Sakda Xayakesone
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Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAKDA XAYAKESONE,

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.: '25CV2995 JES BJW

Petition for Writ of Habeas Corpus

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

[1] Mr. Xayakesone is filing this petition for a writ of habeas corpus with the assistance of the Federal Defenders of San Diego, Inc., who drafted the instant petition. That same counsel also assisted the petitioner in preparing and submitting his request for the appointment of counsel, which has been filed concurrently with this petition, and all other documents supporting the petition. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Kara Hartzler in Support of Appointment Motion attaches case examples.

INTRODUCTION

Mr. Xayakesone was born in Laos and came to the United States with his family as a refugee in 1979. Soon after, he became a lawful permanent resident. In 2004, he was ordered removed on the basis of a criminal conviction. But when Laos would not accept him after about three months of detention, Mr. Xayakesone was released on an order of supervision.

Mr. Xayakesone remained on supervision for the next 21 years. He checked in with ICE every year without incident. He accrued no new criminal convictions. When he went for his annual check-in on October 16, 2025, ICE re-detained him. Contrary to regulation, ICE did not notify Mr. Xayakesone of any changed circumstances that made his removal more likely. Nor did it give Mr. Xayakesone an informal interview or an opportunity to contest his re-detention. He has now been detained for several weeks, with no information about whether ICE has sought a travel document or even begun the process of seeking his deportation. Worse yet, on July 9, 2025, ICE adopted a new policy permitting removals to third countries with no notice, six hours' notice, or 24 hours' notice depending on the circumstances, providing no meaningful opportunity to make a fear-based claim against removal.

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

(1) Regulatory and due process violations: Mr. Xayakesone must be released because ICE's failure to follow its own regulations about notice and an opportunity to be heard violate due process. *See, e.g.*, *Constantinovici v. Bondi*, __F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 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); *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025); *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Ca. Nov. 3, 2025) (all either granting temporary restraining orders releasing noncitizens, or granting habeas petitions outright, due to ICE regulatory violations during recent re-detentions of released noncitizens previously ordered removed).

(2) Zadvydas violations: Mr. Xayakesone must also be released under *Zadvydas* because—having proved unable to remove him for the last 21 years—the government cannot show that there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. *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) (granting habeas petitions releasing noncitizens due to *Zadvydas* violations).

(3) Third-country removal statutory and due process violations: This Court should enjoin ICE from removing Mr. Xayakesone to a third country without providing an opportunity to assert fear of persecution or torture before an immigration judge. *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) (all either granting temporary restraining orders or habeas petitions ordering the government to not remove petitioners to third countries pending litigation or reopening of their immigration cases).

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

STATEMENT OF FACTS

I. Mr. Xayakesone is ordered removed, held in ICE custody, and released as ICE proves unable to deport him for the next 21 years, until he is arrested at his annual ICE check-in.

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

In 2004, Mr. Xayakesone was convicted of a drug-related offense. *Id.* at ¶ 2. As a result of this conviction, Mr. Xayakesone was placed in removal proceedings. *Id.* at ¶ 2. An immigration judge ordered him removed on August 13, 2004. *Id.* at ¶ 3.

But ICE was not able to effectuate Mr. Xayakesone's removal to Laos. For approximately the next three months, ICE tried and failed to obtain travel documents for him. *Id.* at ¶ 4. Finally, ICE gave up and released him on an order of supervision. *Id.* In the years since his removal order, Mr. Xayakesone has complied with all the conditions of his release and has not been convicted of any other offenses. *Id.* at ¶ 5.

On October 16, 2025, ICE officials arrested Mr. Xayakesone during his annual check in appointment. *Id.* at ¶ 6. They did not provide him any notice or give him an interview or an opportunity to contest his detention. *Id.*

II. Laos has no repatriation agreement with the United States and a longstanding policy of refusing to accept deportees.

The Lao People's Democratic Republic is an authoritarian state and one of the poorest nations in Asia. *See* Congressional Research Service, *In Focus: Laos*

(Dec. 2, 2024) ("2024 CRS").[2] When the communist party came to power in Laos in 1975, hundreds of thousands of refugees fled, including many who had fought alongside the U.S. government in the Vietnam War. *Id.*; *see* The Economist, *America's secret war in Laos* (Jan. 21, 2017).[3] During the war, the United States had dropped over 2.5 million tons of bombs on Laos in what remains the largest bombardment of any country in history. *Id.*

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

In 2018, the United States issued visa sanctions on Laos "due to lack of cooperation in accepting their citizens who have been ordered removed."[6] The federal government explained that Laos had not "established repeatable processes for issuing travel documents to their nationals ordered removed from the United States." *Id.*

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[2] https://www.congress.gov/crs-product/IF10236.

[3] https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-laos.

[4] https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation.

[5] https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf.

[6] https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions.

