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

12  
13 **DUC VAN PHAM,**  
14 **Petitioner,**

15 **v.**

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

21 **Respondents.**

Civil Case No.: **'25CV3373 BTM MMP**

**Petition for Writ**  
**of**  
**Habeas Corpus**

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

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23  
24  
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26  
27 <sup>1</sup> Federal Defenders of San Diego, Inc., is filing the instant petition with provisional  
28 appointment under Chief Judge Order No. 134. Mr. Pham's financial eligibility for  
representation is included in a sworn statement attached to this petition.

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1 **I. Introduction**

2 Mr. Pham is Amerasian. He was born in Vietnam in 1971 to a Vietnamese  
3 woman who was impregnated by an American soldier. As such, Mr. Pham faced  
4 significant discrimination. His mother abandoned him, and he was raised instead  
5 by his grandparents. In school, he was bullied, taunted and assaulted. His  
6 grandparents were ridiculed, encouraged to abandon him, and when they did not,  
7 they were accused of supporting the American war effort.

8 At 18 years of age, Mr. Pham's grandfather encouraged him to leave  
9 Vietnam, as his life would be in danger if he remained. Mr. Pham took his  
10 grandfather's advice and left Vietnam in 1990. He spent eight months in the  
11 Philippines, waiting for a visa. In 1991, he entered the U.S. as an Amerasian  
12 immigrant. He became a lawful permanent resident and held such status until  
13 October 27, 2010. While in the U.S., Mr. Pham married and fathered two U.S.  
14 citizen children. He also has a 6-year-old U.S. citizen granddaughter. Although he  
15 is now divorced, his ex-wife is a naturalized U.S. citizen.

16 On October 27, 2010, Mr. Pham was ordered removed. But Vietnam would  
17 not accept him, in line with its general policy of not accepting pre-1995 immigrants  
18 for deportation. After he spent about three months in ICE custody, Mr. Pham was  
19 released on an order of supervision. Since his release, Mr. Pham has not sustained  
20 any new criminal convictions.

21 Around October 10, 2025, ICE detained Mr. Pham outside his ex-wife's  
22 residence. After taking him to a detention center, ICE gave him a piece of paper in  
23 English, a language he does not speak well, with no translation into Vietnamese.  
24 Contrary to regulation, that paper did not notify Mr. Pham of the specific "reasons"  
25 for his re-detention that made his removal more likely, 8 C.F.R. § 241.13(i)(3)—  
26 like it receiving news from Vietnam that it would now accept Mr. Pham, despite  
27 not accepting him for all these decades. Nor has it given Mr. Pham a "prompt[]"  
28 "informal interview," or any other opportunity to contest his re-detention, in any

1 language. 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1). He has now been detained almost  
2 two months, with no information about whether ICE has sought a travel document  
3 or even begun the process of seeking his deportation to Vietnam. Worse yet, on  
4 July 9, 2025, ICE adopted a new policy permitting removals to third countries with  
5 no notice, six hours' notice, or 24 hours' notice depending on the circumstances,  
6 providing no meaningful opportunity to make a fear-based claim against removal.  
7 The Notice of Revocation of Release states that Mr. Pham was granted withholding  
8 of removal to Vietnam, but his case is "under current review for removal to an  
9 alternate country." *See* Exhibit B.

10 Mr. Pham's unnecessary re-detention violates his statutory and regulatory  
11 rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. Courts  
12 in this district have agreed in similar circumstances. Specifically:

13 (1) *Regulatory and due process claim*: Mr. Pham must be released because  
14 ICE's failure to follow its own regulations—about timely notifying noncitizens of  
15 the reasons for their re-detention, about promptly providing a meaningful  
16 opportunity to be heard following re-detention, and about the limited reasons ICE  
17 can invoke to re-detain someone—repeatedly violated due process. *See, e.g.*,  
18 *Nguyen v. Noem*, No. 25-cv-2791-BAS, ECF No. 12 (S.D. Cal. Nov. 7, 2025);  
19 *Nguyen v. Noem*, No. 25-cv-2792-LL, ECF No. 10 (S.D. Cal. Nov. 6, 2025);  
20 *Ghafouri v. Noem*, 25-cv-2675-RBM, ECF No. 11 (S.D. Cal. Nov. 4, 2025); *Tran*  
21 *v. Noem*, No. 25-cv-2391-BTM, 2025 WL 3005347 (S.D. Cal. Oct. 27, 2025); *Bui*  
22 *v. Warden*, No. 25-cv-2111-JES, ECF No. 18 (S.D. Cal. Oct. 23, 2025);  
23 *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal.  
24 Oct. 9, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal.  
25 Sept. 30, 2025); *Rokhfirooz v. Larose*, \_\_ F. Supp. 3d \_\_, 2025 WL 2646165 (S.D.  
26 Cal. Sept. 15, 2025) (granting temporary restraining orders releasing noncitizens,  
27 or granting habeas petitions, due to ICE regulatory violations during recent re-

