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10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 LIEM THAHN LAM,

Case No.: 25-cv-03141-CAB-MSB

13 Petitioner,

14 v.

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

24 Respondents.

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

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1 **I. Introduction**

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

- 3 • A notice of revocation of release provided to Mr. Lam on the date of  
4 his re-detention, alleging that the sole changed circumstance warranting  
5 revocation of his supervision was “a review of your official alien file,” ECF No.  
6 8-2 at 25, Exhibit 8;
- 7 • A declaration from a San Diego deportation officer declaring that:
- 8 ○ 15 years ago, ICE tried but was “unable to obtain a travel  
9 document” for Mr. Lam;
  - 10 ○ ICE first submitted a travel document request to Vietnam  
11 almost a month after it revoked Mr. Lam’s supervision, and  
12 that request remains pending; and
  - 13 ○ ICE removed 324 Vietnamese immigrants who came to the  
14 U.S. before 1995 last fiscal year; ECF No. 8-1, Declaration of  
15 Jason Cole, ¶¶ 6, 11, 12-14.

16 This evidence does not rebut Mr. Lam’s claim that he was re-detained in  
17 violation of his regulatory and due process rights to be notified of “the reasons for  
18 revocation.” § 241.13(i)(2)(iii), 241.13(l)(1). “[A] reason is what makes an action  
19 intelligible, accounted for, or explained”—“the specific facts supporting ICE’s  
20 decision.” *Sarail A. v. Bondi*, \_\_ F. Supp. \_\_, 2025 WL 2533673, \*5–\*6 (D.  
21 Minn. 2025). Nor do they rebut Mr. Lam’s claim that ICE never made a  
22 determination before his re-detention that “there is a significant likelihood that  
23 [he] may be removed in the reasonably foreseeable future,” § 241.13(i)(2), or his  
24 claim that he was not “afford[ed] . . . an opportunity to respond to the reasons for  
25 revocation,” *id.* §§ 241.4(l)(1), 241.13(i)(3).

26 Nor does the government rebut Mr. Lam’s claim that there is not an  
27 individualized, significant likelihood of his removal in the foreseeable future. ICE

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1 tried and failed to obtain a travel document for Mr. Lam 15 years ago. The only  
2 evidence ICE presents now is that it succeeded in obtaining travel documents for  
3 324 pre-1995 Vietnamese immigrants—without information as to how many  
4 requests ICE made for pre-1995 immigrants, how long it took to receive those  
5 travel documents, or whether those immigrants had previously been denied travel  
6 documents.

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

14 This Court should grant Mr. Lam’s petition, or, in the alternative, grant his  
15 motion for temporary relief in full.

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

17 **A. Mr. Lam’s third-country removal challenge is not moot.**

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

21 “There, so to speak, lies the rub.” *D.V.D. v. U.S. Dep’t of Homeland Sec.*,  
22 778 F. Supp. 3d 355, 389 n.44 (D. Mass. 2025). “[A]ccording to [Respondents],  
23 an individual must await notice of removal before his claim is ripe[.]” *Id.* But  
24 under ICE’s policy, “there is no notice” for certain removals, and between 6 and  
25 24 hours’ notice for all others. *Id.* If Mr. Lam “is removed” before he can raise his  
26 third-country removal challenges, Respondents will then argue that “there is no  
27 jurisdiction” to bring him back to the United States. *Id.*

28 This Court need not adopt that Kafkaesque view. The government has not

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

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

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

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

1 “On balance,” then, “there is a sufficiently imminent risk that [Mr. Lam]  
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 Tran v. Noem*, 2025 WL 2770623 at \*3; *Nguyen Tran v. Noem*, No. 25-  
6 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) (all ordering  
8 the government to not remove petitioners to third countries). The issue is not  
9 moot.

