**EMILY R. CHILD**
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Emily_Child@fd.org

Attorneys for Mr. Nguyen

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF CALIFORNIA**

HOANG VAN NGUYEN,

Petitioner,

v.

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

Respondents.

CIVIL CASE NO.: 25-CV-03033-BJC-MSB

**Traverse in Support of Petition for Writ of Habeas Corpus**

**&**

**Reply in Support of Motion for a Temporary Restraining Order**

## INTRODUCTION

The government's Return confirms that this Court should grant the petition on Counts 1 and 2, and defer ruling on Count 3.

First, this Court should grant the petition on Count One because the evidence confirms that the government has not complied with its own regulations.

Mr. Nguyen did not receive notice of the reasons for his re-detention "upon revocation" and did not get a "prompt" interview. 8 C.F.R. § 241.13(i). Instead, the government gave him notice two weeks after his re-detention and an interview six weeks after he was re-detained—and after the instant petition had already been filed. Doc. 11-1 at ¶¶ 7-8. That alone warrants release on Count 1.

But even further, for persons like Mr. Nguyen, the regulations permit re-detention only if ICE: (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," 8 C.F.R. § 241.13(i)(2); (2) makes that finding "on account of changed circumstances," *id.*; (3) provides "an initial informal interview promptly," *id.* §§ 241.4(*l*)(1), 241.13(i)(3); and (4) "affords the [person] an opportunity to respond to the reasons for revocation." *id.* Here, ICE provided Mr. Nguyen only with a vague notice that stated his re-detention was based on "a review of [his] official alien file and review of [his] criminal history" – which is not a permissible basis for revocation under the regulation, nor was it sufficient to give him a meaningful opportunity to respond to the reasons for revocation. 8 C.F.R. § 241.13(i)(3).

The government now tries to post-hoc justify Mr. Nguyen's re-detention by saying it was based on changed circumstances, namely, that a month *after* his re-detention, they were able to obtain a travel document for Mr. Nguyen. But that was not the basis for revocation stated in Mr. Nguyen's notice. And Detention Officer Jason Cole's declaration does not provide any basis to believe that an individualized determination of changed circumstances specific to Mr. Nguyen had taken place *prior to* revocation of his release. Such "[a]fter-the-fact

determinations in an attempt to justify a noncitizen's re-detention cannot cure the Government's blatant procedural errors." *Truong v. Noem*, 25-cv-02597-JES-MMP, Doc. 13 at *7 (S.D. Cal. Oct. 22, 2025)

Though ICE claims to have received a travel document for Mr. Nguyen, other judges in this district have granted relief and ordered the petitioner released due to the regulatory violations of 8 C.F.R. § 241.4 even *after* ICE obtained a travel document. *See, e.g.*, *Truong v. Noem*, 25-cv-2597-JES-MMP, Dkt. 13 (S.D. Cal. Oct. 22, 2025) (granting habeas because "the Government failed to follow its own regulations" even though ICE had obtained travel document); *Khambounheuang v. Noem*, 25-cv-2575-JO-SBC, Dkt. 17 (S.D. Cal. Oct. 23, 2025) (same); *Ngo v. Noem*, 25-cv-2739-TWR-MMP, Dkt. 11 (S.D. Cal. Oct. 23, 2025) (same); *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025) (same); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Oct. 30, 2025) (same); *Touch v. Noem*, 25-cv-03118-RBM-AHG, Dkt. 14 (S.D. Cal. Nov. 26, 2025). This Court should do the same here.

Second, while the government purports to have obtained a travel document for Mr. Nguyen and "tentatively" plans to remove him no later than December 15, DO Cole's declaration also states that ICE is currently investigating Mr. Nguyen's potential claim to U.S. citizenship and "will not remove Petitioner until resolution of that claim." Without more concrete information about the timeline and further steps necessary to complete the investigation, it cannot be said that there is a significant likelihood of removal in the reasonably foreseeable future. Accordingly, Mr. Nguyen still prevails on his *Zadvydas* claim.

Third, the government does not try to defend ICE's third-country removal policy on the merits, and the government's justiciability and jurisdictional arguments are meritless. But because ICE has taken concrete steps to remove Mr. Nguyen to his country of origin, he does not object to deferring ruling on Count 3 unless and until he is removed to Vietnam.

