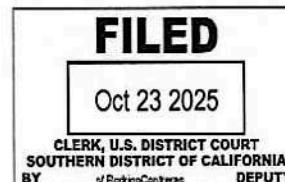


1 Alain Sayvongsa  
2 A# [REDACTED]  
3 Otay Mesa Detention Center  
4 P.O. Box 439049  
5 San Diego, CA 92143-9049

6 Pro Se<sup>1</sup>  
7



8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ALAIN SAYVONGSA,  
11 Petitioner,  
12 v.  
13 KRISTI NOEM, Secretary of the  
14 Department of Homeland Security,  
15 PAMELA JO BONDI, Attorney General,  
16 TODD M. LYONS, Acting Director,  
17 Immigration and Customs Enforcement,  
18 JESUS ROCHA, Acting Field Office  
19 Director, San Diego Field Office,  
20 CHRISTOPHER LAROSE, Warden at  
21 Otay Mesa Detention Center,  
22  
23 Respondents.

CIVIL CASE NO.:

'25CV2867 AGS DEB

Petition for Writ  
of  
Habeas Corpus

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

24  
25  
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27  
28  
1 Mr. Sayvongsa 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. Sayvongsa was born in Laos, came to the United States in the late seventies, and soon after became a lawful permanent resident. In 1999, he was ordered removed. But when Laos would not accept him after over a year of detention, Mr. Sayvongsa was released on an order of supervision.

6 Mr. Sayvongsa remained on supervision for the next 25 years. He checked  
7 in with ICE every year without incident. But when he went for his annual check-  
8 in on October 7, 2025, ICE re-detained him. Contrary to regulation, ICE did not  
9 notify Mr. Sayvongsa of any changed circumstances that made his removal more  
10 likely. Nor did it give Mr. Sayvongsa an informal interview or an opportunity to  
11 contest his re-detention. He has no information about whether ICE has sought a  
12 travel document or even begun the process of seeking his deportation. Worse yet,  
13 on July 9, 2025, ICE adopted a new policy permitting removals to third countries  
14 with no notice, six hours' notice, or 24 hours' notice depending on the  
15 circumstances, providing no meaningful opportunity to make a fear-based claim  
16 against removal.

17 Mr. Sayvongsa's detention violates his statutory and regulatory rights,  
18 *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. Courts in this  
19 district have agreed in similar circumstances as to each of Mr. Sayvongsa's three  
20 claims. Specifically:

21       (1) *Regulatory and due process violations*: Mr. Sayvongsa must be released  
22 because ICE's failure to follow its own regulations about notice and an  
23 opportunity to be heard violate due process. *See, e.g., Constantinovici v. Bondi*,  
24 \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10,  
25 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal.  
26 Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB,  
27 \*3-\*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-  
28 2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No.

1 25-cv-2334-JES, \*3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-  
2 02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*,  
3 No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025) (all either  
4 granting temporary restraining orders releasing noncitizens, or granting habeas  
5 petitions outright, due to ICE regulatory violations during recent re-detentions of  
6 released noncitizens previously ordered removed).

7 (2) *Zadvydas violations*: Mr. Sayvongsa must also be released under  
8 *Zadvydas* because—having proved unable to remove him for the last 26 years—the  
9 government cannot show that there is a “significant likelihood of removal in  
10 the reasonably foreseeable future.” *Id.* at 701. *See, e.g., Conchas-Valdez*, 2025  
11 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*,  
12 No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas  
13 petitions releasing noncitizens due to *Zadvydas* violations).

14 (3) *Third-country removal statutory and due process violations*: This Court  
15 should enjoin ICE from removing Mr. Sayvongsa to a third country without  
16 providing an opportunity to assert fear of persecution or torture before an  
17 immigration judge. *See, e.g., Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No.  
18 13; *Van Tran v. Noem*, 2025 WL 2770623 at \*3; *Nguyen Tran v. Noem*, No. 25-  
19 cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*,  
20 2025 WL 2881578, No. 25-cv-2502-JES, \*4 (S.D. Cal. Oct. 9, 2025) (all either  
21 granting temporary restraining orders or habeas petitions ordering the government  
22 to not remove petitioners to third countries pending litigation or reopening of their  
23 immigration cases).