10 **B. Mr. Lam’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.”<sup>4</sup> *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  
24

25 \_\_\_\_\_  
26 <sup>4</sup> 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. Lam 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. Lam’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. Lam’s] continued detention and  
13 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. Lam 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. Lam’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. Lam did not receive notice of the reasons for his  
13 revocation or have an opportunity to contest those reasons.

14 The government does not claim to have fully complied with 8 C.F.R.  
15 §§ 241.4 and 241.13. *See* ECF No. 8 at 11–14. For Mr. Lam, those regulations  
16 permit his re-detention only if ICE: (1) “determines that there is a significant  
17 likelihood that the alien may be removed in the reasonably foreseeable future,”  
18 § 241.13(i)(2); (2) makes that finding “on account of changed circumstances,” *id.*;  
19 (3) “upon revocation,” “notifie[s]” the noncitizen “of the reasons for revocation of  
20 his or her release,” § 241.13(i)(2)(iii), 241.4(l)(1); and (4) “affords the [person] an  
21 opportunity to respond to the reasons for revocation,” *id.*

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

24 First, the evidence before this Court indicates ICE did not determine that  
25 there were “changed circumstances” such that, unlike in 2010, there is now “a  
26 significant likelihood that [Mr. Lam] may be removed in the reasonably  
27 foreseeable future.” § 241.13(i)(2). ICE’s internal record for Mr. Lam, its I-213,  
28 incorrectly indicates that Mr. Lam is an “ALIEN PRESENT WIHTOUT  
ADMISSION OR PAROLE.” ECF No. 8-2 at 4, Exhibit 1. But as noted by DO

1 Cole in his declaration, Mr. Lam was admitted as a refugee and received lawful  
2 permanent status. ECF No. 8-1, Cole Dec. at ¶ 3. The warrants for his arrest on  
3 the day of his re-detention find only that “there is probable cause to believe that  
4 Lam, Liem is removable from the United States.” ECF No. 8-2 at 18, Exhibit 5;  
5 *accord* Exhibit 6 (noting Mr. Lam is “subject to removal/deportation”). Indeed,  
6 ICE did not even begin the process of requesting travel documents from Vietnam  
7 for Mr. Lam until almost a month after it re-detained him. ECF No. 8-1, Cole  
8 Dec., ¶ 11.

9 Next, upon Mr. Lam’s revocation, ICE did not notify him of “the reasons  
10 for revocation of his . . . release.” § 241.13(i)(2)(iii); § 241.4(I)(1). The notice he  
11 received informed him only that “your order of supervision has been revoked . . .  
12 based on a review of your official alien file and a determination that there are  
13 changed circumstances in your case.” ECF No. 8-2 at 25, Exhibit 8.

14 As Judge Montenegro recently explained as to an identically worded  
15 written revocation notification, “ICE’s conclusory explanations for revoking  
16 Petitioner’s release ‘did not offer him adequate notice of the basis for the  
17 revocation decision such that he could meaningfully respond at the post-detention  
18 informal interview.’” *Rasakhamdee v. Noem*, No.25-cv-2816-RBM-DEB, 2025  
19 WL 3102037, \*4 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No. 25-cv-  
20 1079-JLT-EPG, 2025 WL 2581575, \*8 (E.D. Cal. Sept. 5, 2025)); *accord Quoc*  
21 *Anh Nguyen v. Noem*, No. 25-cv-2792-LL-VET, 2025 WL 3101979, \*2 (S.D. Cal.  
22 Nov. 6, 2025) (holding that a similarly “bare-bones explanation does not contain  
23 reasons for the revocation of Petitioner’s release” as to a pre-1995 Vietnamese  
24 immigrant). “Simply to say that circumstances had changed . . . is not enough.  
25 Petitioner must be told *what* circumstances had changed or *why* there was now a  
26 significant likelihood of removal in order to meaningfully respond to the reasons  
27 and submit evidence in opposition, as allowed under § 241.13(i)(3).” *Sarail A.*, \_\_\_  
28 F. Supp. 3d \_\_\_, 2025 WL 2533673 at \*10 (emphasis in original).

