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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

INPONE OMDARA,

Petitioner,

v.

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

Respondents.

Civil Case No.: 25-cv-2834-BAS-MMP

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

Having received the government's Return and exhibits, this Court should grant Mr. Omdara's petition. To do so, the Court need only follow the reasoning of recent decisions in this district and around the country.

First, this Court should grant the petition on Claim One because the government has not complied with its own regulations. For persons like Mr. Omdara, those regulations permit re-detention only if ICE: (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2); (2) makes that finding "on account of changed circumstances," *id.*; (3) provides "an initial informal interview promptly," *id.* §§ 241.4(*l*)(1), 241.13(i)(3); and (4) "affords the [person] an opportunity to respond to the reasons for revocation," *id.*

Yet ICE did none of these things when it arrested Mr. Omdara on August 12, 2025. It did not provide a Notice of Revocation of Release or an informal interview until two-and-a-half months later—six days after he filed his habeas petition. Dkt. 7-2, Exh. 6 & 7. Though ICE claims to have received a travel document for Mr. Omdara, other judges in this district have granted relief and ordered the petitioner released due to the regulatory violations of 8 C.F.R. § 241.4 even *after* ICE obtained a travel document. *See, e.g.*, *Truong v. Noem*, 25-cv-2597-JES-MMP, Dkt. 13 (S.D. Cal. Oct. 22, 2025) (granting habeas because "the Government failed to follow its own regulations" even though ICE had obtained travel document); *Khambounheuang v. Noem*, 25-cv-2575-JO-SBC, Dkt. 17 (S.D. Cal. Oct. 23, 2025) (same); *Ngo v. Noem*, 25-cv-2739-TWR-MMP, Dkt. 11 (S.D. Cal. Oct. 23, 2025) (same); *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025) (same); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Oct. 30, 2025) (same).

Second, this Court should grant the petition on Claim Two because the government provides insufficient evidence to satisfy the success element ("a

significant likelihood of removal") or the timing element ("in the reasonably foreseeable future") of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The declaration of Deportation Officer Jason Cole does not say when Mr. Omdara will be removed—only that it "intends to effectuate removal" before the travel document expires on January 6, 2026. Dkt. 7-1 at ¶ 20. But as the government admits, deportation flights to Laos have occurred since it obtained a travel document—yet Mr. Omdara was not on those flights. *See* Cole Dec., Dkt. 7-1 at ¶ 15 (stating that ICE removed people to Laos on October 22, 2025). Moreover, even though the government has obtained a travel document for Laos, the government's own website states that Mr. Omdara was born in Thailand; thus, it is unclear how he will be removed to Laos.

Third, the government does not dispute that ICE's third-country removal policy violates due process. And the Ninth Circuit has squarely rejected the government's jurisdictional argument, holding that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed," or any other claim asserting a "violation of [ICE's] mandatory duties." *Ibarra-Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *7, *9 (9th Cir. Aug. 27, 2025). The contrary position would leave immigrants without protection from ICE's policy, which allows for a change of plans with minimal or no notice. Multiple judges in this district have granted relief on this ground. *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). This Court should therefore grant the petition or a preliminary injunction on all three grounds.

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ARGUMENT

I. This Court has jurisdiction to consider Mr. Omdara's claims.

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

In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed," *id.* at *7[1]—the same claim that Mr. Omdara raises here with respect to third-country removals. The Court reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, § 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

[1] Mr. Ibarra-Perez raised this claim in a post-removal Federal Tort Claims Act ("FTCA") case, *id.* at *2, while this is a pre-removal habeas petition. But the analysis under § 1252(g) remains the same, because both Mr. Ibarra-Perez and Mr. Omdara 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).

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

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

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

II. Mr. Omdara's claims succeed on the merits.

This Court need not speculate about whether Mr. Omdara may succeed on the merits. Because the government's evidence is insufficient to justify

Mr. Omdara's detention, his petition should be granted outright, or the Court should at least release him on a TRO pending further briefing.

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

ICE's regulatory violations alone are sufficient to grant the habeas petition or TRO. First, ICE did not provide Mr. Omdara sufficient notice under 8 C.F.R. § 241.13 of the reasons for the revocation of his release. The government did not provide Mr. Omdara either the Notice of Revocation of Release or an informal interview until October 28, 2025—two-and-a-half months after it detained him. Dkt. 7-2, Exhibit 6 & 7. And it only did so *after* Mr. Omdara filed a habeas petition. The government provides no explanation for its failure to follow these regulations.