28

1 detentions of released noncitizens previously ordered removed under 8 C.F.R. §§  
2 241.13(i), 241.4(l)).

3 (2) *Zadvydas claim*: Mr. Pham must also be released under *Zadvydas*  
4 because—having proved unable to remove him for the last fifteen years—the  
5 government cannot show that there is a “significant likelihood of removal in the  
6 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. *See, e.g., Phan v.*  
7 *Warden of Otay Mesa Detention Facility*, No. 25-cv-2369-AJB, 2025 WL 3141205  
8 (S.D. Cal. Nov. 10, 2025); *Gharakhan v. Noem*, No. 25-cv-2879-DMS, ECF No.  
9 11 (S.D. Cal. Nov. 5, 2025); *Ho v. Noem*, No. 25-cv-2453-BAS, ECF No. 11 (S.D.  
10 Cal. Oct. 20, 2025); *Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS  
11 (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13  
12 (S.D. Cal. Sept. 25, 2025) (granting habeas petitions or TROs releasing noncitizens  
13 under *Zadvydas*).

14 (3) *Third-country removal statutory and due process violations*: This Court  
15 should enjoin ICE from removing Mr. Pham to a third country without providing  
16 an opportunity to assert fear of persecution or torture before an immigration judge.  
17 *See, e.g., Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v.*  
18 *Noem*, 2025 WL 2770623 at \*3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF  
19 No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No.  
20 25-cv-2502-JES, \*4 (S.D. Cal. Oct. 9, 2025) (all either granting temporary  
21 restraining orders or habeas petitions ordering the government to not remove  
22 petitioners to third countries pending litigation or reopening of their immigration  
23 cases).

## 24 II. Statement of Facts

### 25 A. Mr. Pham is ordered removed, held in ICE custody, and released 26 as ICE proves unable to deport him for the next fifteen years.

27 In 1990, Duc Van Pham left Vietnam. Declaration of Duc Van Pham, Exhibit  
28 A ¶ 4. He traveled to the United States in 1991, and obtained lawful permanent

1 resident status shortly thereafter. *Id.* Mr. Pham was ordered removed to Vietnam  
2 on October 27, 2010. *Id.* ¶ 6.<sup>2</sup> ICE held him for about three months but was unable  
3 to deport him. *See* Exhibit. A. He was eventually released. *Id.*

4 Around October 10, 2025, Mr. Pham was arrested by ICE agents outside his  
5 ex-wife's home and brought to the Otay Mesa Detention Center, where he remains.  
6 *Id.* at ¶¶ 7-9. He explains:

7 I saw two ICE officers get out of a van. They approached  
8 me and handcuffed me. They asked, "Are you Duc  
9 Pham?" I said yes and then they put me in the van ... They  
did not tell me why they were detaining me.

10 Nobody talked to me until I got to the Otay Mesa  
11 Detention Center. After I arrived at the detention center  
12 an officer spoke to me in English. I don't speak English  
13 very well and couldn't understand everything. They said  
14 something, but I didn't understand. I told them I don't  
15 understand English very much and I need a Vietnamese  
16 interpreter. They did not provide a Vietnamese  
interpreter. They told me to sign papers. I don't know  
what I signed. The only paperwork they gave me was a  
property receipt for my car key, clothes and wallet. They  
gave me one other paper, but I could not read or  
understand it because it was in English. The officer did  
not translate the form for me.

17 I have not been interviewed by an ICE officer since being  
18 given the paper. As of today, no one has given me notice  
19 of why I was re-detained. No one has given me a chance  
to fight my re-detention. No one has told me what  
changed to make it more likely that I can be deported to  
Vietnam.

