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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THO VAN TRAN,

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.

Case No.: 25-cv-2994-RSH-KSC

Traverse in Support of Petition for Writ of Habeas Corpus and Reply in Support of Motion for Temporary Restraining Order

Table of Contents

I. Introduction

The government's return and opposition includes the following evidence:

- A notice of revocation of release provided to Mr. Tran when he was arrested at his annual check-in, alleging that the sole changed circumstance warranting revocation of his supervision was "a review of your official alien file," ECF No. 8, Exhibit 6;
- A record of an informal interview conducted that day, noting that Mr. Tran requested release on an ankle monitor, but that ICE denied that request "as he has a final order," ECF No. 8, Exhibit 7; and
- A declaration from a San Diego deportation officer declaring that:
  - Nine years ago, ICE tried but was "unable to obtain a travel document" for Mr. Tran;
  - ICE first submitted a travel document request to Vietnam two weeks after it revoked Mr. Tran's supervision, and that request remains pending; and
  - ICE removed 324 Vietnamese immigrants who came to the U.S. before 1995 last fiscal year; ECF No. 12, Declaration of David Townsend, ¶¶ 6, 11, 14.

This evidence does not rebut Mr. Tran's claim that he was re-detained in violation of his regulatory and due process rights to be notified of "the reasons for revocation." § 241.13(i)(2)(iii), 241.13(*l*)(1). "[A] reason is what makes an action intelligible, accounted for, or explained"—"the specific facts supporting ICE's decision." *Sarail A. v. Bondi*, __ F. Supp. __, 2025 WL 2533673, *5–*6 (D. Minn. 2025). Nor do they rebut Mr. Tran's claim that ICE never made a determination before his re-detention that "there is a significant likelihood that [he] may be removed in the reasonably foreseeable future," § 241.13(i)(2), or his

claim that he was not "afford[ed] . . . an opportunity to respond to the reasons for revocation," *id.* §§ 241.4(*l*)(1), 241.13(i)(3).

Nor does the government rebut Mr. Tran's claim that there is not an individualized, significant likelihood of his removal in the foreseeable future. ICE tried and failed to obtain a travel document for Mr. Tran nine years ago. The only evidence ICE presents now is that it succeeded in obtaining travel documents for 324 pre-1995 Vietnamese immigrants—without information as to how many requests ICE made for pre-1995 immigrants, how long it took to receive those travel documents, or whether those immigrants had previously been denied travel documents.

Finally, the government does not defend its third-country removal policy on the merits. Instead, it argues only that because it currently does not intend to remove Mr. Tran to a third country, Mr. Tran's claim is moot. In light of the evidence Mr. Tran presented in his habeas petition that the government *has* deported Vietnamese immigrants to third countries this year—especially immigrants with serious convictions like Mr. Tran's—and that it has done so with little-to-no notice, the government's justiciability argument fails to persuade.

This Court should grant Mr. Tran's petition, or, in the alternative, grant his motion for temporary relief in full.

II. There is no jurisdictional bar to resolution of the petition or TRO.

A. Mr. Tran's third-country removal challenge is not moot.

First, the government argues that Mr. Tran's third-country removal challenge is nonjusticiable under Article III because ICE professes no current plans to remove Mr. Tran to a third country. ECF No. 8 at 3–4.

"There, 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 between 6 and

24 hours' notice for all others. *Id.* If Mr. Tran "is removed" before he can raise his third-country removal challenges, 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"—both of 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. Tran 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," including Vietnamese immigrants. *Id.*; *see* ECF No. 1 at 6–8. There are still Vietnamese immigrants still being held without charge and without access to counsel in Eswatini, South Sudan, and Rwanda, months after their swift removals to those countries. *See* Gerald Imray, *A Cuban man deported by the US to Africa is on a hunger strike in prison, his lawyer says*, Associated Press (Oct. 23, 2025)[1]; Agence France-Press, *Eswatini confirms receiving over $5m from US to accept deportees*, The Guardian (Nov. 17, 2025)[2]; *see also* ECF No. 1 at 6–7 (citing Nokukhanya Musi & Gerald Imray, *10 more deportees from the US arrive in the African nation of Eswatini*, Associated Press (Oct. 6, 2025)[3]). DHS has publicly stated that they all have serious prior criminal convictions in the United States, *see id.*, like Mr. Tran.

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[1] https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859.

[2] https://www.theguardian.com/world/2025/nov/17/eswatini-5-m-dollars-us-deportees.

[3] https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2.

