner’s detention does
11 not turn on the degree of the government’s good faith efforts. Indeed, the
12 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of
13 Petitioner’s detention turns on whether and to what extent the government’s efforts
14 are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL
15 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is required
16 to demonstrate the likelihood of not only the *existence* of untapped possibilities,
17 but also of a probability of success in such possibilities.” *Elashi v. Sabol*, 714 F.
18 Supp. 2d 502, 506 (M.D. Pa. 2010).

19 Here, then, “[w]hile the respondent asserts that [Mr. Rasakhamdee’s] travel
20 document requests with [the Laotian] Consulate[]” will be lodged, “this is
21 insufficient. It is merely an assertion of good-faith efforts to secure removal; it
22 does not make removal likely in the reasonably foreseeable future.” *Gilali v.*
23 *Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis.
24 Oct. 15, 2019). Many courts have agreed that requesting travel documents does
25 not itself make removal reasonably likely. *See, e.g., Andreasyan v. Gonzales*, 446
26 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner’s
27 case was “still under review and pending a decision” did not meet respondents’
28 burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D.

1 Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205
2 (D. Ariz. Sept. 20, 2011) (“Repeated statements from the Bangladesh Consulate
3 that the travel document request is pending does not provide any insight as to
4 when, or if, that request will be fulfilled.”); *Khader v. Holder*, 843 F. Supp. 2d
5 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document
6 request, where “[t]he government offers nothing to suggest when an answer might
7 be forthcoming or why there is reason to believe that he will not be denied travel
8 documents”); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1
9 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document
10 request). That includes Judge Robinson’s recent ruling. *See supra*, Introduction
11 (explaining the *Rebenok* ruling).

12 **3. The government provides no evidence to support that any
13 such removal will occur “in the reasonably foreseeable
future.”**

14 Additionally, even if ICE will eventually remove Mr. Rasakhamdee, the
15 government provides zero evidence that removal will happen “in the reasonably
16 foreseeable future.” *Zadvydas*, 533 U.S. at 701. DO Cole provides no timetable
17 for how long travel document requests like his typically take—no statistics, no
18 estimations, no anecdotes, no nothing.

19 That is fatal. “[D]etention may not be justified on the basis that removal to
20 a particular country is likely *at some point* in the future; *Zadvydas* permits
21 continued detention only insofar as removal is likely in the *reasonably
foreseeable* future.” *Hassoun*, 2019 WL 78984, at *6. “The government’s active
22 efforts to obtain travel documents from the Embassy are not enough to
23 demonstrate a likelihood of removal in the reasonably foreseeable future where
24 the record before the Court contains no information to suggest a timeline on
25 which such documents will actually be issued.” *Rual v. Barr*, No. 6:20-CV-06215
26 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). “[I]f DHS has no idea
27 of when it might reasonably expect [Mr. Rasakhamdee] to be repatriated, this

1 Court certainly cannot conclude that his removal is likely to occur—or even that it
2 *might* occur—in the reasonably foreseeable future.” *Singh v. Whitaker*, 362 F.
3 Supp. 3d 93, 102 (W.D.N.Y. 2019).

4 Courts have routinely granted habeas petitions where, as here, the
5 government does not establish *Zadvydas*’s timing element. *See, e.g., Balza v.*
6 *Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020),
7 *report and recommendation adopted*, No. 6:20-CV-00866, 2020 WL 6064881
8 (W.D. La. Oct. 14, 2020) (“[A] theoretical possibility of eventually being
9 removed does not satisfy the government’s burden[.]”); *Eugene v. Holder*, No.
10 408CV346-RH WCS, 2009 WL 931155, at *4 (N.D. Fla. Apr. 2, 2009) (“While
11 Respondents contend Petitioner *could* be removed to Haiti, it has not been shown
12 that it is significantly likely that Petitioner *will* be removed in the *reasonably*
13 *foreseeable* future.”); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D.
14 Pa. 2004) (granting petition because even if “Petitioner’s removal will ultimately
15 be effected . . . the Government has not rebutted the presumption that removal is
16 not likely to occur in the reasonably foreseeable future”); *Seretse-Khama v.*
17 *Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002) (granting petition where the
18 government had not provided any “evidence . . . that travel documents will be
19 issued in a matter of days or weeks or even months”).

20 In sum, then, there could be “some possibility that [Laos] will accept
21 Petitioner at some point. But that is not the same as a significant likelihood that he
22 will be accepted in the reasonably foreseeable future.” *Nguyen*, 2025 WL
23 2419288, at *16. Mr. Rasakhamdee therefore succeeds under *Zadvydas*, too.

24 **C. Claim Three: The government does not deny that ICE’s third-
25 country removal policy violates due process, and this claim is
justiciable.**

26 This Court should also prohibit ICE from removing Mr. Rasakhamdee to a
27 third country without adequate notice. The government does not try to defend
28 ICE’s third-country removal policy on the merits. Instead, the government says

1 that a third-country removal challenge is nonjusticiable under Article III because
2 ICE professes no current plans to remove Mr. Rasakhamdee to a third country.
3 Dkt. 8 at 2–3.