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

26

27

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## STATEMENT OF FACTS

I. Mr. Saywongsa is ordered removed, held in ICE custody, and released as ICE proves unable to deport him for the next 26 years, until he is arrested at his annual ICE check-in.

Alain Sayvongsa was born in Laos and came to the United States as a refugee with his family in 1978 or 1979. Exhibit A, "Sayvongsa Declaration," at ¶ 1. When they arrived in the U.S., they all became lawful permanent residents.

Id

In 1994, when he was about 17 years old, Mr. Sayvongsa was convicted of carjacking as an adult. *Id.* at ¶ 2. As a result of this conviction, Mr. Sayvongsa was placed in removal proceedings. *Id.* at ¶ 2. An immigration judge ordered him removed on July 16, 1999. *Id.* at ¶ 3.

But ICE was not able to effectuate Mr. Sayvongsa's removal to Laos. For over a year, ICE tried and failed to obtain travel documents for him. *Id.* at ¶ 4. Finally, ICE gave up and released him on an order of supervision in 2000. *Id.*

On October 7, 2025, ICE officials arrested Mr. Sayvongsa during his annual check in appointment. *Id.* at ¶ 6. They did not provide him any notice or give him an interview or an opportunity to contest his detention. *Id.*

Mr. Sayvongsa is a single father and the sole provider for both his daughter and his elderly mother, who has diabetes and recently suffered a stroke. *Id.* at ¶ 7. His absence is putting a heavy strain on the family. *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").<sup>2</sup> When the communist party came to power in Laos in 1975, hundreds of thousands of refugees fled, including many who had fought

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

1 alongside the U.S. government in the Vietnam War. *Id.*; *see* The Economist,  
 2 *America's secret war in Laos* (Jan. 21, 2017).<sup>3</sup> During the war, the United States  
 3 had dropped over 2.5 million tons of bombs on Laos in what remains the largest  
 4 bombardment of any country in history. *Id.*

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

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

18 In June of this year, President Trump reiterated, “Laos has historically  
 19 failed to accept back its removable nationals.” *See* Presidential Proclamation,  
 20 *Restricting the Entry of Foreign Nationals to Protect the United States from  
 21 Foreign Terrorists and Other National Security and Public Safety Threats*,

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 24  
 25 <sup>3</sup> <https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-laos>.

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

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

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

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

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

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

19       When immigrants cannot be removed to their home country, ICE has begun  
 20 deporting those individuals to third countries without adequate notice or a  
 21 hearing. *See Edward Wong et al, Inside the Global Deal-Making Behind Trump's*  
 22 *Mass Deportations*, *N.Y. Times*, June 25, 2025. This summer and fall, ICE has  
 23 carried out highly publicized third country deportations to prisons in South Sudan,  
 24

25       <sup>7</sup> <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       <sup>8</sup> <https://www.americanimmigrationcouncil.org/report/trump-2025-travel-ban/>.

27       <sup>9</sup> <https://www.detroitnews.com/story/news/local/michigan/2025/08/15/hmong-refugees-among-those-deported-to-laos/85680464007/>.

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

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

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

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

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

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

1 as the alien is provided reasonable means and opportunity to speak with an  
 2 attorney prior to the removal.” *Id.*

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

7 **CLAIMS FOR RELIEF**

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

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

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

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

21 Two regulations establish the process due to someone who is re-detained in  
 22 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to  
 23 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping  
 24 framework to persons released upon good reason to believe that they will not be  
 25 removed in the reasonably foreseeable future, as Mr. Sayvongsa was. *See Phan v.*  
 26 *Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, \*3-\*5 (S.D. Cal. Oct.  
 27 10, 2025) (explaining this regulatory framework and granting a habeas petition for  
 28 ICE’s failure to follow these regulations); *Rokhfirooz*, No. 25-CV-2053-RSH-

1 VET, 2025 WL 2646165 at \*2 (same as to an Iranian national).

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

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

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

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

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

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

7       Second, ICE did not notify Mr. Sayvongsa of the reasons for his re-  
8 detention upon revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He  
9 was re-detained on October 7, 2025. Exh. A at ¶ 5. As he has explained, “[t]hey  
10 did not tell me why they were revoking my supervision.” *Id.* at ¶ 6.

