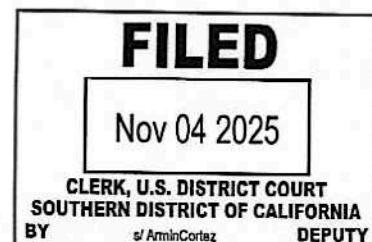


ORIGINAL

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6
7
8 Pro Se¹



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10 THO VAN TRAN,
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

24 Respondents.

CIVIL CASE NO.: 25CV2994 RSH KSC

Petition for Writ
of
Habeas Corpus

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

1 Mr. Tran 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.

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1 **I. Introduction**

2 Mr. Tran and his brother fled Vietnam in 1982. In 2016, Mr. Tran was
3 ordered removed. But Vietnam wouldn't accept him, in line with its general
4 policy of not accepting pre-1995 immigrants for deportation. After he spent about
5 three months in ICE custody, Mr. Tran was released on an order of supervision.

6 Mr. Tran remained on supervision for the next nine years. He checked in
7 with ICE every year without incident. When he went for his annual check-in on
8 October 24, 2025, ICE re-detained him. Contrary to regulation, ICE did not notify
9 Mr. Tran of any changed circumstances that made his removal more likely, like it
10 receiving news from Vietnam that it would now accept Mr. Tran despite not
11 accepting him less than a decade ago. Nor did it give Mr. Tran an opportunity to
12 contest his re-detention. Worse yet, on July 9, 2025, ICE adopted a new policy
13 permitting removals to third countries with no notice, six hours' notice, or 24
14 hours' notice depending on the circumstances, providing no meaningful
15 opportunity to make a fear-based claim against removal.

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

19 (1) *Regulatory and due process violations*: Mr. Tran must be released
20 because ICE's failure to follow its own regulations about notice and an
21 opportunity to be heard violate due process. *See, e.g., Constantinovici v. Bondi*,
22 __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10,
23 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal.
24 Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB,
25 *3-*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-
26 2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No.
27 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-

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

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

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

23 This Court should grant this habeas petition and issue appropriate
24 injunctive relief on all three grounds.
25
26
27
28

1 **II. Statement of Facts**2 **A. Mr. Tran is ordered removed, held in ICE custody, and released**
3 **as ICE proves unable to deport him for the next 9 years, until he**
4 **is arrested at his annual ICE check-in.**5 In 1982, Tho Van Tran fled Vietnam with his brother. Declaration of Tho
6 Van Tran, Exhibit A (“Exh. A”) ¶ 1. They soon obtained green cards. *Id.* Mr. Tran
7 was arrested at 17 years old in 1989 for a robbery and murder in San Diego, and
8 he was tried as an adult and convicted. *See Van Tran v. Lindsey*, 212 F.3d 1143
9 (9th Cir. 2000) (habeas case of co-defendant). After he was released from prison,
10 on July 15, 2016,² Mr. Tran was ordered removed to Vietnam. *Id.* ¶ 2. ICE
11 detained Mr. Tran for about three months after that. *Id.* ¶ 2.12 For the next nine years, Mr. Tran had no issues on supervision. *Id.* at ¶ 3.
13 He checked in every time ICE asked him to. *Id.*14 He lived with his aunt and uncle in San Diego. *Id.* ¶ 7. He now takes them
15 to medical appointments and to the grocery store. *Id.* His sister also cares for their
16 97-year-old mother during the day, and he comes over in the evening to help his
17 sister with heavy lifting tasks like carrying her to the shower. *Id.* ¶ 8. He works
18 two jobs; one is at a nail salon, and the other is in construction. *Id.* ¶ 6.19 On October 24, 2025, Mr. Tran went in for his scheduled check-in. *Id.* at
20 ¶ 4. ICE agents told him that he was being detained, and without further
21 explanation, they arrested him. *Id.* No one gave him notice of why he was being
22 re-detained. *Id.* at ¶ 5. No one gave him a chance to fight his re-detention. *Id.* No
23 one told him what changed to make it more likely that he could be removed to
24 Vietnam. *Id.* In fact, as of October 29, he has not talked to an ICE officer at all
25 since his arrest. *Id.*26 In the meantime, Mr. Tran is “worried about how [his aunt and uncle] are
27 going to make rent while [he’s] detained.” *Id.* ¶ 7. He works two jobs and uses all28 ² EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1 his money toward rent, food, and living expenses. *Id.* ¶ 6. Since he has been in
2 custody, he has not been able to work those jobs. *Id.* His sister has not had
3 “anyone to help her carry [their] mom to the shower, to help her eat dinner, and to
4 give [his sister] a few hours’ break” from caretaking. *Id.* ¶ 8.

