

Souksavath Phakeokoth

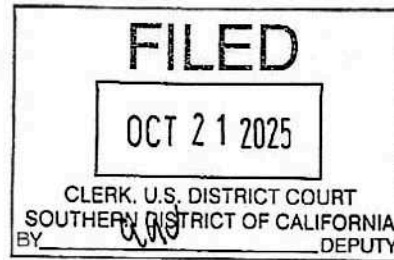
A# [REDACTED]

Otay Mesa Detention Center

P.O. Box 439049

San Diego, CA 92143-9049

Pro Se¹



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

SOUKSAVATH PHAKEOKOTH,

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.: '25CV2817 RBM SBC

**Petition for Writ
of
Habeas Corpus**

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

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

INTRODUCTION

Mr. Phakeokoth was born in Laos and came to the United States with his family in 1987 as a refugee; soon after, he became a permanent resident. In 2004, he was ordered removed. But when Laos would not accept him after three months of detention, Mr. Phakeokoth was released on an order of supervision.

Mr. Phakeokoth remained on supervision for the next 21 years. At one point, he committed a violation and was redetained for another three months before being released. When he went for his annual check-in on August 29, 2025, ICE re-detained him. Contrary to regulation, ICE did not notify Mr. Phakeokoth of any changed circumstances that made his removal more likely. Nor did it give Mr. Phakeokoth an informal interview or an opportunity to contest his re-detention. He has now been detained for nearly two months, 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. Phakeokoth'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. Phakeokoth's three claims. Specifically:

(1) *Regulatory and due process violations*: Mr. Phakeokoth 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. Phakeokoth 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. Phakeokoth 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. Phakeokoth is ordered removed, held in ICE custody, and released as ICE proves unable to deport him.

Souksavath Phakeokoth was born in Laos and came to the United States as a refugee with his family in 1987. Exhibit A, “Phakeokoth Declaration,” at ¶ 1. When they arrived in the U.S., they all became lawful permanent residents. *Id.*

In about 2003, when he was about 20 years old, Mr. Phakeokoth was convicted of an offense relating to threatening a witness. *Id.* at ¶ 2. As a result of this conviction, Mr. Phakeokoth was placed in removal proceedings. *Id.* at ¶ 2. An immigration judge ordered him removed on September 13, 2004. *Id.* at ¶ 3.

But ICE was not able to effectuate Mr. Phakeokoth’s removal to Laos. For approximately the next three months, ICE tried and failed to obtain travel documents for him. *Id.* at ¶ 4. After he was released, ICE took him into custody and tried at least one more time to deport him but again released him after three months. *Id.* at ¶ 5.

On August 29, 2025, at his annual check in, ICE took Mr. Phakeokoth into custody. *Id.* at ¶ 6. They did not provide him any notice or give him an interview or an opportunity to contest his detention. *Id.*

Mr. Phakeokoth was diagnosed with schizophrenia seven years ago. *Id.* at ¶ 7. Since he has been in custody, he has not received his psychiatric medication. *Id.*

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

The Lao People’s Democratic Republic is an authoritarian state and one of the poorest nations in Asia. *See* Congressional Research Service, *In Focus: Laos* (Dec. 2, 2024) (“2024 CRS”).² When the communist party came to power in Laos

² <https://www.congress.gov/crs-product/IF10236>.

1 in 1975, hundreds of thousands of refugees fled, including many who had fought
 2 alongside the U.S. government in the Vietnam War. *Id.*; see The Economist,
 3 *America's secret war in Laos* (Jan. 21, 2017).³ During the war, the United States
 4 had dropped over 2.5 million tons of bombs on Laos in what remains the largest
 5 bombardment of any country in history. *Id.*

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

15 In 2018, the United States issued visa sanctions on Laos “due to lack of
 16 cooperation in accepting their citizens who have been ordered removed.”⁶ The
 17 federal government explained that Laos had not “established repeatable processes
 18 for issuing travel documents to their nationals ordered removed from the United
 19 States.” *Id.*

20 In June of this year, President Trump reiterated, “Laos has historically
 21 failed to accept back its removable nationals.” See Presidential Proclamation,
 22 *Restricting the Entry of Foreign Nationals to Protect the United States from*
 23

24 ³ [https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-](https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-laos)
 25 [laos](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-](https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation)
 27 [southeast-asian-refugees-facing-deportation](https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation).