This Court should therefore grant the petition on Counts 1 and 2 and defer ruling on Count 3.

## ARGUMENT

### I. Mr. Nguyen's regulatory argument succeeds on the merits.

#### A. Count 1: As judges in this district have uniformly held, immigrants must be released when ICE does not adhere to the regulations governing re-detention.

This Court should grant the petition on Count 1, because the government's evidence establishes that that ICE did not comply with 8 C.F.R. §§ 241.4, 241.13. That is dispositive. At least a dozen recent decisions from this district grant release for this very reason. *See Nguyen Tran v. Noem*, 25-CV-2391-BTM (S.D. Cal. Oct. 27, 2025); *Ngo v. Noem*, 25-cv-02739-TWR-MMP, ECF. No. 11 (Oct. 23, 2025); *Bui v. Noem*, 25-CV-2111-JES-DEB, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thanh Nguyen v. Noem*, 25-cv-2760-TWR-KSC, ECF. No. 12 (Oct. 23, 2025); *Ho v. Noem*, 25-cv-2453-BAS-BLM, ECF No. 11 (S.D. Cal. Oct. 20, 2025); *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, 13 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025).

##### 1. The government violated 8 C.F.R. § 241.13(i).

First, ICE did not comply with 8 C.F.R. §§ 241.4(*l*), 241.13(i)(3)'s interview requirements. "[B]oth [regulations] require ICE to provide 'an initial

informal interview promptly . . . to afford the [noncitizen] an opportunity to respond to the reasons for revocation.'" *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (quoting 8 C.F.R. §§ 241.4(*l*)(2), 241.13(i)(3)). DO Jason Cole asserts in his declaration that Mr. Nguyen was provided with an informal interview on November 12, 2025—*more than six weeks* after Mr. Nguyen's September 25, 2025 re-detention and nearly a week after the instant petition was filed. Such an interview cannot comply with § 241.13(i)'s requirement to provide a "prompt" interview. *See M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (finding an informal interview given 27 days after petitioner was taken into ICE custody "cannot reasonably be construed as . . . prompt" and granting habeas petition); *Soryadvongsa v. Noem,* 24-cv-2663-AGS-DDL, 2025 WL 3126821, at *1 (S.D. Cal. Nov. 8, 2025) (holding that "an interview 29 days after arrest" is not prompt); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (finding "the failure to provide an informal interview during that lengthy [two-month] period of time renders petitioner's re-detention unlawful"); *McSweeney v. Warden*, 25-cv-2488-RBM, Dkt. 22 at 11 (S.D. Cal. Oct. 24, 2025) (interview provided six months after detention did not cure the regulatory violation).

Second, Section 241.13(i)(3) requires the agency to "afford the [noncitizen] an opportunity to respond to the reasons for revocation *stated in the notification.*" (emphasis added). While Mr. Nguyen's notice stated only that his re-detention was based on "a review of [his] official alien file and review of [his] criminal history," Doc. 1-3 at 2 (Notice of Revocation of Release), the government now asserts, for the first time, that his re-detention was in fact based on changed circumstances – namely a renewed ability to procure Vietnamese travel documents and a procured travel document for Mr. Nguyen. Doc. 11 at 9-12. But Mr. Nguyen's notice said nothing about a renewed ability to obtain Vietnamese

travel documents, nor any steps taken toward obtaining a travel document for him, nor any reason to believe a travel document might soon be obtained for him. *See* Doc. 1-3 at 2. Indeed, the notice said *nothing whatsoever* about "changed circumstances." *See id.* Thus, the revocation notice Mr. Nguyen received, referring only to his "criminal history" and an even more general reference to his "alien file," did not provide him with sufficient information to contest the basis for his re-detention. *See Truong v. Noem*, 25-cv-02597-JES-MMP, Doc. 13 at *7 (S.D. Cal. Oct. 22, 2025) (finding that a notice that contained identical language to Mr. Nguyen's "fail[ed] to provide any, let alone sufficient, notice of the Government's basis for revoking [petitioner's] release); *Bui v. Warden*, 25-cv-2111-JES, Doc. 18 at 7–8 (S.D. Cal. Oct. 23, 2025); *Sarail A. v. Bondi*, --F.Supp.3d--, 2025 WL 2533673, at *5 (D. Minn. Sept. 3, 2025) ("The purpose of the interview . . . is to allow the petitioner to respond to reasons *already* given—without those reasons, the petitioner has no way to know what evidence or information is responsive.") (emphasis in original). Accordingly, the violations regarding Mr. Nguyen's right to a prompt informal interview and his opportunity to meaningfully respond to the basis for revocation stated in his notification are enough to grant the petition.