5 **B. Vietnam has a longstanding policy of not accepting Vietnamese**
6 **immigrants who entered before 1995.**

7 There is a reason why ICE has proved unable to remove Mr. Tran for the
8 last 9 years: Vietnam has a general policy of not accepting pre-1995 Vietnamese
9 immigrants for deportation. In 2008, Vietnam and the United States signed a
10 repatriation treaty under which Vietnam agreed to consider accepting certain
11 Vietnamese immigrants for deportation. *See Trinh v. Homan*, 466 F. Supp. 3d
12 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-1995 Vietnamese
13 immigrants, providing, “Vietnamese citizens are not subject to return to Vietnam
14 under this Agreement if they arrived in the United States before July 12, 1995.”
15 Agreement Between the United States of America and Vietnam, at 2 (Jan. 22,
16 2008).³

17 Despite that limit, the first Trump administration detained Vietnamese
18 immigrants and held them for months, while the administration tried to pressure
19 Vietnam to take them. *See Trinh*, 466 F. Supp. 3d at 1083–84. That possibility did
20 not materialize. “In total, between 2017 and 2019, ICE requested travel
21 documents for pre-1995 Vietnamese immigrants 251 times. Vietnam granted
22 those requests only 18 times, in just over seven percent of cases.” *Id.* at 1084. The
23 administration was forced to release many of these detainees in 2018. *See id.*

24 Eventually, in 2020, the administration secured a Memorandum of
25 Understanding (“MOU”) with Vietnam, which created a process through which

26
27
28 ³<https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>

1 the Vietnamese government could consider some pre-1995 Vietnamese
2 immigrants for removal.⁴ The MOU limited consideration to persons meeting
3 certain criteria, but many of these criteria have been shielded from public view. See
4 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *14 (W.D. Wash.
5 Aug. 21, 2025). When an immigrant does qualify, the MOU provides only that
6 Vietnam has “discretion whether to issue a travel document,” which it exercises
7 “on a case-by-case basis.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025
8 WL 1993771, at *5 (E.D. Cal. July 16, 2025).

9 Even after signing the MOU, Vietnam overwhelmingly declined to timely
10 issue travel documents for pre-1995 immigrants. By October 2021, ICE had
11 adopted a “policy of generally finding that ‘pre-1995 Vietnamese
12 immigrants’ . . . are not likely to be removed in the reasonably foreseeable
13 future.” Order on Joint Motion for Entry of Stipulated Dismissal, *Trinh*, 18-CV-
14 316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).⁵ That admission aligned
15 with two years’ worth of quarterly reports that ICE agreed to submit as part of a
16 class action settlement. Those quarterly reports showed that between September
17 2021 and September 2023, only four immigrants who came to the U.S. before
18 1995 were given travel documents and deported. Asian Law Caucus, *Resources*
19 *on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul.
20 15, 2025) (providing links to all quarterly reports).⁶ During the same period, ICE
21 made 14 requests for travel documents that, as of 2023, had not been granted,
22

23
24 ⁴<https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf>

25 ⁵

26 <https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf>.

27
28 ⁶ <https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports>

1 including requests made months or years before the September 2023 cutoff. *See*
2 *id.* (proposed counsel's count based on quarterly reports).

3 On June 9, 2025, the Trump administration rescinded ICE's policy of
4 generally finding that pre-1995 Vietnamese immigrants were not likely to be
5 removed in the reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-
6 01398, 2025 WL 2419288, at *7 (W.D. Wash. Aug. 21, 2025). But since then,
7 several courts have found that facts on the ground likely have not changed enough
8 to show that any individual pre-1995 Vietnamese immigrant will be timely
9 removed to Vietnam. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL
10 2419288, at *17 (W.D. Wash. Aug. 21, 2025); *Hoac*, 2025 WL 1993771, at *4;
11 *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *5 (D. Mass. June
12 20, 2025); *Ho v. Noem*, No. 25-cv-2453-BAS, ECF No. 11 at 3, 6 (S.D. Cal. Oct.
13 20, 2025); *Thanh Nguyen v. Noem*, No. 25-cv-2760-TWR, ECF No. 12 (S.D. Cal.
14 Oct. 23, 2025).