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

⁶ [https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-](https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions)
[visa-sanctions](https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions).

1 *Foreign Terrorists and Other National Security and Public Safety Threats*,
 2 § 3(c)(i) (June 4, 2025).⁷ As a result, he included Laos as one of 19 countries in
 3 his travel ban, banning all Lao immigrant, tourist, student, and exchange visitors
 4 from the United States. *Id.*; see American Immigration Council, *Trump's 2025*
 5 *Travel Ban* (Aug. 6, 2025).⁸ In response, the Lao government has issued travel
 6 documents to a few dozen nationals of Laos with final removal orders. See Ben
 7 Warren, *Hmong refugees from Michigan among those deported to Laos, despite*
 8 *calls for release*, The Detroit News (Aug. 15, 2025) (noting 32 Laotian nationals
 9 were deported on a flight in August).⁹

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

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

20 When immigrants cannot be removed to their home country, ICE has begun
 21 deporting those individuals to third countries without adequate notice or a
 22 hearing. See Edward Wong et al, *Inside the Global Deal-Making Behind Trump's*
 23 *Mass Deportations*, N.Y. Times, June 25, 2025. This summer and fall, ICE has

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/)

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

28 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/).

1 carried out highly publicized third country deportations to prisons in South Sudan,
 2 Eswatini, Ghana, and Rwanda. Nokukhanya Musi & Gerald Imray, *10 more*
 3 *deportees from the US arrive in the African nation of Eswatini*, Associated Press
 4 (Oct. 6, 2025).¹⁰ At least four men deported to Eswatini have remained in a
 5 maximum-security prison there for nearly three months without charge and
 6 without access to counsel; another six are detained incommunicado in South
 7 Sudan, and another seven are being held in an undisclosed facility in Rwanda. *Id.*

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

13 On July 9, 2025, ICE rescinded previous guidance meant to give
 14 immigrants a “‘meaningful opportunity’ to assert claims for protection under the
 15 Convention Against Torture (CAT) before initiating removal to a third country”
 16 like the ones just described. Exh. B. Instead, under new guidance, ICE may
 17 remove any immigrant to a third country “without the need for further
 18 procedures,” as long as—in the view of the State Department—the United States
 19 has received “credible” “assurances” from that country that deportees will not be
 20 persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to
 21 persecute or torture releasees, ICE may still remove immigrants there with
 22 minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’ notice. But “[i]n
 23
 24

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

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

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

1 exigent circumstances,” a removal may take place in as little as six hours, “as long
 2 as the alien is provided reasonable means and opportunity to speak with an
 3 attorney prior to the removal.” *Id.*

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

8 CLAIMS FOR RELIEF

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

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

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

19 I. Claim One: ICE failed to comply with its own regulations before re- 20 detaining Mr. Phakeokoth, violating his rights under applicable 21 regulations and due process.

22 Two regulations establish the process due to someone who is re-detained in
 23 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
 24 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
 25 framework to persons released upon good reason to believe that they will not be
 26 removed in the reasonably foreseeable future, as Mr. Phakeokoth was. See *Phan*
 27 *v. Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct.
 28 10, 2025) (explaining this regulatory framework and granting a habeas petition for

1 ICE's failure to follow these regulations); *Rokhfirooz*, No. 25-CV-2053-RSH-
2 VET, 2025 WL 2646165 at *2 (same as to an Iranian national).

3 These regulations permit an official to "return [the person] to custody" only
4 when the person "violate[d] any of the conditions of release," 8 C.F.R.
5 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official
6 "determines that there is a significant likelihood that the alien may be removed in
7 the reasonably foreseeable future," and makes that finding "on account of
8 changed circumstances," 8 C.F.R. § 241.13(i)(2).