1 Finally, ICE did not “afford[] [Mr. Lam] an opportunity to respond to the  
2 reasons for revocation.” 8 C.F.R. §§ 241.13(i)(3); 241.4(l)(1). The government  
3 does not argue that an informal interview occurred. ECF No. 8 at 13-14. But even  
4 if an informal interview was given here, “Petitioner could not have responded to  
5 the reasons for revocation, because they were not given.” *Sarail A.*, \_\_\_ F. Supp.  
6 3d \_\_\_, 2025 WL 2533673 at \*10. In fact, it appears that, even if ICE had afforded  
7 Mr. Lam an opportunity to respond, it would not have “evaluat[ed] . . . any  
8 contested facts relevant to the revocation” regarding the likelihood he may be  
9 removed and “determine[ed] whether the facts as determined warrant revocation  
10 and further denial of release.” 8 C.F.R. § 241.13(i)(3).

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

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

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

28 First, Mr. Lam need not show prejudice from these regulatory claims.

1 “[T]he ‘norm’ when ICE fails to conduct an ‘informal interview promptly’ is that  
2 ‘courts across the country have ordered the release of individuals stemming from  
3 ICE’s illegal detention.” *Soryadvongsa*, 2025 WL 3125821 at \*3 (quoting *KEO v.*  
4 *Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, \*6–\*7 (W.D. Ky. Sept. 4,  
5 2025)). As Judge Schopler recently reasoned, “Especially in the context of civil  
6 detentions—when constitutional safeguards are at their zenith—this Court is  
7 unwilling to import such a prejudice analysis into regulations or binding caselaw  
8 that don’t mention it.” *Id.*

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

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

25 And Mr. Lam could “present plausible scenarios in which the outcome of  
26 the proceedings would have been different if a more elaborate process were  
27 provided.” *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007)  
28 (cleaned up). He would have had a very strong argument against re-detention had

1 ICE given him notice and an opportunity to respond. Importantly, ICE is fully  
2 capable of trying to get a travel document while Mr. Lam remained at liberty.  
3 Mr. Lam has complied with ICE’s requests for more information while he  
4 remained at liberty for the last 15 years. ECF No. 1, Exhibit A ¶¶ 5; *accord* ECF  
5 No. 8-1, Exhibit 1 (noting no issues since his release on an order of supervision in  
6 2010). Detaining him is therefore unnecessary. Mr. Lam deserved a chance to  
7 make that case upon his re-detention. Because ICE did not make any of the proper  
8 findings, let alone give Mr. Lam timely notice and a chance to contest them, he  
9 must be released.

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

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

23 “When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it  
24 explained that the regulation was intended to provide aliens procedural due  
25 process, stating that § 241.4 ‘has the procedural mechanisms that . . . courts have  
26 sustained against due process challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d  
27 626, 641 (D. Mass. 2018) (quoting *Detention of Aliens Ordered Removed*, 65 FR  
28 80281-01). And “[s]ection 241.13(i) includes provisions modeled on § 241.4(1)

1 to govern determinations to take an alien back into custody,” Continued Detention  
2 of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it  
3 addresses the same due process concerns as 241.4(I). “The procedures in § 241.4”  
4 and § 241.13 therefore “are not meant merely to facilitate internal agency  
5 housekeeping, but rather afford important and imperative procedural safeguards to  
6 detainees.” *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R.  
7 §§ 241.4, 241.13 are “intended to provide due process to individuals in  
8 [Mr. Lam’s] position,” *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC,  
9 2025 WL 2444087, \*6 (D. Md. Aug. 25, 2025), they are enforceable.

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

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

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

- 21 1. The six-month grace period passed in October 2010, and  
22 Mr. Lam provided good reason to believe his individual  
23 removal is not likely in the foreseeable future in light of ICE  
24 being unable to remove him in 2010 and unable to remove  
25 most pre-1995 Vietnamese immigrants under the still-effective  
26 2020 MOU.