15 **C. The government is carrying out deportations to third countries
16 without providing sufficient notice and opportunity to be heard.**

17 When immigrants cannot be removed to their home country—including
18 Vietnamese immigrants—ICE has begun deporting those individuals to third
19 countries without adequate notice or a hearing. *See* Edward Wong et al, *Inside the*
20 *Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25,
21 2025. This summer and fall, ICE has carried out highly publicized third country
22 deportations to prisons in South Sudan, Eswatini, Ghana, and Rwanda.
23 *Nokukhanya Musi & Gerald Imray, 10 more deportees from the US arrive in the*
24 *African nation of Eswatini*, Associated Press (Oct. 6, 2025).⁷ At least four men
25 deported to Eswatini have remained in a maximum-security prison there for
26

27
28 ⁷ <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

1 nearly three months without charge and without access to counsel; another six are
2 detained incommunicado in South Sudan, and another seven are being held in an
3 undisclosed facility in Rwanda. *Id.* Several of these men are Vietnamese. *Id.*

4 In February, Panama and Costa Rica imprisoned hundreds of deportees—
5 including immigrants from Vietnam—in hotels, a jungle camp, and a detention
6 center. Vanessa Buschschluter, *Costa Rican court orders release of migrants*
7 *deported from U.S.*, BBC (Jun. 25, 2025)⁸; Human Rights Watch, *'Nobody Cared,*
8 *Nobody Listened': The US Expulsion of Third-Country Nationals to Panama,*
9 Apr. 24, 2025.⁹

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

23 Under this policy, the United States has deported noncitizens to prisons and
24 military camps in Rwanda, Eswatini, South Sudan, and Ghana. Many are still
25

26
27 ⁸ <https://www.bbc.com/news/articles/cwyrn42kp7no>.

28 ⁹ <https://www.hrw.org/report/2025/04/24/nobody-cared-nobody-listened/the-us-expulsion-of-third-country-nationals-to>.

1 detained to this day, in countries to which they have never been, without charge.
2 See Musi & Gerald Imray, *supra*.

3 **III. Legal Analysis.**

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

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

11 Second, it should enjoin the Respondents from removing Mr. Tran to a
12 third country without first providing notice and a sufficient opportunity to be
13 heard before an immigration judge.

14 **IV. Claim 1: ICE failed to comply with its own regulations before re-
15 detaining Mr. Tran, violating his rights under applicable regulations
16 and due process.**

17 Two regulations establish the process due to someone who is re-detained in
18 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
19 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
20 framework to persons released upon good reason to believe that they will not be
21 removed in the reasonably foreseeable future, as Mr. Tran was. *See Phan v.
22 Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3-*5 (S.D. Cal. Oct.
23 10, 2025) (explaining this regulatory framework and granting a habeas petition for
24 ICE's failure to follow these regulations for a refugee of Vietnam who entered the
25 United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL
26 2646165 at *2 (same as to an Iranian national).

27 These regulations permit an official to "return [the person] to custody" only
28 when the person "violate[d] any of the conditions of release," 8 C.F.R.
§§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official

1 “determines that there is a significant likelihood that the alien may be removed in
2 the reasonably foreseeable future,” and makes that finding “on account of
3 changed circumstances,” § 241.13(i)(2).

4 No matter the reason for re-detention, the re-detained person is entitled to
5 certain procedural protections. For one, “[u]pon revocation,’ the noncitizen ‘will
6 be notified of the reasons for revocation of his or her release or parole.’” *Phan*,
7 2025 WL 2898977 at *3, *4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Further, the
8 person “will be afforded an initial informal interview promptly after his or her
9 return’ to be given ‘an opportunity to respond to the reasons for revocation stated
10 in the notification.”” *Id.*

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

16 ICE is required to follow its own regulations. *United States ex rel. Accardi*
17 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
18 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
19 abide by certain internal policies is well-established.”). A court may review a re-
20 detention decision for compliance with the regulations, and “where ICE fails to
21 follow its own regulations in revoking release, the detention is unlawful and the
22 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at *4
23 (collecting cases); *accord Phan*, 2025 WL 2898977 at *5.

