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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAENGPHET,

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-2909-JES-BLM

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

Having received the government's Return and exhibits, this Court should grant Mr. Saengphet's petition on all three claims. 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. Saengphet, 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. Saengphet on October 15, 2025. Although it provided two Notices of Revocation of Release that vaguely claimed there were "changed circumstances," Dkt. 7-2, Exhibits B & F, it never explained what those changed circumstances were. Nor *have* there been any changed circumstances, since the government admits that it hasn't even submitted a request to Laos for travel documents and thus does not have a travel document for Mr. Saengphet. And ICE did not provide the mandatory interview until two weeks later—the day *after* Mr. Saengphet filed a habeas petition. Dkt. 7-2, Exh. G. This was not "prompt," as the regulations require. In the last several weeks, multiple judges from this district have ordered release on similar records. *See Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025); *Sphabmixay v. Noem,* 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 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).

Second, this Court should grant the petition on Claim Two because the government provides no independent evidence to satisfy the success element ("a significant likelihood of removal") or timing element ("in the reasonably foreseeable future") of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Though Deportation Officer ("DO") Negrin asserts that "ICE has been routinely obtaining travel documents for Laos citizens" and purports to have removed "several" individuals to Laos recently, Dkt. 7-2 at ¶ 20–21, he does not say what proportion of Laotian citizens for whom travel documents are sought actually receive them. Nor does DO Negrin even claim that ICE has submitted a request for travel documents for Mr. Saengphet to Laos—only that it has been "diligently preparing a travel document request to send to the Laos embassy." *Id.* at ¶ 17. Nor does DO Negrin explain what is different this time from the two other times when ICE was "unable to obtain a travel document to Laos." Dkt. 7-2 at ¶ 5, 7. As other judges of this district have held, a travel document request alone—with no evidence of likely success or timing—does not satisfy the government's burden. *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); *Alic v. Dep't of Homeland Sec./Immigr. Customs Enf't*, No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025).

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

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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.

ARGUMENT

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

To begin, this Court has jurisdiction to consider all of Mr. Saengphet'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. Saengphet raises here with respect to third-country

[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. Saengphet 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).

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.

The same logic applies to all of Mr. Saengphet'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. Saengphet'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. Saengphet 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. Saengphet's claims succeed on the merits.

This Court need not speculate about whether Mr. Saengphet may succeed on the merits. Because the government's evidence is insufficient to justify Mr. Saengphet'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. Saengphet sufficient notice under 8 C.F.R. § 241.13 of the reasons for the revocation of his release. The Notice of Revocation of Release simply states that this revocation was "based on a review of your official alien file and a determination that there are changed circumstances in your case." Dkt. 7-2, Exhibit B & F. But "[s]imply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough." *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). Rather, "Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3)." *Id.* By "identif[ying] the category—'changed circumstances'—but fail[ing] to notify [Petitioner] of the reason—the

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

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

Just as importantly, courts have "demanded an individualized analysis" of why *this* person—Mr. Saengphet—will likely be removed. *Nguyen*, 2025 WL 2419288, at *17 (citing *Nguyen*, 2025 WL 1725791, at *4). Because "[t]he government has not provided any evidence of [Laos'] eligibility criteria or why it believes *Petitioner* now meets it," the government's evidence is insufficient. *Id.* at *18 (emphasis added). Absent a travel document specific to Mr. Saengphet—which the government has not even requested from Laos yet, Dkt. 7-2 at ¶ 17–18—nothing is different from the last two times ICE tried to remove him.[2]

[2] The government also argues that Mr. Saengphet's original habeas petition "claims that his detention is unlawful because the agency failed to comply with its regulations *before* re-detaining him" and argues in rebuttal that the regulations do

Next, the government suggests that it complied with the regulations requiring an informal interview because it provided one on October 29, 2025—two weeks after his re-detention (and a day after his habeas was filed). Dkt. 7 at 11. But the regulations require that a person be "afforded an initial informal interview *promptly* after his or her return to Service custody." 8 C.F.R. §§ 241.4*(l)*(1) (emphasis added). Here, ICE did not provide Mr. Saengphet an interview until two weeks after his rearrest. Dkt. 7-2, Exh. G. In *M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025), a district court recently granted a habeas petition because an informal interview given 27 days after petitioner was taken into ICE custody "cannot reasonably be construed as . . . prompt." And in *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025), Judge Schopler relied on this case and others to hold that a three-week delay was not "prompt." So here, as in those cases, a two-week delay "cannot reasonably be construed as . . . prompt," 2025 WL 2430267, and the government has yet to comply with its own regulations.