Third, the government's evidence shows that Mr. Nguyen was not provided with the reasons for his re-detention "upon revocation." 8 C.F.R. § 241.13(i)(3). True, ICE showed Mr. Nguyen a warrant for his arrest upon revocation. Doc. 11-1 at ¶ 6. But the arrest warrant does not satisfy the regulation, because the warrant merely memorializes that the person is being arrested due to a final removal order. *Tran v. Noem*, 25-cv-2391-BTM, Dkt. No. 16 at 5-6 (S.D. Cal. Oct. 10, 2025). It does not explain why release is being revoked, let alone provide notice of the supposed changed circumstances justifying re-detention. *Id.* Rather, Mr. Nguyen received his first revocation notice not "upon revocation," 8 C.F.R. § 241.13(i)(3), but on October 8, 2025, *see* Doc. 11-1 at 2, ¶ 7 – two full weeks after his arrest.

Fourth, the government does not establish that the proper findings necessary to justify revocation of release were made *prior to* Mr. Nguyen's re-detention. Section 241.13(i) permits ICE to "revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). That "regulation require[s] (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023). The United States now argues that circumstances have changed, in that ICE has "revived ability to obtain travel documents from the Vietnamese government and to schedule routine removal flights to Vietnam," and that ERO has now obtained travel documents for Mr. Nguyen. Doc. 11 at 10. But, as discussed above, "changed circumstances" was not the basis for re-detention stated in the notice Mr. Nguyen received. In fact, his notice said nothing whatsoever about changed circumstances.[1] *Compare* Doc. 1-3 at 2 (Mr. Nguyen's Notice of Revocation, stating that revocation was "based on a review of your official alien file and review of your criminal history"); *with Touch v. Noem*, 25-cv-03118-RBM-AHG, Doc. 10-4 (S.D. Cal. Nov. 19, 2025) (Mr. Touch's Notice of Revocation, stating that revocation was "based on a review of your official alien file *and a determination that there are changed circumstances in your case*.") (emphasis added). The government cannot post-hoc rationalize Mr. Nguyen's re-detention by asserting now – for the first time, more than two months after Mr. Nguyen's re-detention – that circumstances have changed. Simply put:

[1] Any discussion of how "a review of [Mr. Nguyen's] alien file and review of [Mr. Nguyen's] criminal history" – the basis for revocation stated in Mr. Nguyen's notice – was a proper basis for re-detaining Mr. Nguyen is noticeably absent from the government's response, and rightfully so: this is blatantly not a permissible basis for revocation under the regulations. *See* 8 C.F.R. § 241.13(i)(2).

"[a]fter-the-fact determinations in an attempt to justify a noncitizen's re-detention cannot cure the Government's blatant procedural errors." *Truong v. Noem*, 25-cv-02597-JES-MMP, Doc. 13 at *7 (S.D. Cal. Oct. 22, 2025)