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

25 First, ICE did not identify a proper reason under the regulations to re-detain
26 Mr. Tran. Mr. Tran was not returned to custody because of a conditions violation,
27 and there was apparently no determination before or at his arrest that there are
28 “changed circumstances” such that there is “a significant likelihood that

1 [Mr. Tran] may be removed in the reasonably foreseeable future." § 241.13(i)(2).

2 Second, ICE did not notify Mr. Tran of the reasons for his re-detention
3 upon revocation of release. *See* §§ 241.4(l)(1), 241.13(i)(3). He was re-detained
4 on October 24, 2025. Exh. A at ¶ 4. As he has explained on October 28, 2025,
5 "[n]o one has given me notice of why I was re-detained." *Id.* at ¶ 5.

6 Third, Mr. Tran has yet to receive the informal interview required by
7 regulation. Nor has he been afforded a meaningful opportunity to respond to the
8 reasons for revocation or submit evidence rebutting his re-detention. Exh. A ¶ 5.
9 No one from ICE has invited him to contest his detention or even spoken to him.
10 *Id.*

11 Numerous courts have released re-detained immigrants after finding that
12 ICE failed to comply with applicable regulations this summer and fall. *See, e.g.*,
13 *Phan*, 2025 WL 2898977 at *5; *Rokhfirooz*, 2025 WL 2646165; *Grigorian*, 2025
14 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v. Kurzdorfer*, 781
15 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463
16 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017);
17 *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y.
18 Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267,
19 at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT,
20 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-
21 cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025
22 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1
23 (S.D.N.Y. Mar. 31, 2025).

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

V. Claim 2: Mr. Tran's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. **Legal background:** The statute, as interpreted by *Zadvydas*, renders detention mandatory for 90 days after removal is ordered, presumptively acceptable for 180 days after removal is ordered, and allowable after 180 days after removal is ordered only if there is a significant likelihood of removal in the reasonably foreseeable future.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Tran: Federal law requires ICE to detain an immigrant during the “removal period,” which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal “simply require[s] more time for processing,” or they are “ordered removed to countries with whom the United States does not have a repatriation agreement,” or their countries “refuse to take them,” or they are “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives. If federal law were understood to allow for “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

24 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to
25 detain an immigrant for 180 days after his or her removal order becomes final.
26 After those 180 days have passed, the immigrant must be released unless his or
27 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six
28 months have passed, the petitioner must only make a *prima facie* case for relief—

1 there is “good reason to believe that there is no significant likelihood of removal
2 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the
3 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*

4 Further, even before the 180 days have passed, the immigrant must still be
5 released if he *rebuts* the presumption that his detention is reasonable. *See, e.g.,*

6 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases
7 on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar v.*
8 *Scott*, Civil No. 25-2104-TDC, 2025 WL 2592543, *6 (D. Md. Sept. 8, 2025)
9 (finding the presumption rebutted for a person who was immediately released
10 after being ordered removed and, years later, re-detained for less than six months).

11 Mr. Tran can make all the threshold showings needed to prove his
12 *Zadvydas* claim and shift the burden to the government.

13 **B. Mr. Tran’s six-month grace period expired in January 2017.**

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); *see also* 8 U.S.C. § 1231(a)(1)(B) (linking the statutory removal
19 period to issuance of the final order and other proceedings associated with the
20 original removal order).

21 Here, Mr. Tran’s order of removal was entered in July 2016. Exh. A at
22 ¶ 2.¹⁰ Accordingly, his 90-day removal period began then. 8 U.S.C.
23 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in January 2017, three

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¹⁰ EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL
2 1678501, No. 25-cv-4108(EP), *2-*3.¹¹

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4 **C. Mr. Tran's personal experience, and Vietnam's general policy of**
5 **not repatriating most pre-1995 Vietnamese immigrants, provide**
6 **good reason to believe that Mr. Tran will not likely be removed**
7 **in the reasonably foreseeable future.**

8 This Court uses a burden-shifting framework to evaluate Mr. Tran's
9 *Zadvydas* claim. At the first stage of the framework, Mr. Tran must "provide[]
10 good reason to believe that there is no significant likelihood of removal in the
11 reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be
12 broken down into three parts.