9 No matter the reason for re-detention, the re-detained person is entitled to
10 certain procedural protections. For one, "[u]pon revocation," the noncitizen "will
11 be notified of the reasons for revocation of his or her release or parole." *Phan*,
12 2025 WL 2898977 at *3, *4 (quoting 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3)).
13 Further, the person "will be afforded an initial informal interview promptly after
14 his or her return" to be given "an opportunity to respond to the reasons for
15 revocation stated in the notification." *Id.*

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

21 ICE is required to follow its own regulations. *United States ex rel. Accardi*
22 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); see *Alcaraz v. INS*, 384 F.3d 1150,
23 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to
24 abide by certain internal policies is well-established."). A court may review a re-
25 detention decision for compliance with the regulations, and "where ICE fails to
26 follow its own regulations in revoking release, the detention is unlawful and the
27 petitioner's release must be ordered." *Rokhfirooz*, 2025 WL 2646165 at *4
28 (collecting cases); accord *Phan*, 2025 WL 2898977 at *5.

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

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

8 Second, ICE did not notify Mr. Phakeokoth of the reasons for his re-
9 detention upon revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He
10 was re-detained on August 29, 2025. Exh. A at ¶ 6. As he has explained, “[t]hey
11 did not tell me why they were revoking my supervision.” *Id.* at ¶ 6.

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

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

19
20 ¹³ *Constantinovici v. Bondi*, F. Supp. 3d ___, 2025 WL 2898985, No. 25-cv-
21 2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-
22 RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL
23 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v.*
24 *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).

25 ¹⁴ *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v.*
26 *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.
27 Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387
28 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at
*7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025
WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-
00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v.*
Becerra, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16,

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

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

7 **A. Legal background**

8 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
9 a problem affecting people like Mr. Phakeokoth: Federal law requires ICE to
10 detain an immigrant during the “removal period,” which typically spans the first
11 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After
12 that 90-day removal period expires, detention becomes discretionary—ICE may
13 detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6).
14 Ordinarily, this scheme would not lead to excessive detention, as removal
15 happens within days or weeks. But some detainees cannot be removed quickly.
16 Perhaps their removal “simply require[s] more time for processing,” or they are
17 “ordered removed to countries with whom the United States does not have a
18 repatriation agreement,” or their countries “refuse to take them,” or they are
19 “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v.*
20 *Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances,
21 detained immigrants can find themselves trapped in detention for months, years,
22 decades, or even the rest of their lives. If federal law were understood to allow for
23 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
24 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
25 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.

26
27
28 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 *Id.* at 689.

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

12 **B. The six-month grace period has expired.**

13 The six-month grace period has long since ended. The *Zadvydas* grace
14 period is linked to the date the final order of removal is issued. It lasts for “six
15 months after a final order of removal—that is, *three months* after the statutory
16 removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th
17 Cir. 2001). Indeed, the statute defining the beginning of the removal period is
18 linked to the latest of three dates, all of which relevant here are tied to when the
19 removal order is issued. 8 U.S.C. § 1231(a)(1)(B).¹⁶
20
21
22

23 ¹⁵ Further, even before the 180 days have passed, the immigrant must still be
24 released if he *rebutts* the presumption that his detention is reasonable. *See, e.g.,*
25 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases
26 on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar*,
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).

27 ¹⁶ Those dates are, specifically, (1) “[t]he date the order of removal becomes
28 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.*

1 Here, Mr. Phakeokoth's order of removal was entered in September 2004.
2 Exh. A at ¶ 3.¹⁷ Accordingly, his 90-day removal period began then. 8 U.S.C.
3 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in February 2005, three
4 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL
5 1678501, No. 25-cv-4108(EP), *2-*3.

6 Regardless, Mr. Phakeokoth was detained for about three months after he
7 was ordered removed, three months at a later date, and nearly two months this
8 year. Exh. A at ¶¶ 4, 5, 6. By the time this Court resolves this case, Mr.
9 Phakeokoth will have been detained for over eight months, if not more; ICE will
10 also, of course, have had 21 years since his removal order issued to remove him.¹⁸
11
12
13

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

15 ¹⁸ The government has sometimes argued that release and rearrest resets the six-
16 month grace period completely, taking the clock back to zero. "Courts . . . broadly
17 agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6
18 (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).

