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8
 9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA
 11

12 UT VAN NGUYEN,
 13 Petitioner,

Case No.: 25-cv-3032-LL-MMP

14 v.

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

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

20 Respondents.
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1 **I. Introduction**

2 The government’s return and opposition includes the following evidence:

- 3 • An internal ICE record from February 25, 2025, indicating that
4 Mr. Nguyen was “remanded to DHS custody pursuant to violation of
5 his Order of Supervision and pending his removal to his country of
6 citizenship,” without any indication what ICE believed the violation
7 conduct was, ECF No. 7, Exhibit 1 at 3;
- 8 • An ICE warrant for Mr. Nguyen’s arrest issued solely because an
9 immigration officer “determined there is probable cause to believe
10 that [Mr. Nguyen] is removable,” ECF No. 7, Exhibit 2; and
- 11 • A declaration from a San Diego deportation officer declaring that:
- 12 ○ ICE arrested Mr. Nguyen this year on February 25, 2025;
 - 13 ○ ICE first requested a travel document from Vietnam for
14 Mr. Nguyen seven months later, on September 11, 2025;
 - 15 ○ That request was “returned for additional information” and re-
16 submitted on November 6, and remains “pending”; and
 - 17 ○ ICE removed 324 Vietnamese immigrants who came to the
18 U.S. before 1995 last fiscal year; ECF No. 7, Declaration of
19 Ramon Meraz, ¶¶ 5, 9, 10, 13.

20 The government does not include any evidence that, in the last nine months
21 he has been in custody, Mr. Nguyen has ever received a notice of the reasons for
22 revocation of his supervision or an informal interview. *See* ECF No. 7.

23 The government’s limited evidence does not rebut Mr. Nguyen’s claim that
24 he was re-detained in violation of his regulatory and due process rights to be
25 notified of “the reasons for revocation.” § 241.13(i)(2), 241.13(l)(1). Nor do they
26 rebut Mr. Nguyen’s claim that he was not “promptly” “afford[ed] . . . an
27 opportunity to respond to the reasons for revocation” in an “informal interview,”
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1 *id.* §§ 241.4(l)(1), 241.13(i)(3), or that he has now been held three months longer
2 than the maximum term of six months permitted for a violation of his supervision
3 conditions, § 241.13(i)(1).

4 Nor does the government rebut Mr. Nguyen’s claim that there is not an
5 individualized, significant likelihood of his removal in the foreseeable future. ICE
6 has tried and failed to obtain a travel document for Mr. Nguyen for the last two
7 and a half decades, including for five years under the currently operative
8 memorandum of agreement between the United States and Vietnam. The only
9 evidence ICE presents now is that it succeeded in obtaining travel documents for
10 324 pre-1995 Vietnamese immigrants—without information as to how many
11 requests ICE made for pre-1995 immigrants, how long it took to receive those
12 travel documents, or whether those immigrants had previously been denied travel
13 documents.

14 Finally, the government does not defend the process provided in its third-
15 country removal policy on the merits. Instead, it argues only that because it
16 currently does not intend to remove Mr. Nguyen to a third country, Mr. Nguyen’s
17 claim about inadequate procedures is moot. In light of the evidence Mr. Nguyen
18 presented in his habeas petition that the government *has* deported Vietnamese
19 immigrants to third countries this year—and that it has done so with little-to-no
20 notice—the government’s justiciability argument fails to persuade.

21 This Court should grant Mr. Nguyen’s petition, or, in the alternative, grant
22 his motion for temporary relief in full.

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

24 **A. Mr. Nguyen’s third-country removal challenge is not moot.**

25 First, the government argues that Mr. Nguyen’s third-country removal
26 challenge is nonjusticiable under Article III because ICE professes no current
27 plans to remove Mr. Nguyen to a third country. ECF No. 7 at 1–2.