20 Exhibit. A at ¶¶ 7-9.

21 The paper Mr. Pham received is entitled "Notice of Revocation of Release."  
22 The notice explains, "This letter is to inform you that your order of supervision has  
23 been revoked, and you will be detained in the custody of U.S. Immigration and  
24 Customs Enforcement (ICE) at this time. This decision has been made based on a  
25 review of your official alien file and a determination that there are changed  
26

27 \_\_\_\_\_  
28 <sup>2</sup> EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/> (searching  
with Mr. Pham's A-number )

1 circumstances in your case.” Exhibit B. It provides no further information as to  
2 what, exactly, changed in Mr. Pham’s case. It then states—wrongly—that  
3 Mr. Pham was “granted a withholding of removal to Vietnam.” *Id.* It warns, “Your  
4 case is under current review for removal to an alternate country.” *Id.*

5 **B. Vietnam has a longstanding policy of not accepting Vietnamese**  
6 **immigrants who entered before 1995, including under the still-**  
7 **operative memorandum of understanding it has with the U.S.**

8 There is a reason why ICE has proved unable to remove Mr. Pham for the  
9 last fifteen years: Vietnam has a longstanding general policy of not accepting pre-  
10 1995 Vietnamese immigrants for deportation. In 2008, Vietnam and the United  
11 States signed a repatriation treaty under which Vietnam agreed to consider  
12 accepting certain Vietnamese immigrants for deportation. *See Trinh v. Homan*, 466  
13 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-1995  
14 Vietnamese immigrants, providing, “Vietnamese citizens are not subject to return  
15 to Vietnam under this Agreement if they arrived in the United States before July  
16 12, 1995.” Agreement Between the United States of America and Vietnam, at 2  
(Jan. 22, 2008).<sup>3</sup>

17 Despite that limit, the first Trump administration detained Vietnamese  
18 immigrants and held them for months, while the administration tried to pressure  
19 Vietnam to take them. *See Trinh*, 466 F. Supp. 3d at 1083–84. That possibility did  
20 not materialize. “In total, between 2017 and 2019, ICE requested travel documents  
21 for pre-1995 Vietnamese immigrants 251 times. Vietnam granted those requests  
22 only 18 times, in just over seven percent of cases.” *Id.* at 1084. The administration  
23 was forced to release many of these detainees in 2018. *See id.*

24 Eventually, in 2020, the administration secured a Memorandum of  
25 Understanding (“MOU”) with Vietnam, which created a process through which the  
26

27 \_\_\_\_\_  
28 <sup>3</sup><https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>

1 Vietnamese government could consider some pre-1995 Vietnamese immigrants for  
2 removal.<sup>4</sup> The MOU limited consideration to persons meeting certain criteria, but  
3 many these criteria have been shielded from public view. *See Nguyen v. Scott*, No.  
4 2:25-CV-01398, 2025 WL 2419288, at \*14 (W.D. Wash. Aug. 21, 2025). When an  
5 immigrant does qualify, the MOU provides only that Vietnam has “discretion  
6 whether to issue a travel document,” which it exercises “on a case-by-case basis.”  
7 *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*5 (E.D.  
8 Cal. July 16, 2025).

9 Even after signing the MOU, Vietnam overwhelmingly declined to timely  
10 issue travel documents for pre-1995 immigrants. By October 2021, ICE had  
11 adopted a “policy of generally finding that ‘pre-1995 Vietnamese  
12 immigrants’ . . . are not likely to be removed in the reasonably foreseeable future.”  
13 Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-316-CJC-  
14 GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).<sup>5</sup> That admission aligned with two years’  
15 worth of quarterly reports that ICE agreed to submit as part of a class action  
16 settlement. Those quarterly reports showed that between September 2021 and  
17 September 2023, only four immigrants who came to the U.S. before 1995 were  
18 given travel documents and deported. Asian Law Caucus, *Resources on*  
19 *Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul. 15,  
20 2025) (providing links to all quarterly reports).<sup>6</sup> During the same period, ICE made  
21 14 requests for travel documents that, as of 2023, had not been granted, including  
22

23 \_\_\_\_\_  
24 <sup>4</sup>[https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-  
b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf](https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf)

25 s  
26 [https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613  
d7372c1bb197e/1636735461479/Trinh+-  
+Doc+161+Order+Granting+Stip+Dismissal.pdf](https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf).

27  
28 <sup>6</sup> <https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports>

1 requests made months or years before the September 2023 cutoff. *See id.* (proposed  
2 counsel’s count based on quarterly reports).