Other judges in this district have reached similar conclusions. In *Rokhfirooz*, Judge Huie determined the fourth requirement was not met on a record materially indistinguishable from this one. 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025). There, the government failed to produce "any documented determination, made prior to Petitioner's arrest, that his release should be revoked." *Id.* at *3. The only documentation was "an arrest warrant, issued on DHS Form I-200, merely recit[ing] that there is probable cause to believe that Petitioner is 'removable from the United States,' that is, subject to removal, which would be accurate whether or not Petitioner's release was revoked." *Id.*

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not require this. Dkt. 7 at 10–11 (citing "ECF No. 1 at 8:25"). But Mr. Saengphet did not make this argument at Dkt. 1 at 8:25 or anywhere else in his petition. *See* Dkt. 1.

Here, similarly, the government provides no documented determination that ICE obtained—or even sought—a travel document before re-detaining Mr. Saengphet. Rather, the government only includes documents showing that he has a prior removal order. *See* Dkt. 7-2. Nothing in the record suggests that there were "changed circumstances" at the time of Mr. Saengphet's re-detention that would have justified the revocation of his release under the regulations.

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

Here, the evidence is even weaker. DO Negrin acknowledges that ICE has twice been unable to deport Mr. Saengphet in the past. Dkt. 7-2 at ¶ 5, 7. Other than unsupported assertions that it is preparing a new request for travel documents, DO Negrin does not say what has changed since the last time ICE tried to remove Mr. Saengphet. Thus, there is "no evidence that DHS has made such a determination as to the revocation of Petitioner's release even after the fact of arrest, up to the present day." *Rokhfirooz*, 2025 WL 2646165, at *4.

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 no evidence that Mr. Saengphet will likely be removed to Laos at all, let alone in the reasonably foreseeable future.

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

As an initial matter, 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).

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

2. The government provides no evidence to support a "significant likelihood of removal" to Laos.

Because the six-month grace period has passed, this court moves on to the burden-shifting framework. The government does not deny that Mr. Saengphet has provided "good reason" to doubt his reasonably foreseeable removal, thereby forfeiting the issue. *See* Dkt. 7 at 8. *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"). The government meets neither.

As an initial matter, the government has not shown that Mr. Saengphet's removal to Laos is "significant[ly] like[ly]." *Zadvydas*, 533 U.S. at 701.

First, DO Negrin's assertion that "ICE has been routinely obtaining travel documents for Laos citizens," Dkt. 7-2 at ¶ 20, does not show that Mr. Saengphet's removal is significantly likely. Again, the mere fact that ICE may have picked up the pace of its deportations to Laos does not mean that a *high proportion* of Laotians with final removal orders will be deported in the reasonably foreseeable future. *See Nguyen*, 2025 WL 1725791, at *4; *accord Hoac*, 2025 WL 1993771, at *5. What's more, the government still has not provided an "individualized analysis" of why *Mr. Saengphet* can be removed. *Nguyen*, 2025 WL 2419288, at *17.

Moreover, even if ICE *had* submitted a request for travel documents to Laos—and, to date, it has not, Dkt. 7-2 at ¶ 17, 19—good faith efforts to secure a travel document do not themselves satisfy *Zadvydas*. In fact, the petitioner in

Zadvydas appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

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

Here, then, "[w]hile the respondent asserts that [Mr. Saengphet's] travel document requests with [the Laotian] Consulate[]" will be lodged, "this is insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019). Many courts have agreed that requesting travel documents does not itself make removal reasonably likely. *See, e.g.*, *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case was "still under review and pending a decision" did not meet respondents' burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to

when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might be forthcoming or why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request). That includes Judge Robinson's recent ruling. *See supra*, Introduction (explaining the *Rebenok* ruling).

3. The government provides no evidence to support that any such removal will occur "in the reasonably foreseeable future."

Additionally, even if ICE will eventually remove Mr. Saengphet, the government provides zero evidence that removal will happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. DO Negrin provides no timetable for how long travel document requests like his typically take—no statistics, no estimations, no anecdotes, no nothing.

That is fatal. "[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun*, 2019 WL 78984, at *6. "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). "[I]f DHS has no idea of when it might reasonably expect [Mr. Saengphet] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it *might* occur—in the reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

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

In sum, then, there could be "some possibility that [Laos] will accept Petitioner at some point. But that is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future." *Nguyen*, 2025 WL 2419288, at *16. Mr. Saengphet 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. Saengphet 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. Saengphet to a third country. Dkt. 7 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. Saengphet "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. Saengphet 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. Saengphet] 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. Saengphet.

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. Saengphet should prevail.

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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. Saengphet 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 14, 15. 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. Saengphet's immediate release, and (2) prohibit the government from removing Mr. Saengphet 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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