28 “There, so to speak, lies the rub.” *D.V.D. v. U.S. Dep’t of Homeland Sec.*,

1 778 F. Supp. 3d 355, 389 n.44 (D. Mass. 2025). “[A]ccording to [Respondents],
2 an individual must await notice of removal before his claim is ripe[.]” *Id.* But
3 under ICE’s policy, “there is no notice” for certain removals, and between 6 and
4 24 hours’ notice for all others. *Id.* If Mr. Nguyen “is removed” before he can raise
5 his third-country removal challenges, Respondents will then argue that “there is
6 no jurisdiction” to bring him back to the United States. *Id.*

7 This Court need not adopt that Kafkaesque view. The government has not
8 denied that “the default procedural structure without an injunction” is “set forth in
9 DHS’s March 30 and July 9, 2025 policy memoranda”—both of which provide
10 for third-country removal with little or no notice. *Y.T.D. v. Andrews*, No. 1:25-
11 CV-01100 JLT SKO, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025). And
12 Mr. Nguyen has “point[ed] to numerous examples of cases involving individuals
13 who DHS has attempted to remove to third countries with little or no notice or
14 opportunity to be heard,” including Vietnamese immigrants. *Id.*; see ECF No. 1 at
15 6–8. There are still Vietnamese immigrants still being held without charge and
16 without access to counsel in Eswatini, South Sudan, and Rwanda, months after
17 their swift removals to those countries. See Gerald Imray, *A Cuban man deported*
18 *by the US to Africa is on a hunger strike in prison, his lawyer says*, Associated
19 Press (Oct. 23, 2025)¹; Agence France-Press, *Eswatini confirms receiving over*
20 *\$5m from US to accept deportees*, The Guardian (Nov. 17, 2025)²; see also ECF
21 No. 1 at 6–7 (citing Nokukhanya Musi & Gerald Imray, *10 more deportees from*
22 *the US arrive in the African nation of Eswatini*, Associated Press (Oct. 6, 2025)³).

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24 ¹ <https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859>.

25 ² <https://www.theguardian.com/world/2025/nov/17/eswatini-5-m-dollars-us-deportees>.

26 ³ <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

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1 “On balance,” then, “there is a sufficiently imminent risk that [Mr. Nguyen]
 2 will be subjected to improper process in relation to any third country removal to
 3 warrant imposition of an injunction requiring additional process.” *Y.T.D.*, 2025
 4 WL 2675760, at *11; *accord Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No.
 5 13; *Van Nguyen v. Noem*, 2025 WL 2770623 at *3; *Nguyen Nguyen v. Noem*, No.
 6 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*,
 7 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025) (ordering the
 8 government to not remove petitioners to third countries without sufficient
 9 process). The issue is not moot.

10 **B. Mr. Nguyen’s claims are not barred by § 1252(g).**

11 Next, contrary to the government’s arguments, Section 1252(g) does not
 12 bar review of “all claims arising from deportation proceedings.” *Reno v. Am.-*
 13 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts
 14 “have jurisdiction to decide a purely legal question that does not challenge the
 15 Attorney General’s discretionary authority.” *Ibarra-Perez v. United States*, __
 16 F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

17 In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not
 18 prohibit immigrants from asserting a “right to meaningful notice and an
 19 opportunity to present a fear-based claim before [they] [are] removed.”⁴ *Id.* at *7.
 20 The Court reasoned that “§ 1252(g) does not prohibit challenges to unlawful
 21 practices merely because they are in some fashion connected to removal orders.”
 22 *Id.* Instead, § 1252(g) is “limited . . . to actions challenging the Attorney General’s
 23 discretionary decisions to initiate proceedings, adjudicate cases, and execute
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 26 ⁴ Mr. Ibarra-Perez raised this claim in a post-removal Federal Tort Claims Act
 27 (“FTCA”) case, *id.* at *2, while this is a pre-removal habeas petition. But the
 28 analysis under § 1252(g) remains the same, because both Mr. Ibarra-Perez and
 Mr. Nguyen 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).

1 removal orders.” *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). The
2 statute does not apply to arguments that the government “entirely lacked the
3 authority, and therefore the discretion,” to carry out a particular action. *Id.* at 800.
4 Instead, § 1252(g) applies to “discretionary decisions that [the Secretary] actually
5 has the power to make, as compared to the violation of his mandatory duties.”
6 *Ibarra-Perez*, 2025 WL 2461663, at *9.

7 The same logic applies to Mr. Nguyen’s claims. He challenges violations of
8 ICE’s mandatory duties under statutes, regulations, and the Constitution. “Though
9 8 U.S.C § 1252(g) precludes this Court from exercising jurisdiction over the
10 executive’s decision to ‘commence proceedings, adjudicate cases, or execute
11 removal orders against any alien,’ this Court has habeas jurisdiction over the
12 issues raised here, namely the lawfulness of [Mr. Nguyen’s] continued detention
13 and the process required in relation to third country removal.” *Y.T.D.*, 2025 WL
14 2675760 at *5.