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

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

18  
19  
20       <sup>13</sup> *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*  
25 *Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, \*3 (S.D. Cal. Sept. 29,  
26 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10,  
27 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D.  
28 Cal. Oct. 9, 2025).

29       <sup>14</sup> *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v.*  
30 *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.  
31 Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387  
32 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at  
33 \*7-9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025  
34 WL 2430267, at \*10-12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-  
35 00182-MJT, 2025 WL 2491782, at \*2-3 (E.D. Tex. July 18, 2025); *Hoac v.*  
36 *Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July 16,  
37 2025); *Liu*, 2025 WL 1696526, at \*2; *M.Q. v. United States*, 2025 WL 965810, at

1        “[B]ecause officials did not properly revoke petitioner’s release pursuant to  
2 the applicable regulations, that revocation has no effect, and [Mr. Sayvongsa] 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. Sayvongsa’s detention violates *Zadvydas* and 8 U.S.C.  
6 § 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. Sayvongsa: 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 *Id.* at 689.

27  
28        \*3, \*5 n.1 (S.D.N.Y. Mar. 31, 2025).

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

11

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

13

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

21

22

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23       <sup>15</sup> Further, even before the 180 days have passed, the immigrant must still be  
24 released if he *rebuts* 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  
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).

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27

28

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

1       Here, Mr. Sayvongsa's order of removal was entered in July 1999. Exh. A  
2 at ¶ 3.<sup>17</sup> Accordingly, his 90-day removal period began then. 8 U.S.C.  
3 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in January 2000, 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. Sayvongsa was detained for over a year after he was  
7 ordered removed. Exh. A at ¶¶ 4. ICE will also, of course, have had 26 years since  
8 his removal order issued to remove him.<sup>18</sup>

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

15       <sup>18</sup> 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  
22 16-2600 (JLL), 2016 WL 5791407, at \*2 (D.N.J. Oct. 3, 2016). "Pursuant to the  
23 statute, the removal period, and in turn the [six-month] presumptively reasonable  
24 period, begins from the latest of 'the date the order of removal becomes  
25 administratively final,' the date of a reviewing court's final order where the  
26 removal order is judicially removed and that court orders a stay of removal, or the  
27 alien's release from detention or confinement where he was detained for reasons  
28 other than immigration purposes at the time of his final order of removal." *Id.*  
None of these statutory starting points have anything to do with whether or when  
an immigrant is detained. *See id.* Because the statutorily-defined removal period  
has nothing to do with release and rearrest, releasing and rearresting the  
immigrant cannot reset the removal period.

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

5                   This Court uses a burden-shifting framework to evaluate Mr. Sayvongsa's  
6                   *Zadvydas* claim. At the first stage of the framework, Mr. Sayvongsa 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. Sayvongsa will likely be removed: Continued detention is permissible only if  
22                  it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533  
23                  U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities,  
24                  but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F.  
25                  Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,  
26                  even if "there remains *some* possibility of removal," a petitioner can still meet its  
27                  burden if there is good reason to believe that successful removal is not  
28

1 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. Sayvongsa 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 Mr. Sayvongsa  
14 “would *eventually* receive” a travel document, he can still meet his burden by  
15 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,  
16 2016 WL 6679830, at \*2 (E.D. Mich. Nov. 14, 2016).

17       Mr. Sayvongsa 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).<sup>19</sup>  
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       <sup>19</sup> <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

1 (S.D. Cal. Oct. 9, 2025); *Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL  
2 2579569 (W.D. Wash. Sept. 5, 2025).

3 *Second*, Mr. Sayvongsa's own experience bears this out. ICE has now had  
4 26 years to deport him. He has cooperated with ICE's removal efforts throughout  
5 that time, including by attending yearly check-ins. Exh. A at ¶ 5. Yet ICE has  
6 proved unable to remove him.

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

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

13 If released on supervision, Mr. Sayvongsa poses no risk of danger or flight.  
14 He has been on supervision for 25 years. Exh. A at ¶ 4. He has sustained no new  
15 convictions in the last 10 years. *Id.* at ¶ 5. And he has checked in regularly with  
16 ICE during this time. *Id.* at ¶ 5.