25 The government argues in a sentence that the six-month *Zadvydas* grace  
26 period, in which Mr. Lam’s detention is presumptively reasonable, is still  
27 ongoing. ECF No. 8 at 8. It notes that Mr. Lam was held in ICE custody for just  
28 over three months before he was released in 2010 because ICE could not obtain

1 travel documents for him, and that he has re-detained for just under two more  
2 month so far this year. *Id.*; see ECF No. 8-1, Exhibit 1 at 2.

3 The grace period expired six months after Mr. Lam’s order of removal was  
4 issued, in October 2010. The *Zadvydas* grace period is linked to the date the final  
5 order of removal is issued. It lasts for “six months after a final order of removal—  
6 that is, three months after the statutory removal period has ended.” *Kim Ho Ma v.*  
7 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Indeed, the statute defining the  
8 beginning of the removal period is linked to the latest of three dates, all of which  
9 relevant here are tied to when the removal order is issued—not when the  
10 noncitizen has been detained for a cumulative total of six months. 8 U.S.C.  
11 § 1231(a)(1)(B).<sup>5</sup> “[T]he removal period does not restart simply because an alien  
12 who has previously been released is taken back into custody.” *Bailey v. Lynch*,  
13 No. 16-2600(JLL), 2016 WL 5791407, \*2 (D.N.J. Oct. 3, 2016).

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

19 In so doing, the government ignores the three good reasons Mr. Lam  
20 provided in his petition: (1) ICE was unable to remove him in 2010, and thus  
21 released him; (2) ICE has remained unable to remove him for the last 15 years,  
22 including during the last five years under the operative memorandum of  
23 understanding between the United States and Vietnam governing pre-1995  
24 Vietnamese arrivals, the 2020 MOU; and (3) ICE itself admitted in later stages of

25  
26 <sup>5</sup> Those dates are, specifically, (1) “[t]he date the order of removal becomes  
27 administratively final;” (2) “[i]f the removal order is judicially reviewed and if a  
28 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.*

1 the *Trinh* litigation that, “generally,” “pre-1995 Vietnamese immigrants’ . . . are  
2 not likely to be removed in the reasonably foreseeable future.” *Trinh v. Homan*,  
3 No. 18-cv-316-CJC-GJS, Dkt. No. 161 at 3 (C.D. Cal. Oct. 7, 2021) (establishing  
4 ICE policy for pre-1995 Vietnamese immigrants in a stipulated dismissal).

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

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

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

14 Deportation Officer Cole notes that ICE removed 324 Vietnamese  
15 immigrants who came to the U.S. before 1995. *Id.* ¶ 14. He does not mention how  
16 many more such immigrants are currently in the United States but have been  
17 unable to be deported. *Id.* For example, “[i]f DHS submitted 350 requests and  
18 Vietnam issued travel documents for 328 individuals’ then removal [would be]  
19 significantly likely,” but “if DHS submitted 3,500 requests and only 328  
20 individuals received travel documents,” then ‘Respondents would not be able to  
21 meet their burden.’ *Hoac v. Becerra*, No. 25-cv-1740-DC-JDP, 2025 WL  
22 1993771, \*5 (E.D. Cal. July 16, 2025) (quoting *Nguyen v. Hyde*, 788 F. Supp. 3d  
23 144, 151 (D. Mass. 2025)). Officer Cole also does not “clarify whether travel  
24 documents *issued* in FY2025 were also *requested* in FY 2025, or if they include  
25 requests made in previous fiscal years.” *Nguyen v. Scott*, \_\_ F. Supp. 3d \_\_, 2025  
26 WL 2419288, \*17 (W.D. Wash. 2025) (emphasis in original).