15 Other circuit courts agree. *See, e.g., Kong v. United States*, 62 F.4th 608,
16 617 (1st Cir. 2023) (“§ 1252(g) does not bar judicial review of Kong's challenge
17 to the lawfulness of his detention,” including ICE’s “fail[ure] to abide by its own
18 regulations”); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (“[S]ection
19 1252(g) does not bar courts from reviewing an alien detention order[.]”); *Parra v.*
20 *Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a “claim
21 concern[ing] detention”).

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

1 *Rodriguez* and the history of judicial review of the detention of noncitizens under
2 28 U.S.C. § 2241.” *Phan v. Noem*, No. 25-cv-2422-RBM, 2025 WL 2898977, *3
3 (S.D. Cal. Oct. 10, 2025) (collecting cases agreeing on this jurisdictional point).

4 In short, Mr. Nguyen does not challenge whether the government may
5 “execute” his removal under 8 U.S.C § 1252(g)—only whether it may detain him
6 up to the date it does so or remove him to a third country without notice and an
7 opportunity to be heard. This Court has jurisdiction.

8 **III. Mr. Nguyen’s claims succeed on the merits.**

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

- 12 1. Mr. Nguyen did not receive notice of the reasons for his
13 revocation or have an opportunity to promptly contest them,
14 and has now been held for more than the maximum time
15 allowed for supervision condition violations

16 The government does not claim to have complied with 8 C.F.R. §§ 241.4
17 and 241.13. *See* ECF No. 7 at 8. For Mr. Nguyen, those regulations permit his re-
18 detention only if ICE: (1) “upon revocation,” “notifie[s]” the noncitizen “of the
19 reasons for revocation of his or her release,” § 241.13(i)(2), 241.4(l)(1); and
20 (2) “afford[s]” the noncitizen “an initial informal interview promptly after his or
21 her return” to be given “an opportunity to respond to the reasons for revocation,”
22 *id.* Further, (3) any re-detention for a violation of conditions cannot be longer than
23 “six months in order to effect the alien’s removal, if possible, and to effect the
24 conditions.” 8 C.F.R. § 241.13(i)(1).

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

27 First, upon Mr. Nguyen’s revocation in February, ICE did not notify him of
28 “the reasons for revocation of his . . . release.” § 241.13(i)(2)(iii); § 241.4(l)(1).
As he explained in his declaration, “ICE told me they were arresting me but didn’t
give me any details why.” ECF No. 1, Exhibit A, ¶ 5. “I don’t remember ever

1 being told if my supervision was being revoked or why. . . No one has told me the
2 reasons for putting and keeping me here.” *Id.* ¶ 6. To this day, he has not received
3 a notification of why his release was revoked.

4 Next, Mr. Nguyen has never received an informal interview required under
5 the regulations. *Id.* §§ 241.4(l)(1), 241.13(i)(3). Nor was he given a chance to
6 “respond to the reasons for revocation.” *Id.*

7 Finally, and most concerningly, the government does not address the fact
8 that it cannot hold Mr. Nguyen under the regulations governing the revocation of
9 his release for more than “six months.” § 241.13(i)(1). Mr. Nguyen has been held
10 since February 25. That means he has been held, without any form of process
11 required under the regulations, for over nine months.

12 In the last few months, nearly every judge from this district has ordered
13 release for failure to follow these regulations, often in less egregious
14 circumstances. *See, e.g., Soryadvongsa*, 2025 WL 3125821; *Ghafouri v. Noem*,
15 No. 25-cv-2675-RBM, ECF No. 11 (S.D. Cal. Nov. 4, 2025); *Phan v. Noem*, 2025
16 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025);
17 *Constantinovici v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 2898985, No. 25-cv-2405-
18 RBM (S.D. Cal. Oct. 10, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No.
19 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-
20 SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *Rokhfirooz v. Larose*, No. 25-cv-
21 2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Sun v. Noem*, 2025 WL
22 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Nguyen v. Noem*,
23 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025). This
24 Court should do the same.