"When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(*l*) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). "The procedures in § 241.4" and § 241.13 therefore "are not meant merely to facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees." *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R. §§ 241.4, 241.13 are "intended to provide due process to individuals in [Mr. Omdara's] position," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable.

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The fact that ICE claims to have received a travel document for Mr. Omdara does not negate this regulatory violation. As noted, other judges in this district have ordered petitioners released due to regulatory violations even *after* ICE obtained a travel document. *See, e.g.*, *Truong v. Noem*, 25-cv-2597-JES-MMP, Dkt. 13 (S.D. Cal. Oct. 22, 2025) (granting habeas because "the Government failed to follow its own regulations" even though ICE had obtained travel document); *Khambounheuang v. Noem*, 25-cv-2575-JO-SBC, Dkt. 17 (S.D. Cal. Oct. 23, 2025) (same); *Ngo v. Noem*, 25-cv-2739-TWR-MMP, Dkt. 11 (S.D. Cal. Oct. 23, 2025) (same); *Sphabmixay v. Noem*, 25-cv-2648-LL (S.D. Cal. Oct. 30, 2025) (same); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Oct. 30, 2025) (same).

Moreover, the government's own evidence suggests that the possibility of removal remains speculative. The declaration of DO Cole does not say identify a date on which Mr. Omdara *will* be removed—only that ICE "intends to effectuate removal" before the travel document expires in early January. Dkt. 7-1 at ¶ 20. But DO Cole does not explain why Mr. Omdara was not on one of the deportation flights that went to Laos *after* the government obtained his travel document. Dkt. 7-1 at ¶ 15. This raises questions about whether the government will actually be able to remove Mr. Omdara.

There is good reason for these questions. A search of the ICE detainee locator using Mr. Omdara's A-number shows that ICE itself acknowledges that Mr. Omdara was not born in Laos—he was born in a refugee camp in Thailand:[2]

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[2] *See* https://locator.ice.gov/.

This adds a complication and casts doubt on the government's assurances that there is "no barrier to the Petitioner's imminent removal to Laos." Dkt. 7-1 at ¶ 22.

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

Second, the government provides insufficient assurances that Mr. Omdara will likely be removed to Laos in the reasonably foreseeable future.

As an initial matter, DO Cole admits that Mr. Omdara has been detained for six months since his removal order. Dkt. 7-1 at ¶ 8, 9, 14. Yet the government appears to contend that the six-month grace period starts over every time ICE re-detains someone. Dkt. 7 at 6–7. "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); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025).

But even a cursory review of § 1231(a)(1)(B) shows that that is not true. The statute defines three, specific starting dates for the removal period, none of which involve re-detention. *See Bailey v. Lynch*, No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (explaining this). The six-month grace period has therefore ended, and so—contrary to the government's claims—Mr. Omdara need not rebut the "presumptively reasonable period of detention." Dkt. 9 at 6.

Because the six-month grace period has passed, this court moves on to the burden-shifting framework. The government does not deny that Mr. Omdara has provided "good reason" to doubt his reasonably foreseeable removal, thereby forfeiting the issue. *See* Dkt. 7 at 7. *Moallin v. Cangemi*, 427 F. Supp. 2d 908, 928 (D. Minn. 2006). The burden therefore shifts to the government to prove that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. That standard has a success element ("significant likelihood of removal") and a timing element ("in the reasonably foreseeable future").

For the reasons previously explained, the government has provided insufficient assurances of either. Though it purports to have a travel document, it has not put Mr. Omdara on any of its recent flights. What's more, the agency itself admits that Mr. Omdara was born in Thailand, not Laos. Because these facts render the certainty of removal speculative, Mr. Omdara therefore succeeds under *Zadvydas*, too.

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

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

third-country removal challenge is nonjusticiable under Article III because ICE professes no current plans to remove Mr. Omdara to a third country. Dkt. 9 at 3–4.

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

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

III. The remaining TRO factors decidedly favor Mr. Omdara.

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

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

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

[3] The government cites several cases to support the position that illegal immigration detention is not irreparable harm. Dkt. 7 at 11, 12. But both cases involved immigrants who (1) had already received a bond hearing and (2) were actively appealing to the BIA, but (3) wanted a federal court to intervene before 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.

Conclusion

For all these reasons, this Court should grant the petition, or at least enter a temporary restraining order and injunction. In either case, the Court should (1) order Mr. Omdara's immediate release, and (2) prohibit the government from removing Mr. Omdara to a third country without following the process laid out in *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).

Respectfully submitted,

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s/ Kara Hartzler

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