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

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

28

1       The Supreme Court rejected that argument. The Court appreciated the  
2 seriousness of the government's concerns. *Id.* at 691. But the Court found that the  
3 immigrant's liberty interests were weightier. *Id.* The Court had never  
4 countenanced "potentially permanent" "civil confinement," based only on the  
5 government's belief that the person would misbehave in the future. *Id.*

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

19       These conditions have proved sufficient to protect the public over the last  
20 25 years. They will continue to do so while ICE keeps trying to deport  
21 Mr. Sayvongsa.

22 **III. Claim Three: ICE may not remove Mr. Sayvongsa to a third country  
23 without adequate notice and an opportunity to be heard.**

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

28

1                   **A. Legal background**

2                   U.S. law enshrines protections against dangerous and life-threatening  
3 removal decisions. By statute, the government is prohibited from removing an  
4 immigrant to any third country where they may be persecuted or tortured, a form  
5 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).  
6 The government “may not remove [a noncitizen] to a country if the Attorney  
7 General decides that the [noncitizen’s] life or freedom would be threatened in that  
8 country because of the [noncitizen’s] race, religion, nationality, membership in a  
9 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,  
10 1208.16. Withholding of removal is a mandatory protection.

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

20                  To comport with the requirements of due process, the government must  
21 provide notice of the third country removal and an opportunity to respond. Due  
22 process requires “written notice of the country being designated” and “the  
23 statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).”  
24 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v.*  
25 *U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at \*1  
26 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.  
27 1999).

28                  The government must also “ask the noncitizen whether he or she fears

1 persecution or harm upon removal to the designated country and memorialize in  
2 writing the noncitizen's response. This requirement ensures DHS will obtain the  
3 necessary information from the noncitizen to comply with section 1231(b)(3) and  
4 avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F. Supp.  
5 3d at 1019. "Failing to notify individuals who are subject to deportation that they  
6 have the right to apply for asylum in the United States and for withholding of  
7 deportation to the country to which they will be deported violates both INS  
8 regulations and the constitutional right to due process." *Andriasiyan*, 180 F.3d at  
9 1041.

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

24 "[L]ast minute" notice of the country of removal will not suffice,  
25 *Andriasiyan*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x 724 (9th  
26 Cir. 2016), and for good reason: To have a meaningful opportunity to apply for  
27 fear-based protection from removal, immigrants must have time to prepare and  
28 present relevant arguments and evidence. Merely telling a person where they may

1 be sent, without giving them a chance to look into country conditions, does not  
2 give them a meaningful chance to determine whether and why they have a  
3 credible fear.

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

7 The policies in the June 6, 2025 memo do not adhere to these requirements.  
8 The memo "contravenes Ninth Circuit law." *Nguyen v. Scott*, No. 25-CV-1398,  
9 2025 WL 2419288, \*19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9,  
10 2025 ICE memo contravenes Ninth Circuit law on the process due to noncitizens  
11 in detail); *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-  
12 MSB (S.D. Cal. Sept. 29, 2025) (granting temporary restraining order preventing  
13 a noncitizen's deportation to a third country pending litigation in light of due  
14 process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.  
15 6 (S.D. Cal. Sept. 18, 2025) (same).

16 First, under the policy, ICE need not give immigrants *any* notice or *any*  
17 opportunity to be heard before removing them to a country that—in the State  
18 Department's estimation—has provided "credible" "assurances" against  
19 persecution and torture. Exh. B. By depriving immigrants of any chance to  
20 challenge the State Department's view, this policy violates "[t]he essence of due  
21 process," "the requirement that a person in jeopardy of serious loss be given  
22 notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*,  
23 424 U.S. 319, 348 (1976) (cleaned up).

24 Second, even when the government has obtained no credible assurances  
25 against persecution and torture, the government can still remove the person with  
26 between 6 and 24 hours' notice, depending on the circumstances. Exh. B.  
27 Practically speaking, there is not nearly enough time for a detained person to  
28 assess their risk in the third country and martial evidence to support any credible

1 fear—let alone a chance to file a motion to reopen with an IJ.