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
16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). "Pursuant to the
22 statute, the removal period, and in turn the [six-month] presumptively reasonable
23 period, begins from the latest of 'the date the order of removal becomes
24 administratively final,' the date of a reviewing court's final order where the
25 removal order is judicially removed and that court orders a stay of removal, or the
26 alien's release from detention or confinement where he was detained for reasons
27 other than immigration purposes at the time of his final order of removal." *Id.*
28 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 **C. Laos’s refusal to accept Mr. Phakeokoth, along with its**
2 **longstanding policy of not accepting deportees, provides good**
3 **reason to believe that Mr. Phakeokoth will not likely be removed**
4 **in the reasonably foreseeable future.**

5 This Court uses a burden-shifting framework to evaluate Mr. Phakeokoth’s
6 *Zadvydas* claim. At the first stage of the framework, Mr. Phakeokoth must
7 “provide[] good reason to believe that there is no significant likelihood of removal
8 in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This standard
9 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 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
19 Petitioners need only give a “good reason”—not prove anything to a certainty.

20 **“Significant likelihood of removal.”** This component focuses on whether
21 Mr. Phakeokoth will likely be removed: Continued detention is permissible only
22 if it is “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*,
23 533 U.S. at 701. This inquiry targets “not only the *existence* of untapped
24 possibilities, but also [the] probability of *success* in such possibilities.” *Elashi v.*
25 *Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In
26 other words, even if “there remains *some* possibility of removal,” a petitioner can
27 still meet its burden if there is good reason to believe that successful removal is
28

1 not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL
2 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

3 “In the reasonably foreseeable future.” This component of the test
4 focuses on when Mr. Phakeokoth will likely be removed: Continued detention is
5 permissible only if removal is likely to happen “in the reasonably foreseeable
6 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
7 removal efforts. If the Court has “no idea of when it might reasonably expect
8 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
9 is likely to occur—or even that it might occur—in the reasonably foreseeable
10 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
11 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
12 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
13 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that
14 Mr. Phakeokoth “would *eventually* receive” a travel document, he can still meet
15 his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes*
16 *v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

17 Mr. Phakeokoth satisfies this standard for two reasons.

18 *First*, as explained above, Laos generally does not accept deportees. Last
19 year, zero people were removed to Laos; in the five years before that, between 0
20 and 11 people were removed per year. See U.S. Immigration and Customs
21 Enforcement, *Annual Report: Fiscal Year 2024*, at 100 (Dec. 19, 2024).¹⁹
22 Although President Trump has pressured Laos to begin accepting deportees, that
23 has resulted in Laos issuing travel documents for only a few dozen nationals out
24 of thousands of Laotians. And since then, multiple courts have rejected the Trump
25 administration’s efforts to re-detain Laotian immigrants without following its own
26 regulations. See, e.g., *Khambounheuang*, No. 25-cv-02575-JO-SBC, ECF No. 12

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

(S.D. Cal. Oct. 9, 2025); *Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL 2579569 (W.D. Wash. Sept. 5, 2025).

Second, Mr. Phakeokoth's own experience bears this out. ICE has now had 21 years to deport him. He has cooperated with ICE's removal efforts throughout that time, including by attending yearly check-ins. Exh. A at ¶ 5. Yet ICE has proved unable to remove him.

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

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

If released on supervision, Mr. Phakeokoth poses no risk of danger or flight. He has been on supervision for 21 years. Exh. A at ¶ 4. Regardless, *Zadvydas* squarely holds that danger or flight are not grounds for detaining an immigrant when there is no reasonable likelihood of removal in the reasonably foreseeable future. 533 U.S. at 684–91.