4 But “[t]here, so to speak, lies the rub.” *D.V.D. v. U.S. Dep’t of Homeland*
5 *Sec.*, 778 F. Supp. 3d 355, 389 n.44 (D. Mass. 2025). “[A]ccording to
6 [Respondents], an individual must await notice of removal before his claim is
7 ripe[.]” *Id.* But under ICE’s policy, “there is no notice” for certain removals and
8 inadequate notice for others. *Id.* And if Mr. Rasakhamdee “is removed” before he
9 can raise this challenge, Respondents will then argue that “there is no
10 jurisdiction” to bring him back to the United States. *Id.*

11 This Court need not adopt that Kafkaesque view. The government has not
12 denied that “the default procedural structure without an injunction” is “set forth in
13 DHS’s March 30 and July 9, 2025 policy memoranda,” which provide for third-
14 country removal with little or no notice. *Y.T.D. v. Andrews*, No. 1:25-CV-01100
15 JLT SKO, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025). And
16 Mr. Rasakhamdee has “point[ed] to numerous examples of cases involving
17 individuals who DHS has attempted to remove to third countries with little or no
18 notice or opportunity to be heard.” *Id.*; *see* Dkt. 1 at 5–6. “On balance,” then,
19 “there is a sufficiently imminent risk that [Mr. Rasakhamdee] will be subjected to
20 improper process in relation to any third country removal to warrant imposition of
21 an injunction requiring additional process.” *Y.T.D.*, 2025 WL 2675760, at *11.
22 And Judge Moskowitz recently issued a TRO prohibiting third-country removal,
23 even though the government claimed there—as here—that ICE had no current
24 plans to remove the petitioner to a third country. *Tran v. Noem*, 25-cv-02391-
25 BTM, Dkt. No. 6.

26 **III. The remaining TRO factors decidedly favor Mr. Rasakhamdee.**

27 This Court need not evaluate the other factors related to a TRO—the Court
28 may simply grant the petition outright. But if the Court does decide to evaluate

1 irreparable harm and balance of harms/public interest, Mr. Rasakhamdee should
2 prevail.

3 On the irreparable harm prong, “[i]t is well established that the deprivation
4 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres*
5 *v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government’s
6 arguments,³ the Ninth Circuit has specifically recognized the “irreparable harms
7 imposed on anyone subject to immigration detention.” *Hernandez v. Sessions*, 872
8 F.3d 976, 995 (9th Cir. 2017). Furthermore, “[i]t is beyond dispute that Petitioner
9 would face irreparable harm from removal to a third country.” *Nguyen*, 2025 WL
10 2419288, at *26.

11 On the balance-of-equities/public-interest prong, the government is correct
12 that there is a “public interest in prompt execution of removal orders.” *Nken v.*
13 *Holder*, 556 U.S. 418, 436 (2009). But that interest is diminished here because the
14 government likely cannot remove Mr. Rasakhamdee in the reasonably foreseeable
15 future, and even if it could, it is equally “well-established that ‘our system does
16 not permit agencies to act unlawfully even in pursuit of desirable ends.’” *Nguyen*,
17 2025 WL 2419288, at *28 (quoting *Ala. Ass'n of Realtors v. Dep't of Health &*
18 *Hum. Servs.*, 594 U.S. 758, 766 (2021)). It also “would not be equitable or in the
19 public's interest to allow the [government] to violate the requirements of federal
20 law” with respect to detention and re-detention, *Arizona Dream Act Coal. v.*
21 *Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (cleaned up), or to imperil the
22 //

23
24 ³ The government cites several cases to support the position that illegal
25 immigration detention is not irreparable harm. Dkt. 8 at 14. But both cases
26 involved immigrants who (1) had already received a bond hearing and (2) were
27 actively appealing to the BIA, but (3) wanted a federal court to intervene before
28 the appeal was done. *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *1
(W.D. Wash. Feb. 19, 2021), and *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK,
2018 WL 7474861, at *1–5 (N.D. Cal. Dec. 24, 2018). These courts indicated
only that post-bond-hearing detention pending an ordinary BIA appeal was not
irreparable harm. *Reyes*, 2021 WL 662659, at *3; *Lopez Reyes*, 2018 WL
7474861, at *10.

1 "public interest in preventing aliens from being wrongfully removed," *Nken*, 556
2 U.S. 418, 436.

3 **Conclusion**

4 For all these reasons, this Court should grant the petition, or at least enter a
5 temporary restraining order and injunction. In either case, the Court should
6 (1) order Mr. Rasakhamdee's immediate release, and (2) prohibit the government
7 from removing Mr. Rasakhamdee to a third country without following the process
8 laid out in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025
9 WL 1453640, at *1 (D. Mass. May 21, 2025).

10 Respectfully submitted,

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12 Dated: October 31, 2025

s/ Kara Hartzler

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