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

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

7 First, Mr. Nguyen need not show prejudice from these regulatory claims.
8 Among other regulatory violations, “the ‘norm’ when ICE fails to conduct an
9 ‘informal interview promptly’ is that ‘courts across the country have ordered the
10 release of individuals stemming from ICE’s illegal detention.” *Soryadvongsa*,
11 2025 WL 3125821 at *3 (quoting *KEO v. Woosley*, No. 4:25-CV-74-RGJ, 2025
12 WL 2553394, *6–*7 (W.D. Ky. Sept. 4, 2025)). As Judge Schopler recently
13 reasoned, “Especially in the context of civil detentions—when constitutional
14 safeguards are at their zenith—this Court is unwilling to import such a prejudice
15 analysis into regulations or binding caselaw that don’t mention it.” *Id.*

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

26 Regardless, a violation of a regulation is prejudicial where, as here, “the
27 merits” of an immigrant’s case for relief “were never considered by the agency at
28 all.” *Arizmendi-Medina v. Garland*, 69 F.4th 1043, 1052 (9th Cir. 2023). Faced

1 with that total deprivation, a petitioner need not point to the specific “evidence
2 [he] would have presented to support [his] assertions” or make “any allegations as
3 to what the petitioner or his witnesses might have said.” *Id.* (cleaned up).

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

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

17 “When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it
18 explained that the regulation was intended to provide aliens procedural due
19 process, stating that § 241.4 ‘has the procedural mechanisms that . . . courts have
20 sustained against due process challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d
21 626, 641 (D. Mass. 2018) (quoting *Detention of Aliens Ordered Removed*, 65 FR
22 80281-01). And “[s]ection 241.13(i) includes provisions modeled on § 241.4(1)
23 to govern determinations to take an alien back into custody,” *Continued Detention*
24 *of Aliens Subject to Final Orders of Removal*, 66 FR 56967-01, meaning that it
25 addresses the same due process concerns as 241.4(l). “The procedures in § 241.4”
26 and § 241.13 therefore “are not meant merely to facilitate internal agency
27 housekeeping, but rather afford important and imperative procedural safeguards to
28 detainees.” *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R.

1 §§ 241.4, 241.13 are “intended to provide due process to individuals in
2 [Mr. Nguyen’s] position,” *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC,
3 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable.

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

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

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

- 16 1. The six-month grace period passed in 2001, and Mr. Nguyen
17 provided good reason to believe his individual removal is not
18 likely in the foreseeable future in light of ICE being unable to
19 remove most pre-1995 Vietnamese immigrants under the still-
20 effective 2020 MOU.

21 The government does not disagree that the *Zadvydas* six-month grace
22 period has long expired. Mr. Nguyen was ordered removed and held in custody in
23 2000, and this year, he has been in custody for the last nine months.

24 The government apparently disagrees that Mr. Nguyen has provided “good
25 reason” to doubt his reasonably foreseeable removal. *See Moallin v. Cangemi*,
26 427 F. Supp. 2d 908, 928 (D. Minn. 2006). *See* ECF No. 7 at 7 (not mentioning
27 the “good reason” standard, but arguing that Mr. Nguyen has not shown there is
28 no significant likelihood of removal in the reasonably foreseeable future).

29 In so doing, the government ignores the three good reasons Mr. Nguyen
30 provided in his petition: (1) ICE has been repeatedly unable to remove him, first
31 in 2000, and then during the last “six[] or seven[] time[s]” he has been in ICE

1 custody after revocation of his supervision, ECF No. 1, Exhibit A, ¶ 4; (2) ICE
2 has remained unable to remove him during the last five years under the operative
3 memorandum of understanding between the United States and Vietnam governing
4 pre-1995 Vietnamese arrivals, the 2020 MOU; and (3) ICE itself admitted in later
5 stages of the *Trinh* litigation that, “generally,” “pre-1995 Vietnamese
6 immigrants’ . . . are not likely to be removed in the reasonably foreseeable
7 future.” *Trinh v. Homan*, No. 18-cv-316-CJC-GJS, Dkt. No. 161 at 3 (C.D. Cal.
8 Oct. 7, 2021) (establishing ICE policy for pre-1995 Vietnamese immigrants in a
9 stipulated dismissal).

10 The burden has therefore shifted to the government to prove that there is a
11 “significant likelihood of removal in the reasonably foreseeable future.”
12 *Zadvydas*, 533 U.S. at 701. That standard has a success element (“significant
13 likelihood of removal”) and a timing element (“in the reasonably foreseeable
14 future”). The government meets neither.

15 2. The government provides insufficient evidence to support a
16 “significant likelihood of removal” to Vietnam.

17 The government has not shown that Mr. Nguyen’s removal to Vietnam is
18 “significant[ly] like[ly].” *Zadvydas*, 533 U.S. at 701.