Indeed, DO Cole's declaration itself highlights the post-hoc nature of the government's attempts to now justify Mr. Nguyen's re-detention based on changed circumstances. The declaration is noticeably silent on any pre-revocation determinations of changed circumstances and talks only about circumstances that may have changed *after* Mr. Nguyen's re-detention. *See* Doc. 11-1 at 2, ¶ 10 ("*Since Petitioner was re-detained*, ERO has worked expeditiously to effectuate Petitioner's removal to Vietnam.") (emphasis added); Doc. 11-1 at 3, ¶ 11 ("*On November 19, 2025*, ERO HQ obtained a travel document for Petitioner from the Vietnamese government.") (emphasis added). The regulations do not permit this sort of post-hoc justification, and the government has not produced "any documented determination, *made prior to Petitioner's arrest*," that individualized changed circumstances warranted Mr. Nguyen's re-detention. *See Rokhfirooz v. Larose*, 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025) (emphasis added). Indeed, the only arguably pre-detention assertion in DO Cole's declaration is that ICE purportedly now "routinely obtains travel documents for Vietnamese citizens, including those who immigrated to the United States before 1995," Doc. 11-1 at 3, ¶ 13 – which says nothing about Mr. Nguyen's individualized circumstances pre-detention, as required. *See Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *1-2 (D. Kan. June 17, 2025) (finding that proposed reason of "an increase in successful repatriations to the People's Republic of China in 2024" was "insufficient"). Because the reason stated for Mr. Nguyen's re-detention in his notice is not permissible under 8 C.F.R. § 241.13(i)(2), Mr. Nguyen's claim succeeds.

Even if the notice Mr. Nguyen received – which said nothing about changed circumstances – were somehow interpreted as encompassing changed

circumstances (which to be clear, it does not), Mr. Nguyen's argument still succeeds. That is because "[s]imply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough." *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). Rather, the Notice must inform a petitioner "*what* circumstances had changed or *why* there was now a significant likelihood of removal" so that the individual may "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.*

The fact that ICE claims to have received a travel document for Mr. Nguyen does not negate this regulatory violation. As noted, other judges in this district have ordered petitioners released due to regulatory violations even *after* ICE obtained a travel document. *See, e.g.*, *Truong v. Noem*, 25-cv-2597-JES-MMP, Dkt. 13 (S.D. Cal. Oct. 22, 2025) (granting habeas because "the Government failed to follow its own regulations" even though ICE had obtained travel document); *Khambounheuang v. Noem*, 25-cv-2575-JO-SBC, Dkt. 17 (S.D. Cal. Oct. 23, 2025) (same); *Ngo v. Noem*, 25-cv-2739-TWR-MMP, Dkt. 11 (S.D. Cal. Oct. 23, 2025) (same); *Sphabmixay v. Noem*, 25-cv-2648-LL (S.D. Cal. Oct. 30, 2025) (same); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Oct. 30, 2025) (same); *Touch v. Noem*, 25-cv-03118-RBM-AHG, Dkt. 14 (S.D. Cal. Nov. 26, 2025).

2. Mr. Nguyen need not show prejudice, but regardless, he can.

Contrary to the government's arguments, these violations entitle Mr. Nguyen to release without a showing of prejudice. "There 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. 2025). Indeed, "[w]hen 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(*l*) 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*). Thus, these regulations fall squarely into the first category requiring no prejudice showing.

But nonetheless, if a showing of prejudice were required, Mr. Nguyen could easily meet it. Had Mr. Nguyen been given a prompt interview after having been adequately advised of the basis for his re-detention, he would have had a very strong argument against re-detention. ICE was fully capable of getting a travel document while Mr. Nguyen remained at liberty. ICE agents could simply have asked Mr. Nguyen to check in whenever they need additional signatures or information from him. And the government does not dispute that Mr. Nguyen had a perfect record of checking in during release. Doc. 1-2 at 2 ¶ 8. On the other hand, detention imposes severe hardships on Mr. Nguyen's family, as he provides

critical caretaking support for his ill sister – caretaking support that became even more crucial after her husband passed away not long before Mr. Nguyen's re-detention. *Id.* at ¶ 16. There is therefore a "plausible scenario[] 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): A reasonable interviewer might well have decided not to detain a model releasee, for whom detention would prove an immense hardship, when detention was totally unnecessary to effectuate ICE's goals.

The government's allegation that a travel document has been obtained for Mr. Nguyen and "expects [his] removal to Vietnam to occur in the reasonably foreseeable future, specifically, no later than December 15, 2025," Doc. 11 at 12, does not change the prejudice inquiry. To the contrary, it strengthens the argument that Mr. Nguyen has suffered prejudice. Mr. Nguyen's wrongful re-detention has deprived him of critical time that he could have had with his family and helping his sister – for whom Mr. Nguyen sets up medical appointments, drives her to medical appointments, and often acts as a translator for her at those appointments – prepare for a future in which she can no longer depend on Mr. Nguyen for this critical daily support.