"On balance," then, "there is a sufficiently imminent risk that [Mr. Tran] 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; *accord Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025) (all ordering the government to not remove petitioners to third countries). The issue is not moot.

B. Mr. Tran's claims are not barred by § 1252(g).

Next, contrary to the government's arguments, Section 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."[4] *Id.* at *7. 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

[4] 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. Tran 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).

removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). The statute 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. Instead, § 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 Mr. Tran's claims. He challenges violations of ICE's mandatory duties under statutes, regulations, and the Constitution. "Though 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. Tran's] continued detention and the process required in relation to third country removal." *Y.T.D.*, 2025 WL 2675760 at *5.

Other circuit courts agree. *See, e.g.*, *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) ("§ 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").

So do courts in this district. As they have explained, the government's argument that § 1252(g) strips this Court of jurisdiction "has been repeatedly 'rejected as implausible' by the Supreme Court." *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS, ECF No. 11 (S.D. Cal. Nov. 8, 2025) (quoting *Department of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). The government's argument "would eliminate judicial review of immigration [detainees'] claims of unlawful detention . . . inconsistent with *Jennings v.*

Rodriguez and the history of judicial review of the detention of noncitizens under 28 U.S.C. § 2241." *Phan v. Noem*, No. 25-cv-2422-RBM, 2025 WL 2898977, *3 (S.D. Cal. Oct. 10, 2025) (collecting cases agreeing on this jurisdictional point).

In short, Mr. Tran 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 has jurisdiction.

III. Mr. Tran's claims succeed on the merits.

A. Claim One: ICE did not adhere to key regulations implementing the due process rights to notice and a meaningful opportunity to be heard, warranting release.

1. Mr. Tran did not receive notice of the reasons for his revocation or have an opportunity to contest those reasons.

The government does not claim to have fully complied with 8 C.F.R. §§ 241.4 and 241.13. *See* ECF No. 8 at 11–14. For Mr. Tran, those regulations permit his re-detention only if ICE: (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," § 241.13(i)(2); (2) makes that finding "on account of changed circumstances," *id.*; (3) "upon revocation," "notifie[s]" the noncitizen "of the reasons for revocation of his or her release," § 241.13(i)(2)(iii), 241.4(*l*)(1); and (4) "affords the [person] an opportunity to respond to the reasons for revocation," *id.*

As Mr. Tran explained in his petition and motion, ICE did not comply with these requirements.

First, the evidence before this Court indicates ICE did not determine that there were "changed circumstances" such that, unlike in 2016, there is now "a significant likelihood that [Mr. Tran] may be removed in the reasonably foreseeable future." § 241.13(i)(2). ICE's internal record for Mr. Tran, its I-213, indicates it revoked his detention solely because "[d]atabase searches confirm that TRAN was issued a final order of removal . . . on July 15, 2016." ECF No. 8,

Exhibit 1. The warrants for his arrest on the day of his re-detention find only that "there is probable cause to believe that TRAN, THO is removable from the United States." ECF No. 8, Exhibit 3; *accord* Exhibit 4 (noting Mr. Tran is "subject to removal/deportation"). Indeed, ICE did not even begin the process of requesting travel documents from Vietnam for Mr. Tran until two weeks after it re-detained him. ECF No. 8, Declaration of Officer Townsend, ¶ 11.

Next, upon Mr. Tran's revocation, ICE did not notify him of "the reasons for revocation of his . . . release." § 241.13(i)(2)(iii); § 241.4(*l*)(1). As he explained in his declaration, "No one has told me what changed to make it more likely that I can be deported to Vietnam." ECF No. 1, Exhibit A, ¶ 5. "All they told me was that I was being detained." *Id.* ¶ 4. His declaration is consistent with the written notification he received that day. It informed him only that "your order of supervision has been revoked . . . based on a review of your official alien file and a determination that there are changed circumstances in your case." ECF No. 8, Exhibit 6.

As Judge Montenegro recently explained as to an identically worded written revocation notification, "ICE's conclusory explanations for revoking Petitioner's release 'did not offer him adequate notice of the basis for the revocation decision such that he could meaningfully respond at the post-detention informal interview.'" *Raskhamdee v. Noem*, No.25-cv-2816-RBM-DEB, 2025 WL 3102037, *4 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No. 25-cv-1079-JLT-EPG, 2025 WL 2581575, *8 (E.D. Cal. Sept. 5, 2025)); *accord Quoc Anh Nguyen v. Noem*, No. 25-cv-2792-LL-VET, 2025 WL 3101979, *2 (S.D. Cal. Nov. 6, 2025) (holding that a similarly "bare-bones explanation does not contain reasons for the revocation of Petitioner's release" as to a pre-1995 Vietnamese immigrant). "Simply to say that circumstances had changed . . . is not enough. 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)." *Sarail A.*, __ F. Supp. 3d __, 2025 WL 2533673 at *10 (emphasis in original).