In June of this year, President Trump reiterated, "Laos has historically failed to accept back its removable nationals." *See* Presidential Proclamation, *Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats*, § 3(c)(i) (June 4, 2025).[7] As a result, he included Laos as one of 19 countries in his travel ban, banning all Lao immigrant, tourist, student, and exchange visitors from the United States. *Id.*; *see* American Immigration Council, *Trump's 2025 Travel Ban* (Aug. 6, 2025).[8] In response, the Lao government has issued travel documents to a few dozen nationals of Laos with final removal orders. *See* Ben Warren, *Hmong refugees from Michigan among those deported to Laos, despite calls for release*, The Detroit News (Aug. 15, 2025) (noting 32 Laotian nationals were deported on a flight in August).[9]

Since then, several courts have rejected the Trump administration's efforts to re-detain a Laotian immigrant without following its own regulations. *See Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL 2579569 (W.D. Wash. Sept. 5, 2025) (granting TRO to Laotian national in light of the government's failure to follow its regulations regarding re-detention and questions regarding the validity of his underlying criminal conviction); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025) (granting habeas for Laotian citizen and ordering immediate release); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025) (same); *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025) (same); *Sayvongsa v. Noem*, 25-

[7] https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/

[8] https://www.americanimmigrationcouncil.org/report/trump-2025-travel-ban/.

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

cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025) (same); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Ca. Nov. 3, 2025) (same).

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

When immigrants cannot be removed to their home country, ICE has begun deporting those individuals to third countries without adequate notice or a hearing. *See* Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025. This summer and fall, ICE has carried out highly publicized third country deportations to prisons in South Sudan, Eswatini, Ghana, and Rwanda. Nokukhanya Musi & Gerald Imray, *10 more deportees from the US arrive in the African nation of Eswatini*, Associated Press (Oct. 6, 2025).[10] At least four men deported to Eswatini have remained in a maximum-security prison there for nearly three months without charge and without access to counsel; another six are detained incommunicado in South Sudan, and another seven are being held in an undisclosed facility in Rwanda. *Id.*

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

On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a "'meaningful opportunity' to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country"

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

[11] Available at https://www.bbc.com/news/articles/cwyrn42kp7no.

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

like the ones just described. Exh. B. Instead, under new guidance, ICE may remove any immigrant to a third country "without the need for further procedures," as long as—in the view of the State Department—the United States has received "credible" "assurances" from that country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours' notice. But "[i]n exigent circumstances," a removal may take place in as little as six hours, "as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to the removal." *Id.*

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

CLAIMS FOR RELIEF

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

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

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

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

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

These regulations permit an official to "return [the person] to custody" only 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 "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," and makes that finding "on account of changed circumstances," 8 C.F.R. § 241.13(i)(2).

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

In the case of someone released under § 241.13(i), the regulations also explicitly require the interviewer to allow the re-detained person to "submit any evidence or information that he or she believes shows there is no significant

likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision." § 241.13(i)(3).

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

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

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

Second, ICE did not notify Mr. Xayakesone of the reasons for his re-detention upon revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He was re-detained on October 16, 2025. Exh. A at ¶ 5. As he has explained, "[t]hey did not tell me why they were revoking my supervision." *Id.* at ¶ 6.

Third, Mr. Xayakesone has yet to receive an informal interview where an officer explained the purported "changed circumstances" underlying his revocation. "Simply 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 circumstances that changed and created a significant likelihood of removal in the reasonably foreseeable future—[ICE] failed to follow the relevant regulation." *Id.* This failure to identify any changed circumstances also means he has he been afforded a meaningful opportunity to respond to the reasons for revocation or submit evidence rebutting his re-detention. Exh. A at ¶ 6.

Numerous courts have released re-detained immigrants after finding that ICE failed to comply with applicable regulations this summer and fall. These have included courts in this district,[13] as well as courts outside this district.[14]

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

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[13] *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 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); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025); *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Ca. Nov. 3, 2025) (same).

[14] *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

II. Claim Two: Mr. Xayakesone's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Xayakesone: 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.

Zadvydas held that § 1231(a)(6) presumptively permits the government to detain an immigrant for 180 days after his or her removal order becomes final. After those 180 days have passed, the immigrant must be released unless his or her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six months have passed, the petitioner must only make a prima facie case for relief—there is "good reason to believe that there is no significant likelihood of removal

in the reasonably foreseeable future." *Id.* Then the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.*[15] Mr. Xayakesone can make all the threshold showings needed to shift the burden to the government.

B. The six-month grace period has expired.

The six-month grace period has long since ended. 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. 8 U.S.C. § 1231(a)(1)(B).[16]

Here, Mr. Xayakesone's order of removal was entered in August 2004. Exh. A at ¶ 3.[17] Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in February 2005, three months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-4108(EP), *2–*3.