**B. Count 2: The Court need not reach Count2 Two, but regardless, Mr. Nguyen still succeeds on that claim.**

Should this Court grant the petition or TRO on the basis of Count One and order Mr. Nguyen immediately released, it need not reach Counts Two and Three. But nonetheless, the government claims that Mr. Nguyen cannot succeed on his *Zadvyas* claim because "a little over a month after his re-detention, ERO HQ successfully obtained travel documents for [Mr. Nguyen]" and "has tentatively scheduled a removal flight to occur no later than December 15, 2025," meaning that "Petitioner has failed to meet his burden to establish that 'there is no significant likelihood of removal in the reasonably foreseeable future.'" Doc. 11 at 8. However,

DO Cole's declaration also states that "Petitioner has set forth a claim that he is a United States citizen (USC). ICE is investigating that claim and will not remove petitioner until resolution of that claim." Doc. 11-1 at ¶ 12. The declaration provides no other details as to what investigation is being done or how long that investigation is expected to take. *Id.* As noted, any removal fight is only "tentatively" scheduled. *Id.* at ¶ 11. Given that ICE has seemingly deferred Mr. Nguyen's removal while this investigation remains ongoing, Mr. Nguyen continues to maintain his claim under *Zadvydas*, as "detention 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 v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *6 (W.D.N.Y. Jan. 2, 2019).

**C. Count 3: The third-country removal claim is justiciable.**

Because DHS policy allows for third-country removal with no or minimal notice, Count 3 remains justiciable even though ICE disclaims any current plans to remove Mr. Nguyen to a third country. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 389 n.44 (D. Mass. 2025); *contra* Doc. 11 at 3-4. But because ICE has now taken steps to remove Mr. Nguyen to Vietnam, Mr. Nguyen does not object to deferring ruling on Count 3 unless and until ICE succeeds in removing him there.

**D. Section 1252(g) does not deprive this Court of jurisdiction on any issue in this petition.**

Finally, contrary to the government's arguments, Doc. 11 at 4-5, § 1252(g) does not bar review of "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts "have jurisdiction to decide a purely legal question that does not challenge the

Attorney General's discretionary authority." *Ibarra-Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed," *id.* at *7[2]—the same claim that Mr. Nguyen raises here with respect to third-country removals. The Court reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

The same logic applies to all of Mr. Nguyen's claims, because he challenges only violations of ICE's mandatory duties under statutes, regulations, and the Constitution. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Nguyen's] continued detention and the process required in relation to third country removal." *Y.T.D.*, 2025 WL 2675760, at *5. Many courts agree. *See, e.g.*,

[2] 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. 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).

*Kong*, 62 F.4th at 617 ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing] detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard prior to removal of an alien to a third country").

## II. The remaining TRO factors decidedly favor Mr. Nguyen.

Because this Court intends to resolve the petition without separately evaluating the TRO, this Court need not evaluate the other TRO factors. But if the Court does decide to evaluate irreparable harm and balance of harms/public interest, Mr. Nguyen would 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, the Ninth Circuit has specifically recognized the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Furthermore, "[i]t is beyond dispute that Petitioner would face irreparable harm from removal to a third country." *Nguyen*, 2025 WL 2419288, at *26.

On the balance-of-equities/public-interest prong, the government is correct that there is a "public interest in prompt execution of removal orders." *Nken v. Holder*, 556 U.S. 418, 436 (2009). But it is equally "well-established that 'our

system does not permit agencies to act unlawfully even in pursuit of desirable ends.'" *Nguyen*, 2025 WL 2419288, at *28 (quoting *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021)). It also "would not be equitable or in the public's interest to allow the [government] to violate the requirements of federal law" with respect to detention and re-detention, *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (cleaned up), or to imperil the "public interest in preventing aliens from being wrongfully removed," *Nken*, 556 U.S. 418, 436.

**Conclusion**

For all these reasons, this Court should grant the petition on Counts 1 and 2 and defer ruling on Count 3.

Respectfully submitted,

Dated: December 1, 2025

*s/ Emily R. Child*

Emily R. Child
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Nguyen
Email: Emily_Child@fd.org