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

The Supreme Court rejected that argument. The Court appreciated the seriousness of the government's concerns. *Id.* at 691. But the Court found that the immigrant's liberty interests were weightier. *Id.* The Court had never

1 countenanced “potentially permanent” “civil confinement,” based only on the
2 government’s belief that the person would misbehave in the future. *Id.*

3 The Court also noted that the government was free to use the many tools at
4 its disposal to mitigate risk: “[O]f course, the alien’s release may and should be
5 conditioned on any of the various forms of supervised release that are appropriate
6 in the circumstances, and the alien may no doubt be returned to custody upon a
7 violation of those conditions.” *Id.* at 700. The Ninth Circuit later elaborated, “All
8 aliens ordered released must comply with the stringent supervision requirements
9 set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration
10 officer periodically, answer certain questions, submit to medical or psychiatric
11 testing as necessary, and accept reasonable restrictions on [their] conduct and
12 activities, including severe travel limitations. More important, if [they] engage[]
13 in any criminal activity during this time, including violation of [their] supervisory
14 release conditions, [they] can be detained and incarcerated as part of the normal
15 criminal process.” *Ma*, 257 F.3d at 1115.

16 These conditions have proved sufficient to protect the public over the last
17 21 years. They will continue to do so while ICE keeps trying to deport
18 Mr. Phakeokoth.

19 **III. Claim Three: ICE may not remove Mr. Phakeokoth to a third country**
20 **without adequate notice and an opportunity to be heard.**

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

25 **A. Legal background**

26 U.S. law enshrines protections against dangerous and life-threatening
27 removal decisions. By statute, the government is prohibited from removing an
28 immigrant to any third country where they may be persecuted or tortured, a form

1 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
2 The government “may not remove [a noncitizen] to a country if the Attorney
3 General decides that the [noncitizen’s] life or freedom would be threatened in that
4 country because of the [noncitizen’s] race, religion, nationality, membership in a
5 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
6 1208.16. Withholding of removal is a mandatory protection.

7 Similarly, Congress codified protections enshrined in the CAT prohibiting
8 the government from removing a person to a country where they would be
9 tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be
10 the policy of the United States not to expel, extradite, or otherwise effect the
11 involuntary return of any person to a country in which there are substantial
12 grounds for believing the person would be in danger of being subjected to torture,
13 regardless of whether the person is physically present in the United States.”); 28
14 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
15 mandatory.

16 To comport with the requirements of due process, the government must
17 provide notice of the third country removal and an opportunity to respond. Due
18 process requires “written notice of the country being designated” and “the
19 statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).”
20 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v.*
21 *U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1
22 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
23 1999).

24 The government must also “ask the noncitizen whether he or she fears
25 persecution or harm upon removal to the designated country and memorialize in
26 writing the noncitizen’s response. This requirement ensures DHS will obtain the
27 necessary information from the noncitizen to comply with section 1231(b)(3) and
28 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.

3d at 1019. “Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at 1041.

If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. The amount and type of notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen’s immigration proceedings if the individual demonstrates “reasonable fear” and to provide “a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings” if the noncitizen is found to not have demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

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

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

4 The policies in the June 6, 2025 memo do not adhere to these requirements.
5 The memo "contravenes Ninth Circuit law." *Nguyen v. Scott*, No. 25-CV-1398,
6 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9,
7 2025 ICE memo contravenes Ninth Circuit law on the process due to noncitizens
8 in detail); *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-
9 MSB (S.D. Cal. Sept. 29, 2025) (granting temporary restraining order preventing
10 a noncitizen's deportation to a third country pending litigation in light of due
11 process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.
12 6 (S.D. Cal. Sept. 18, 2025) (same).

13 First, under the policy, ICE need not give immigrants *any* notice or *any*
14 opportunity to be heard before removing them to a country that—in the State
15 Department's estimation—has provided "credible" "assurances" against
16 persecution and torture. Exh. B. By depriving immigrants of any chance to
17 challenge the State Department's view, this policy violates "[t]he essence of due
18 process," "the requirement that a person in jeopardy of serious loss be given
19 notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*,
20 424 U.S. 319, 348 (1976) (cleaned up).