Regardless, Mr. Xayakesone was detained for about three months after he was ordered removed, and he has been detained for several weeks this year. Exh.

[15] Further, even before the 180 days have passed, the immigrant must still be released if he *rebuts* the presumption that his detention is reasonable. *See, e.g., Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar*, 2025 WL 2592543 at *6 (finding the presumption rebutted for a person who was released and, years later, re-detained for less than six months).

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

[17] EOIR, *Automated Case Information*, https://acis.eoir.justice.gov/en/.

A at ¶¶ 4, 6. And ICE has had 21 years since his removal order issued to remove him.[18]

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

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

"Good reason to believe." The "good reason to believe" standard is a relatively forgiving one. "A petitioner need not establish that there exists no

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[18] The government has sometimes argued that release and rearrest resets the six-month grace period completely, taking the clock back to zero. "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).

It has also sometimes argued that rearrest creates a new three-month grace period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). "Pursuant to the statute, the removal period, and in turn the [six-month] presumptively reasonable period, begins from the latest of 'the date the order of removal becomes administratively final,' the date of a reviewing court's final order where the removal order is judicially removed and that court orders a stay of removal, or the alien's release from detention or confinement where he was detained for reasons 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.

possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "'[g]ood reason to believe' . . . place a burden upon the detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or show that his detention is indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says: Petitioners need only give a "good reason"—not prove anything to a certainty.

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

"In the reasonably foreseeable future." This component of the test focuses on when Mr. Xayakesone will likely be removed: Continued detention is permissible only if removal is likely to happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's removal efforts. If the Court has "no idea of when it might reasonably expect [Petitioner] 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." *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d

93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Xayakesone "would *eventually* receive" a travel document, he can still meet his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

Mr. Xayakesone satisfies this standard for two reasons.

First, as explained above, Laos generally does not accept deportees. Last year, zero people were removed to Laos; in the five years before that, between 0 and 11 people were removed per year. *See* U.S. Immigration and Customs Enforcement, *Annual Report: Fiscal Year 2024,* at 100 (Dec. 19, 2024).[19] Although President Trump has pressured Laos to begin accepting deportees, that has resulted in Laos issuing travel documents for only a few dozen nationals out of thousands of Laotians. And since then, multiple courts have rejected the Trump administration's efforts to re-detain Laotian immigrants without following its own regulations. *See, e.g., Khambounheuang*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL 2579569 (W.D. Wash. Sept. 5, 2025).

Second, Mr. Xayakesone's own experience bears this out. ICE has now had 21 years to deport him. He has no new criminal convictions and has cooperated with ICE's removal efforts throughout that time, including by attending yearly check-ins. Exh. A at ¶ 5. Yet ICE has proved unable to remove him.

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

[19] https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf.

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

If released on supervision, Mr. Xayakesone poses no risk of danger or flight. He has been on supervision for 21 years. Exh. A at ¶ 4. He has sustained no new convictions. *Id.* at ¶ 5. And he has checked in regularly with ICE during this time. *Id.* at ¶ 5.

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

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

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

The Court also noted that the government was free to use the many tools at its disposal to mitigate risk: "[O]f course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions." *Id.* at 700. The Ninth Circuit later elaborated, "All aliens ordered released must comply with the stringent supervision requirements

set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration officer periodically, answer certain questions, submit to medical or psychiatric testing as necessary, and accept reasonable restrictions on [their] conduct and activities, including severe travel limitations. More important, if [they] engage[ ] in any criminal activity during this time, including violation of [their] supervisory release conditions, [they] can be detained and incarcerated as part of the normal criminal process." *Ma*, 257 F.3d at 1115.

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

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

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

A. Legal background

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

Similarly, Congress codified protections enshrined in the CAT prohibiting the government from removing a person to a country where they would be

tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial 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 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

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

If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. The amount and type of

notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen's immigration proceedings if the individual demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

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

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

The policies in the June 6, 2025 memo do not adhere to these requirements. The memo "contravenes Ninth Circuit law." *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit law on the process due to noncitizens in detail); *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D. Cal. Sept. 29, 2025) (granting temporary restraining order preventing

a noncitizen's deportation to a third country pending litigation in light of due process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No. 6 (S.D. Cal. Sept. 18, 2025) (same).

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

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

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

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

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

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

V. Prayer for relief

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

1. Order and enjoin Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(*l*), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to any country other than Laos, unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
    a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
    b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
    c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
    d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a

minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.

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

Conclusion

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

DATED: 11-1-25

Respectfully submitted,

Sakda Xayakesone

Petitioner

PROOF OF SERVICE

I, the undersigned, caused to be served this Petition for Writ of Habeas Corpus by e-mail to:

U.S. Attorney's Office, Southern District of California
Civil Division
880 Front Street
Suite 6253
San Diego, CA 92101

Date: 11-4-25

Kara Hartzler