Finally, ICE did not "afford[] [Mr. Tran] an opportunity to respond to the reasons for revocation." 8 C.F.R. §§ 241.13(i)(3); 241.4(*l*)(1). "[W]hile an informal interview apparently occurred, Petitioner could not have responded to the reasons for revocation, because they were not given." *Sarail A.*, __ F. Supp. 3d __, 2025 WL 2533673 at *10. Instead, Mr. Tran's informal interview apparently revolved solely around his mitigating facts and request to be put on an ankle monitor, ECF No. 8, Exhibit 7; without reasons for why ICE thought his removal was now likely in the foreseeable future, that was all he could bring up. In fact, it appears that, even if ICE had afforded Mr. Tran an opportunity to respond, it would not have "evaluat[ed] . . . any contested facts relevant to the revocation" regarding the likelihood he may be removed and "determine[ed] whether the facts as determined warrant revocation and further denial of release." 8 C.F.R. § 241.13(i)(3). ICE noted Mr. Tran's response in its informal interview documentation, and responded, "subject notified he will be detained as he has a final order." ECF No. 8, Exhibit 7. Whether Mr. Tran had been able to rebut the reasons ICE may or may not have had for deciding he was significantly likely to be removed in the reasonably foreseeable future, ICE apparently would have detained him regardless, "as he has a final order." *Id.*

In the last two months, multiple judges from this district have ordered release for failure to follow these regulations for similar reasons. *See, e.g.*, *Soryadvongsa*, 2025 WL 3125821; *Ghafouri v. Noem*, No. 25-cv-2675-RBM, ECF No. 11 (S.D. Cal. Nov. 4, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 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); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 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). This Court should do the same.

2. Mr. Tran need not show prejudice, although he can, because the regulations implement the core due process guarantees of notice and an opportunity to be heard while being detained.

The government's two remaining arguments on Mr. Tran's regulatory claims—that Mr. Tran must show prejudice, and that the regulations do not implement due process and protected liberty interests—also fail.

First, Mr. Tran need not show prejudice from these regulatory claims. "[T]he 'norm' when ICE fails to conduct an 'informal interview promptly' is that 'courts across the country have ordered the release of individuals stemming from ICE's illegal detention." *Soryadvongsa*, 2025 WL 3125821 at *3 (quoting *KEO v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, *6–*7 (W.D. Ky. Sept. 4, 2025)). As Judge Schopler recently reasoned, "Especially in the context of civil detentions—when constitutional safeguards are at their zenith—this Court is unwilling to import such a prejudice analysis into regulations or binding caselaw that don't mention it." *Id.*

To flesh this point out, "[t]here are two types of regulations: (1) those that protect fundamental due process rights, and (2) and those that do not." *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first type of regulation . . . implicates due process concerns even without a prejudice inquiry." *Id.* (cleaned up). Here, "[t]here can be little argument that ICE's requirement that noncitizens be afforded an informal interview—arguably the most bare-bones form of an opportunity to be heard—derives from the fundamental constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. May 2, 2025). No showing of prejudice is required.

Regardless, a violation of a regulation is prejudicial where, as here, "the merits" of an immigrant's case for relief "were never considered by the agency at all." *Arizmendi-Medina v. Garland*, 69 F.4th 1043, 1052 (9th Cir. 2023). Faced with that total deprivation, a petitioner need not point to the specific "evidence [he] would have presented to support [his] assertions" or make "any allegations as to what the petitioner or his witnesses might have said." *Id.* (cleaned up).

And Mr. Tran could "present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up). He would have had a very strong argument against re-detention had ICE given him notice and an opportunity to respond. Importantly, ICE is fully capable of trying to get a travel document while Mr. Tran remained at liberty. Mr. Tran has complied with ICE's requests for more information while he remained at liberty for the last nine years. ECF No. 1, Exhibit A ¶¶ 2–3; *accord* ECF No. 8, Exhibit 1 (noting no issues since his release on an order of supervision in 2016). Detaining him is therefore unnecessary. Mr. Tran deserved a chance to make that case upon his re-detention. Because ICE did not make any of the proper findings, let alone give Mr. Tran timely notice and a chance to contest them, he must be released.