19 Deportation Officer Meraz notes that ICE removed 324 Vietnamese
20 immigrants who came to the U.S. before 1995. ECF No. 7, Declaration of Ramon
21 Meraz, ¶ 13. He does not mention how many more such immigrants are currently
22 in the United States but have been unable to be deported. *Id.* For example, “[i]f
23 DHS submitted 350 requests and Vietnam issued travel documents for 328
24 individuals’ then removal [would be] significantly likely,” but “if DHS submitted
25 3,500 requests and only 328 individuals received travel documents,” then
26 ‘Respondents would not be able to meet their burden.’ *Hoac v. Becerra*, No. 25-
27 cv-1740-DC-JDP, 2025 WL 1993771, *5 (E.D. Cal. July 16, 2025) (quoting
28 *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151 (D. Mass. 2025)). Officer Meraz also

1 does not “clarify whether travel documents *issued* in FY2025 were also *requested*
2 in FY 2025, or if they include requests made in previous fiscal years.” *Nguyen v.*
3 *Scott*, __ F. Supp. 3d. __, 2025 WL 2419288, *17 (W.D. Wash. 2025) (emphasis
4 in original).

5 Regardless, courts have “demanded an individualized analysis” of why *this*
6 person—Mr. Nguyen—will likely be removed. *Id.* Because “[t]he government has
7 not provided any evidence of [Vietnam’s] eligibility criteria or why it believes
8 Petitioner now meets it,” and because the only individualized evidence indicates
9 Vietnam has previously declined to provide travel documents to Mr. Nguyen, the
10 government’s evidence is insufficient. *Nguyen*, 2025 WL 2419288 at *18.

11 Importantly, the government apparently waited until it had detained
12 Mr. Nguyen for longer than allowed by its regulations—seven months—before it
13 even began the process of *requesting* travel documents from Vietnam. Even if this
14 could be construed as diligence or good faith, good-faith efforts to secure a travel
15 document do not themselves satisfy *Zadvydas*. The petitioner in *Zadvydas*
16 appealed a “Fifth Circuit h[olding] [that] [the petitioner’s] continued detention
17 [was] lawful as long as good faith efforts to effectuate deportation continue and
18 [the petitioner] failed to show that deportation will prove impossible.” 533 U.S. at
19 702 (cleaned up). The Supreme Court reversed. It held that the Fifth Circuit’s
20 good-faith-efforts standard “demand[ed] more than our reading of the statute can
21 bear.” *Id.*

22 Thus, “under *Zadvydas*, the reasonableness of Petitioner's detention does
23 not turn on the degree of the government's good faith efforts. Indeed, the
24 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of
25 Petitioner’s detention turns on whether and to what extent the government's
26 efforts are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019
27 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is
28 required to demonstrate the likelihood of not only the *existence* of untapped

1 possibilities, but also of a probability of success in such possibilities.” *Elashi v.*
2 *Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010).

3 Here, then, “[w]hile the respondent asserts that [Mr. Nguyen’s] travel
4 document requests with [Vietnamese] Consulates” remain pending, “this is
5 insufficient. It is merely an assertion of good-faith efforts to secure removal; it
6 does not make removal likely in the reasonably foreseeable future.” *Gilali v.*
7 *Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis.
8 Oct. 15, 2019).

9 3. The government provides no evidence to support that any
10 removal will occur “in the reasonably foreseeable future.”

11 Additionally, even if ICE will eventually remove Mr. Nguyen, the
12 government provides little evidence that removal will happen “in the reasonably
13 foreseeable future.” *Zadvydas*, 533 U.S. at 701. Officer Meraz provides no
14 timetable for how long travel document requests like Mr. Nguyen’s typically take.

15 That is fatal. “[D]etention may not be justified on the basis that removal to
16 a particular country is likely *at some point* in the future; *Zadvydas* permits
17 continued detention only insofar as removal is likely in the *reasonably*
18 *foreseeable* future.” *Hassoun*, 2019 WL 78984, at *6. “The government’s active
19 efforts to obtain travel documents from the Embassy are not enough to
20 demonstrate a likelihood of removal in the reasonably foreseeable future where
21 the record before the Court contains no information to suggest a timeline on
22 which such documents will actually be issued.” *Rual v. Barr*, No. 6:20-CV-06215
23 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). “[I]f DHS has no idea
24 of when it might reasonably expect [Mr. Nguyen] to be repatriated, this Court
25 certainly cannot conclude that his removal is likely to occur—or even that it *might*
26 occur—in the reasonably foreseeable future.” *Singh v. Whitaker*, 362 F. Supp. 3d
27 93, 102 (W.D.N.Y. 2019).