27 Regardless, courts have “demanded an individualized analysis” of why *this*  
28 person—Mr. Lam—will likely be removed. *Id.* Because “[t]he government has

1 not provided any evidence of [Vietnam’s] eligibility criteria or why it believes  
2 Petitioner now meets it,” and because the only individualized evidence indicates  
3 Vietnam has previously declined to provide travel documents to Mr. Lam, ECF  
4 No. 8-1, Cole Declaration ¶ 6, the government’s evidence is insufficient. *Nguyen*,  
5 2025 WL 2419288 at \*18.

6       Importantly, good faith efforts to secure a travel document do not  
7 themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a “Fifth  
8 Circuit h[olding] [that] [the petitioner’s] continued detention [was] lawful as long  
9 as good faith efforts to effectuate deportation continue and [the petitioner] failed  
10 to show that deportation will prove impossible.” 533 U.S. at 702 (cleaned up).  
11 The Supreme Court reversed, finding that the Fifth Circuit’s good-faith-efforts  
12 standard “demand[ed] more than our reading of the statute can bear.” *Id.*

13       Thus, “under *Zadvydas*, the reasonableness of Petitioner’s detention does  
14 not turn on the degree of the government’s good faith efforts. Indeed, the  
15 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of  
16 Petitioner’s detention turns on whether and to what extent the government’s  
17 efforts are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019  
18 WL 78984, at \*5 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is  
19 required to demonstrate the likelihood of not only the *existence* of untapped  
20 possibilities, but also of a probability of success in such possibilities.” *Elashi v.*  
21 *Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010).

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

28



1 that a third-country removal challenge is not relevant because ICE professes no  
2 current plans to remove Mr. Lam to a third country. As Mr. Lam explained earlier  
3 and in his habeas petition, that does not moot his claim: The extremely fast turn-  
4 around of ICE’s current third-country removal policy, of 0-to-24-hours’ notice of  
5 ICE’s change of plans to pursue a third-country removal before the removal itself,  
6 could realistically happen for him. *See supra* section II.A; ECF No. 1, Exhibit B.

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

13 **IV. The remaining TRO factors decidedly favor Mr. Lam.**

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

17 On the irreparable harm prong, “[i]t is well established that the deprivation  
18 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres*  
19 *v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government’s  
20 arguments,<sup>6</sup> the Ninth Circuit has specifically recognized the “irreparable harms

21 \_\_\_\_\_  
22 <sup>6</sup> The government cites three cases to support the position that illegal immigration  
23 detention is not irreparable harm. ECF No. 8 at 15. All involved immigrants who  
24 were actively appealing to the BIA, but wanted a federal court to intervene before  
25 the appeal was done. *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at \*1  
26 (W.D. Wash. Feb. 19, 2021); *Cortez v. Nielsen*, 2019 WL 1508458 (N.D. Cal.  
27 Apr. 5, 2019); *Resendiz v. Holder*, 2012 WL 5451162. These courts indicated  
28 only that post-bond-hearing detention pending an ordinary BIA appeal, in which  
administrative exhaustion was available to the petitioner and being pursued, was  
not irreparable harm. *Id.* The government also cites one case for this proposition  
in which the court did grant a temporary restraining order ordering an  
immigration judge to reconsider a request for a bond hearing. *See Lopez Reyes v.*  
*Bonnar*, No. 18-cv-07429, 2018 WL 7474861, \*10–11 (N.D. Cal. Dec. 24, 2018).

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

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

## 22 **V. Conclusion**

23 For all these reasons, this Court should grant the petition or enter a  
24 temporary restraining order and injunction. In either case, the Court should  
25 (1) order Mr. Lam’s immediate release; (2) prohibit Respondents from re-  
26 detaining Mr. Lam unless and until Respondents obtain a travel document;  
27 without following all regulatory procedures; (3) prohibit Respondents from re-  
28 detaining Mr. Lam without first following all regulatory procedures; and

1 (4) prohibit Respondents from removing Mr. Lam to a third country without  
2 following the process laid out in his prayer for relief.

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Respectfully submitted,

Dated: November 24, 2025

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