Second, of course § 241.13(i) and § 241.4(l)(1) implement the basic due process protections of notice and an opportunity to be heard before being detained indefinitely. Their violation is an enforceable violation of a protected interest in being free from indefinite detention. "When someone's most basic right of freedom is taken away, that person is entitled to at least some minimal process; otherwise, we all are at risk to be detained—and perhaps deported—because someone in the government thinks we are not supposed to be here." *Ceesay*, 781 F. Supp. 3d at 165.

In arguing otherwise, the government "confuses [Mr. Tran's] right to an order of supervision, which ICE indeed has discretion to grant or deny, with his right not to be detained without adequate—in fact, without *any*—process. The right to be free from detention can never be dismissed as discretionary." *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)).

"When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(1) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). "The procedures in § 241.4" and § 241.13 therefore "are not meant merely to facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees." *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R. §§ 241.4, 241.13 are "intended to provide due process to individuals in [Mr. Tran's] position," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable.

Because the government failed to comply with core requirements of § 241.4 and § 241.13 when revoking Mr. Tran's release, it should, "[l]ike many other district courts within this circuit," "find[] that these failures constitute a violation of Petitioner's due process rights and justif[y] his release." *Bui v. Warden of Otay Mesa Detention Facility*, No. 25-cv-2111-JES, 2025 WL 2988356, *5 (S.D. Cal. Oct. 23, 2025).

B. Claim Two: The government has not proved that there is a significant likelihood of removal in the reasonably foreseeable future under *Zadvydas* and § 1231.

Next, government provides insufficient evidence to meet its burden to show that Mr. Tran will likely be removed to Vietnam in the reasonably foreseeable future.

1. The six-month grace period passed in January 2017, and Mr. Tran provided good reason to believe his individual removal is not likely in the foreseeable future in light of ICE being unable to remove him in 2016 and unable to remove most pre-1995 Vietnamese immigrants under the still-effective 2020 MOU.

The government argues in a sentence that the six-month *Zadvydas* grace period, in which Mr. Tran's detention is presumptively reasonable, is still ongoing. ECF No. 8 at 8. It notes that Mr. Tran was held in ICE custody for just over three months before he was released in October 2016 because ICE could not obtain travel documents for him, and that he has re-detained for just under one more month so far this year. *Id.*; *see* ECF No. 8, Exhibit 1 at 2–3; ECF No. 1, Exhibit A, ¶¶ 2, 4.

The grace period expired six months after Mr. Tran's order of removal was issued, in January 2017. The *Zadvydas* grace period is linked to the date the final order of removal is issued. It lasts for "six months after a final order of removal—that is, three months after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Indeed, the statute defining the beginning of the removal period is linked to the latest of three dates, all of which relevant here are tied to when the removal order is issued—not when the noncitizen has been detained for a cumulative total of six months. 8 U.S.C. § 1231(a)(1)(B).[5] "[T]he removal period does not restart simply because an alien

[5] 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

who has previously been released is taken back into custody." *Bailey v. Lynch*, No. 16-2600(JLL), 2016 WL 5791407, *2 (D.N.J. Oct. 3, 2016).

The government also apparently disagrees that Mr. Tran has provided "good reason" to doubt his reasonably foreseeable removal. *See Moallin v. Cangemi*, 427 F. Supp. 2d 908, 928 (D. Minn. 2006). *See* ECF No. 8 at 8–10 (not mentioning the "good reason" standard, but arguing that Mr. Tran has not shown there is no significant likelihood of removal in the reasonably foreseeable future).

In so doing, the government ignores the three good reasons Mr. Tran provided in his petition: (1) ICE was unable to remove him in 2016, and thus released him; (2) ICE has remained unable to remove him for the last nine years, including during the last five years under the operative memorandum of understanding between the United States and Vietnam governing pre-1995 Vietnamese arrivals, the 2020 MOU; and (3) ICE itself admitted in later stages of the *Trinh* litigation that, "generally," "'pre-1995 Vietnamese immigrants' . . . are not likely to be removed in the reasonably foreseeable future." *Trinh v. Homan*, No. 18-cv-316-CJC-GJS, Dkt. No. 161 at 3 (C.D. Cal. Oct. 7, 2021) (establishing ICE policy for pre-1995 Vietnamese immigrants in a stipulated dismissal).

The burden has therefore shifted 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.

2. The government provides insufficient evidence to support a "significant likelihood of removal" to Vietnam.

The government has not shown that Mr. Tran's removal to Vietnam is "significant[ly] like[ly]." *Zadvydas*, 533 U.S. at 701.