28 In sum, there could be “some possibility that Vietnam will accept Petitioner

1 at some point. But that is not the same as a significant likelihood that he will be
2 accepted in the reasonably foreseeable future.” *Nguyen*, 2025 WL 2419288 at
3 *16. Mr. Nguyen therefore succeeds under *Zadvydas*, too.

4 **C. Claim Three: The government does not deny that ICE’s third-**
5 **country removal policy violates due process, and this claim is**
6 **justiciable.**

7 This Court should also prohibit ICE from removing Mr. Nguyen to a third
8 country without adequate notice and process. The government does not try to
9 defend the procedures of ICE’s current third-country removal policy on the
10 merits. Instead, the government says that a third-country removal challenge is not
11 relevant because ICE professes no current plans to remove Mr. Nguyen to a third
12 country. As Mr. Nguyen explained earlier and in his habeas petition, that does not
13 moot his claim: The extremely fast turn-around of ICE’s current third-country
14 removal policy, of 0-to-24-hours’ notice of ICE’s change of plans to pursue a
15 third-country removal before the removal itself, could realistically happen for
16 him. *See supra* section II.A; ECF No. 1, Exhibit C.

17 The government has no other argument on the merits against this Court’s
18 issuance of a temporary restraining order and injunctive relief requiring adequate
19 notice and an opportunity to be heard before any third-country removal. For the
20 reasons identified in Mr. Nguyen’s petition and motion for temporary relief, this
21 Court should enjoin Respondents from removing him to a third country absent the
22 minimum requirements of due process identified in his prayer for relief.

23 **IV. The remaining TRO factors decidedly favor Mr. Nguyen.**

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

27 On the irreparable harm prong, “[i]t is well established that the deprivation
28 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres*
v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government’s

1 arguments,⁵ the Ninth Circuit has specifically recognized the “irreparable harms
2 imposed on anyone subject to immigration detention.” *Hernandez v. Sessions*, 872
3 F.3d 976, 995 (9th Cir. 2017). “Freedom from imprisonment—from government
4 custody, detention, or other forms of physical restraint—lies at the heart of the
5 liberty” that the Fifth Amendment protects. *Zadvydas*, 533 U.S. at 690.
6 Furthermore, “[i]t is beyond dispute that Petitioner would face irreparable harm
7 from removal to a third country.” *Nguyen*, 2025 WL 2419288, at *26.

8 On the balance-of-equities/public-interest prong, the government is correct
9 that there is a “public interest in prompt execution of removal orders.” *Nken v.*
10 *Holder*, 556 U.S. 418, 436 (2009). But that interest is diminished here because the
11 government likely cannot remove Mr. Nguyen in the reasonably foreseeable
12 future, and even if it could, it is equally “well-established that ‘our system does
13 not permit agencies to act unlawfully even in pursuit of desirable ends.’” *Nguyen*,
14 2025 WL 2419288, at *28 (quoting *Ala. Ass’n of Realtors v. Dep’t of Health &*
15 *Hum. Servs.*, 594 U.S. 758, 766 (2021)). It also “would not be equitable or in the
16 public’s interest to allow the [government] to violate the requirements of federal
17 law” with respect to detention and re-detention, *Arizona Dream Act Coal. v.*
18 *Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (cleaned up), or to imperil the
19 “public interest in preventing aliens from being wrongfully removed,” *Nken*, 556
20 U.S. 418, 436. *See, e.g., Sun*, 2025 WL 2800037 at *4 (explaining this and

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22
23 ⁵ The government cites two cases to support the position that illegal immigration
24 detention is not irreparable harm. ECF No. 7 at 10. All involved immigrants who
25 were actively appealing to the BIA, but wanted a federal court to intervene before
26 the appeal was done. *Cortez v. Nielsen*, 2019 WL 1508458 (N.D. Cal. Apr. 5,
27 2019); *Resendiz v. Holder*, 2012 WL 5451162. These courts indicated only that
28 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).

1 holding that the “third and fourth *Winter* factors support injunctive relief”
2 enjoining the petitioner’s improper revocation of immigration supervision).

3 **V. Conclusion**

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

11
12 Respectfully submitted,

13 Dated: November 30, 2025

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