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14 ¹¹ The government has sometimes argued that release and rearrest resets the
15 six-month grace period completely, taking the clock back to zero.
16 "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL
17 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation*
18 *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 **“Good reason to believe.”** The “good reason to believe” standard is a
2 relatively forgiving one. “A petitioner need not establish that there exists no
3 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
4 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
5 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
6 foreseeable, significant likelihood of removal or show that his detention is
7 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
8 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
9 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
10 Petitioners need only give a “good reason”—not prove anything to a certainty.

11 **“Significant likelihood of removal.”** This component focuses on whether
12 Mr. Tran will likely be removed: Continued detention is permissible only if it is
13 “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533 U.S.
14 at 701. This inquiry targets “not only the *existence* of untapped possibilities, but
15 also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.
16 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,
17 even if “there remains *some* possibility of removal,” a petitioner can still meet its
18 burden if there is good reason to believe that successful removal is not
19 significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL
20 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

21 **“In the reasonably foreseeable future.”** This component of the test
22 focuses on when Mr. Tran will likely be removed: Continued detention is
23 permissible only if removal is likely to happen “in the reasonably foreseeable
24 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
25 removal efforts. If the Court has “no idea of when it might reasonably expect
26 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
27 is likely to occur—or even that it might occur—in the reasonably foreseeable
28 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3

1 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
2 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
3 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Tran
4 “would *eventually* receive” a travel document, he can still meet his burden by
5 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
6 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

7 Mr. Tran satisfies this standard for two reasons.

8 First, Mr. Tran’s own experience bears this out. ICE has now had nine
9 years to deport him, including five years under the MOU. He has cooperated with
10 ICE’s removal efforts throughout that time. Exh. A ¶ 3. Yet ICE has proved
11 unable to remove him.

12 Second, the general experience of other Vietnamese immigrants also bears
13 this out. Vietnam often does not accept pre-1995 Vietnamese immigrants for
14 deportation. Even after Vietnam signed the 2020 MOU, ICE had to admit that
15 there was no reasonable likelihood of removing such immigrants in the
16 reasonably foreseeable future, Order on Joint Motion for Entry of Stipulated
17 Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—
18 an admission backed up by two years’ experience under the MOU, Asian Law
19 Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the*
20 *U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports). Though
21 the Trump administration rescinded this admission, *Nguyen*, 2025 WL 2419288,
22 at *7, several courts have explained that barriers continue to obstruct removal for
23 people like Mr. Tran. See *Nguyen*, 2025 WL 2419288; *Hoac*, 2025 WL 1993771;
24 *Nguyen*, 2025 WL 1725791; see also *Than Nguyen*, No. 25-CV-2760-TWR at
25 ECF No. 12 (minute order noting grant of *Zadydas* petition as to pre-1995
26 Vietnamese immigrant on October 23, 2025); *Ho*, No. 25-cv-2453-BAS at ECF
27 No. 11 (granting preliminary injunction ordering release as to pre-1995
28 Vietnamese immigrant on October 20, 2025).

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

5 **VI. Claim 3: ICE may not remove Mr. Tran to a third country without**
6 **adequate notice and an opportunity to be heard.**

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

11 A. **The Convention Against Torture, statutory withholding of**
12 **removal, and due process prohibit deportation to third countries**
13 **without meaningful notice and an opportunity to be heard.**

14 U.S. law enshrines protections against dangerous and life-threatening
15 removal decisions. By statute, the government is prohibited from removing an
16 immigrant to any third country where they may be persecuted or tortured, a form
17 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
18 The government “may not remove [a noncitizen] to a country if the Attorney
19 General decides that the [noncitizen’s] life or freedom would be threatened in that
20 country because of the [noncitizen’s] race, religion, nationality, membership in a
21 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
22 1208.16. Withholding of removal is a mandatory protection.

23 Similarly, Congress codified protections enshrined in the CAT prohibiting
24 the government from removing a person to a country where they would be
25 tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be
26 the policy of the United States not to expel, extradite, or otherwise effect the
27 involuntary return of any person to a country in which there are substantial
28 grounds for believing the person would be in danger of being subjected to torture,
regardless of whether the person is physically present in the United States.”); 28

1 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
2 mandatory.

3 To comport with the requirements of due process, the government must
4 provide notice of the third country removal and an opportunity to respond. Due
5 process requires “written notice of the country being designated” and “the
6 statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).”
7 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v.*
8 *U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1
9 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
10 1999).