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process), the date the alien is released from detention or confinement." *Id.*

Deportation Officer Townsend notes that ICE removed 324 Vietnamese immigrants who came to the U.S. before 1995. *Id.* ¶ 14. He does not mention how many more such immigrants are currently in the United States but have been unable to be deported. *Id.* For example, "'[i]f DHS submitted 350 requests and Vietnam issued travel documents for 328 individuals' then removal [would be] significantly likely," but "'if DHS submitted 3,500 requests and only 328 individuals received travel documents,'" then 'Respondents would not be able to meet their burden." *Hoac v. Becerra*, No. 25-cv-1740-DC-JDP, 2025 WL 1993771, *5 (E.D. Cal. July 16, 2025) (quoting *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151 (D. Mass. 2025)). Officer Townsend also does not "clarify whether travel documents *issued* in FY2025 were also *requested* in FY 2025, or if they include requests made in previous fiscal years." *Nguyen v. Scott*, __ F. Supp. 3d. __, 2025 WL 2419288, *17 (W.D. Wash. 2025) (emphasis in original).

Regardless, courts have "demanded an individualized analysis" of why *this* person—Mr. Tran—will likely be removed. *Id.* Because "[t]he government has not provided any evidence of [Vietnam's] eligibility criteria or why it believes Petitioner now meets it," and because the only individualized evidence indicates Vietnam has previously declined to provide travel documents to Mr. Tran, ECF No. 12, Townsend Declaration ¶ 6, the government's evidence is insufficient. *Nguyen*, 2025 WL 2419288 at *18.

Importantly, 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. Tran's] travel document requests with [Vietnamese] Consulates" remain pending, "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).

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

Additionally, even if ICE will eventually remove Mr. Tran, the government provides little evidence that removal will happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Officer Townsend provides no timetable for how long travel document requests like Mr. Tran's typically take.

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. Tran] 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).

In sum, there could be "some possibility that Vietnam 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. Tran 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. Tran to a third country without adequate notice. The government does not try to defend ICE's current third-country removal policy on the merits. Instead, the government says that a third-country removal challenge is not relevant because ICE professes no current plans to remove Mr. Tran to a third country. As Mr. Tran explained earlier and in his habeas petition, that does not moot his claim: The extremely fast turn-around of ICE's current third-country removal policy, of 0-to-24-hours' notice of ICE's change of plans to pursue a third-country removal before the removal itself, could realistically happen for him. *See supra* section II.A; ECF No. 1 at 6–8, 16–19, Exhibit B.

The government has no other argument on the merits against this Court's issuance of a temporary restraining order and injunctive relief against third-country removal without adequate notice and an opportunity to be heard. For the reasons identified in Mr. Tran's petition and motion for temporary relief, this Court should enjoin Respondents from removing him to a third country absent the process identified in his prayer for relief.

IV. The remaining TRO factors decidedly favor Mr. Tran.

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

On the irreparable harm prong, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments,[6] 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). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Fifth Amendment protects. *Zadvydas*, 533 U.S. at 690. 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. Tran 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*,

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[6] The government cites three cases to support the position that illegal immigration detention is not irreparable harm. ECF No. 8 at 15. All involved immigrants who were actively appealing to the BIA, but 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); *Cortez v. Nielsen*, 2019 WL 1508458 (N.D. Cal. Apr. 5, 2019); *Resendiz v. Holder*, 2012 WL 5451162. These courts indicated only that post-bond-hearing detention pending an ordinary BIA appeal, in which administrative exhaustion was available to the petitioner and being pursued, was not irreparable harm. *Id.* The government also cites one case for this proposition in which the court did grant a temporary restraining order ordering an immigration judge to reconsider a request for a bond hearing. *See Lopez Reyes v. Bonnar*, No. 18-cv-07429, 2018 WL 7474861, *10–11 (N.D. Cal. Dec. 24, 2018).

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. *See, e.g.*, *Sun*, 2025 WL 2800037 at *4 (explaining this and holding that the "third and fourth *Winter* factors support injunctive relief" enjoining the petitioner's improper revocation of immigration supervision).

V. Conclusion

For all these reasons, this Court should grant the petition or enter a temporary restraining order and injunction. In either case, the Court should (1) order Mr. Tran's immediate release; (2) prohibit Respondents from re-detaining Mr. Tran unless and until Respondents obtain a travel document; without following all regulatory procedures; (3) prohibit Respondents from re-detaining Mr. Tran without first following all regulatory procedures; and (4) prohibit Respondents from removing Mr. Tran to a third country without following the process laid out in his prayer for relief.

Respectfully submitted,

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s/ Jessie Agatstein

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