2 An immigrant may know nothing about a third country, like Eswatini or  
3 South Sudan, when they are scheduled for removal there. Yet if given the  
4 opportunity to investigate conditions, immigrants would find credible reasons to  
5 fear persecution or torture—like patterns of keeping deportees indefinitely and  
6 without charge in solitary confinement or extreme instability raising a high  
7 likelihood of death—in many of the third countries that have agreed to removal  
8 thus far.

9 Due process requires an adequate chance to identify and raise these threats  
10 to health and life. This Court must prohibit the government from removing Mr.  
11 Sayvongsa without these due process safeguards.

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

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

16 **V. Prayer for relief**

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

- 18 1. Order and enjoin Respondents to immediately release Petitioner from  
19 custody;
- 20 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.  
21 § 1231(a)(6) unless and until Respondents obtain a travel document for  
22 his removal;
- 23 3. Enjoin Respondents from re-detaining Petitioner without first following  
24 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other  
25 applicable statutory and regulatory procedures;
- 26 4. Enjoin Respondents from removing Petitioner to any country other than  
27 Laos, unless they provide the following process, *see D.V.D. v. U.S.*

Dep't of Homeland Sec., No. CV 25-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May 21, 2025):

- a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
- b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
- c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
- d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.

5. Order all other relief that the Court deems just and proper.

## Conclusion

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

DATED: 10/19/25

Respectfully submitted,

ALAIN SAYVONGSA

Petitioner

  
**ALAIN SAYVONGSA**  
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: 10.23.25



Kara Hartzler

# EXHIBIT A

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

6  
7  
8 Pro Se<sup>1</sup>  
9

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**  
12

13 ALAIN SAYVONGSA,  
14 Petitioner,  
15

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

26 Respondents.  
27  
28

Civil Case No.:

Declaration of  
Alain Sayvongsa  
in Support of Petition  
for a Writ of Habeas Corpus

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

1 I, Alain Sayvongsa, declare:

2

3 1. I was born in Laos and entered the United States with my family as a  
4 refugee in 1978 or 1979. We all became lawful permanent residents soon  
5 after we arrived.

6 2. In approximately 1994, when I was about 17, I was convicted of carjacking  
7 as an adult. As a result of this conviction, I was put into removal  
8 proceedings.

9 3. On July 16, 1999, an immigration judge ordered me removed on the basis  
10 of this conviction.

11 4. After I was ordered removed, ICE tried to deport me to Laos. However,  
12 Laos did not issue me travel documents. ICE continued to detain me for  
13 over a year before releasing me on an order of supervision in 2000.

14 5. My last criminal conviction was in 2015. Since then, I have not violated the  
15 conditions of my supervised release and have no new criminal convictions.

16 6. On October 7, 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. I am a single father of a 16-year-old daughter. I take care of both her and  
21 my elderly mother, who has diabetes, recently suffered a stroke, and cannot  
22 drive. I am the sole provider for them both, and my incarceration is putting  
23 a heavy strain on my family. Neither myself nor my family have sufficient  
24 funds to hire a lawyer for me.

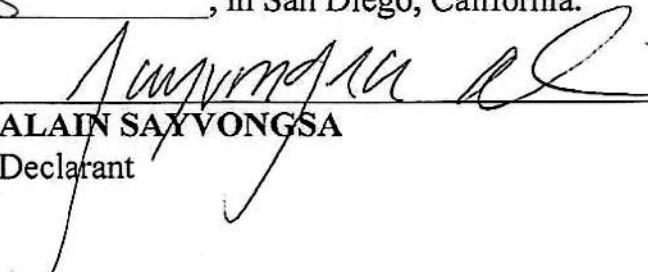
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28 8. I have no legal education or training. I also do not have free access to the  
internet in custody.

1 I declare under penalty of perjury that the foregoing is true and correct,  
2 executed on 10/19/25, in San Diego, California.

3   
4 **ALAIN SAYVONGSA**  
5 Declarant

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# EXHIBIT B

CASE NO. PX 25-951

IDENTIFICATION: JUL 10 2025

ADMITTED: JUL 10 2025

To All ICE Employees  
July 9, 2025

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

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

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

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

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

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

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

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

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

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

Attachments:

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