11 The government must also “ask the noncitizen whether he or she fears
12 persecution or harm upon removal to the designated country and memorialize in
13 writing the noncitizen’s response. This requirement ensures DHS will obtain the
14 necessary information from the noncitizen to comply with section 1231(b)(3) and
15 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.
16 3d at 1019. “Failing to notify individuals who are subject to deportation that they
17 have the right to apply for asylum in the United States and for withholding of
18 deportation to the country to which they will be deported violates both INS
19 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at
20 1041.

21 If the noncitizen claims fear, measures must be taken to ensure that the
22 noncitizen can seek asylum, withholding, and relief under CAT before an
23 immigration judge in reopened removal proceedings. The amount and type of
24 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
25 circumstances, he would have a reasonable opportunity to raise and pursue his
26 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
27 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
28 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the

1 government to move to reopen the noncitizen's immigration proceedings if the
2 individual demonstrates "reasonable fear" and to provide "a meaningful
3 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening
4 of their immigration proceedings" if the noncitizen is found to not have
5 demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice
6 and time for a respondent to file a motion to reopen and seek relief).

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

15 **B. ICE's June 6, 2025 removal policies violate the Fifth
16 Amendment, 8 U.S.C. § 1231, the Conviction Against Torture,
17 and Implementing Regulations.**

18 The policies in ICE's currently applicable June 6, 2025 memo do not
19 adhere to these requirements. The memo "contravenes Ninth Circuit law." *Nguyen*
20 *v. Scott*, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025)
21 (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit law on the
22 process due to noncitizens in detail); *see also Van Tran v. Noem*, 2025 WL
23 2770623, No 25-cv-2334-JES-MSB (S.D. Cal. Sept. 29, 2025) (granting
24 temporary restraining order preventing a noncitizen's deportation to a third
25 country pending litigation in light of due process problems); *Nguyen Tran v.*
26 *Noem*, No. 25-cv-2391-BTM-BLM, ECF No. 6 (S.D. Cal. Sept. 18, 2025) (same).

27 First, under the policy, ICE need not give immigrants *any* notice or *any*
28 opportunity to be heard before removing them to a country that—in the State

1 Department's estimation—has provided "credible" "assurances" against
2 persecution and torture. Exh. B. By depriving immigrants of any chance to
3 challenge the State Department's view, this policy violates "[t]he essence of due
4 process," "the requirement that a person in jeopardy of serious loss be given
5 notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*,
6 424 U.S. 319, 348 (1976) (cleaned up).

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

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

20 Due process requires an adequate chance to identify and raise these threats
21 to health and life. This Court must prohibit the government from removing Mr.
22 Tran without these due process safeguards.

23 **VII. This Court must hold an evidentiary hearing on any disputed facts.**

24 Resolution of a prolonged-detention habeas petition may require an
25 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr.
26 Tran hereby requests such a hearing on any material, disputed facts.
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28

1 **VIII. Prayer for relief**

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

3 1. Order and enjoin Respondents to immediately release Petitioner from

4 custody;

5 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.

6 § 1231(a)(6) unless and until Respondents obtain a travel document for
7 his removal;

8 3. Enjoin Respondents from re-detaining Petitioner without first following
9 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other
10 applicable statutory and regulatory procedures;

11 4. Enjoin Respondents from removing Petitioner to any country other than
12 Vietnam, unless they provide the following process, *see D.V.D. v. U.S.*
13 *Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at
14 *1 (D. Mass. May 21, 2025):

15 a. written notice to both Petitioner and Petitioner's counsel in a
16 language Petitioner can understand;

17 b. a meaningful opportunity, and a minimum of ten days, to raise a
18 fear-based claim for CAT protection prior to removal;

19 c. if Petitioner is found to have demonstrated "reasonable fear" of
20 removal to the country, Respondents must move to reopen
21 Petitioner's immigration proceedings;

22 d. if Petitioner is not found to have demonstrated a "reasonable fear"
23 of removal to the country, a meaningful opportunity, and a
24 minimum of fifteen days, for the Petitioner to seek reopening of
25 his immigration proceedings.

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

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Conclusion

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

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DATED: 10-29-2025

Respectfully submitted,

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tho
Petitioner

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