21 Second, even when the government has obtained no credible assurances
22 against persecution and torture, the government can still remove the person with
23 between 6 and 24 hours' notice, depending on the circumstances. Exh. B.
24 Practically speaking, there is not nearly enough time for a detained person to
25 assess their risk in the third country and marshal evidence to support any credible
26 fear—let alone a chance to file a motion to reopen with an IJ.

27 An immigrant may know nothing about a third country, like Eswatini or
28 South Sudan, when they are scheduled for removal there. Yet if given the

1 opportunity to investigate conditions, immigrants would find credible reasons to
2 fear persecution or torture—like patterns of keeping deportees indefinitely and
3 without charge in solitary confinement or extreme instability raising a high
4 likelihood of death—in many of the third countries that have agreed to removal
5 thus far.

6 Due process requires an adequate chance to identify and raise these threats
7 to health and life. This Court must prohibit the government from removing Mr.
8 Phakeokoth without these due process safeguards.

9 **IV. This Court must hold an evidentiary hearing on any disputed facts.**

10 Resolution of a prolonged-detention habeas petition may require an
11 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).
12 Mr. Phakeokoth hereby requests such a hearing on any material, disputed facts.

13
14 **V. Prayer for relief**

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

- 16 1. Order and enjoin Respondents to immediately release Petitioner from
17 custody;
- 18 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
19 § 1231(a)(6) unless and until Respondents obtain a travel document for
20 his removal;
- 21 3. Enjoin Respondents from re-detaining Petitioner without first following
22 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other
23 applicable statutory and regulatory procedures;
- 24 4. Enjoin Respondents from removing Petitioner to any country other than
25 Laos, unless they provide the following process, *see D.V.D. v. U.S.*
26 *Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at
27 *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: Oct 19/25

Respectfully submitted,



SOUKSAVATH PHAKEOKOTH

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

Souksavath Phakeokoth

A# [REDACTED]

Otay Mesa Detention Center

P.O. Box 439049

San Diego, CA 92143-9049

Pro Se¹

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

SOUKSAVATH PHAKEOKOTH,

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.:

**Declaration of
Souksavath Phakeokoth
in Support of Petition
for a Writ of Habeas Corpus**

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

1 I, Souksavath Phakeokoth, declare:

- 2
- 3 1. I was born in Laos and came to the United States with my family in 1987 as
- 4 a refugee. We all became lawful permanent residents soon after we arrived.
- 5 2. In approximately 2003, when I was about 20 years old, I was convicted of a
- 6 crime that I believe related to threatening a witness. As a result of this
- 7 conviction, I was put into removal proceedings.
- 8 3. On September 13, 2004, an immigration judge ordered me removed on the
- 9 basis of this conviction.
- 10 4. After I was ordered removed, ICE tried to deport me to Laos. However,
- 11 Laos did not issue me travel documents. ICE continued to detain me for
- 12 about three months before releasing me on an order of supervision.
- 13 5. Since my release from ICE custody, I violated the conditions of my release
- 14 and have been convicted of vandalism and several DUIs. About ten years
- 15 ago, I was taken back into custody and detained for another three months.
- 16 6. On August 29, 2025, I went to the ICE office for my annual check in. At
- 17 that appointment, ICE took me into custody. They did not tell me why they
- 18 were revoking my supervision, nor did they give me an informal interview
- 19 or a chance to contest my detention.
- 20 7. About seven years ago, I was diagnosed with schizophrenia. In the nearly
- 21 two months since I have been detained, I have not received my psychiatric
- 22 medications, though I was told I will receive a shot next week.
- 23 8. I live with my elderly mother, as well as my wife, and the youngest of my
- 24 two children, who is 13. I help take care of my mother, who has dementia.
- 25 My wife is the only one who is able to work. She is a receptionist but does
- 26 not make enough money to pay for a lawyer for me.
- 27 9. I have no legal education or training. I also do not have free access to the
- 28 internet in custody.

1 I declare under penalty of perjury that the foregoing is true and correct,
2 executed on Oct 19/25, in San Diego, California.
3

4 
5 **SOUKSAVATH PHAKEOKOTH**
6 Declarant
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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