3 On June 9, 2025, the Trump administration rescinded ICE’s policy of  
4 generally finding that pre-1995 Vietnamese immigrants were not likely to be  
5 removed in the reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-  
6 01398, 2025 WL 2419288, at \*7 (W.D. Wash. Aug. 21, 2025).

7 Since then, many courts have still found that facts on the ground have not  
8 changed enough to show that any individual pre-1995 Vietnamese immigrant will  
9 be timely removed to Vietnam. *See, e.g., Phan*, 2025 WL 3141205 at \*4–\*5; *Thanh*  
10 *Nguyen v. Noem*, No. 25-cv-2760-TWR, ECF No. 12 (S.D. Cal. Oct. 23, 2025); *Vo*  
11 *v. Noem*, No. 25-cv-3031-JO, ECF No. 14 (S.D. Cal. Nov. 19, 2025); *see also*  
12 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at \*17 (W.D. Wash. Aug.  
13 21, 2025); *Hoac*, 2025 WL 1993771, at \*4; *Nguyen v. Hyde*, No. 25-CV-11470-  
14 MJJ, 2025 WL 1725791, at \*5 (D. Mass. June 20, 2025).

### 15 **III. This Court has jurisdiction.**

16 This Court has jurisdiction to consider Mr. Pham’s claims of unlawful  
17 detention and unlawful third-country removal under 28 U.S.C. § 2241.

18 The government’s recent argument otherwise, that 8 U.S.C. § 1252(g) strips  
19 this Court of jurisdiction, “has been repeatedly ‘rejected as implausible’ by the  
20 Supreme Court.” *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS, 2025 WL 316821,  
21 \*1 (S.D. Cal. Nov. 8, 2025) (quoting *Department of Homeland Sec. v. Regents of*  
22 *the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). The government’s argument “would  
23 eliminate judicial review of immigration [detainees’] claims of unlawful detention  
24 . . . inconsistent with *Jennings v. Rodriguez* and the history of judicial review of the  
25 detention of noncitizens under 28 U.S.C. § 2241.” *Phan v. Noem*, No. 25-cv-2422-  
26 RBM, 2025 WL 2898977, \*3 (S.D. Cal. Oct. 10, 2025) (collecting cases agreeing  
27 on this jurisdictional point).

28

1 **IV. Claim 1: ICE failed to comply with its own regulations before re-**  
2 **detaining Mr. Pham, violating his rights under applicable regulations**  
3 **and due process.**

4 ICE is required to follow its own due-process-implementing regulations  
5 under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). See  
6 *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (“The legal proposition that  
7 agencies may be required to abide by certain internal policies is well-established.”).  
8 A court may review a re-detention decision for compliance with the regulations,  
9 and “where ICE fails to follow its own regulations in revoking release, the detention  
10 is unlawful and the petitioner’s release must be ordered.” *Rokhfirooz v. Larose*, \_\_  
11 F. Supp. \_\_, 2025 WL 2646165, \*4 (S.D. Cal. Sept. 15, 2025); accord *Reyes v.*  
12 *Larose*, No. 25-cv-2959-JLS, 2025 WL 3204733 at \*2 (S.D. Cal. Nov. 17, 2025)  
(collecting cases).

13 Two regulations establish the process due to someone who is re-detained in  
14 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to  
15 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping  
16 framework to persons released upon good reason to believe that they will not be  
17 removed in the reasonably foreseeable future, as Mr. Pham was. See *Duong v.*  
18 *Charles*, No. 25-cv-1375-SKO, 2025 WL 3187313 (E.D. Cal. Nov. 14, 2025)  
19 (explaining this regulatory framework and granting a habeas petition for ICE’s  
20 failure to follow these regulations for a refugee of Vietnam who entered the United  
21 States before 1995); *Nguyen v. Noem*, No. 25-cv-2792-LL-VET, 2025 WL 3101979  
22 (S.D. Cal. Nov. 6, 2025) (same); *Phan v. Noem*, 2025 WL 2898977, No. 25-CV-  
23 2422-RBM-MSB, \*3–\*5 (S.D. Cal. Oct. 10, 2025) (same).

24 These regulations establish important substantive limitations before a  
25 noncitizen’s re-detention. Officials are allowed to “return [the person] to custody”  
26 only when the person “violate[d] any of the conditions of release,” 8 C.F.R.  
27 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official  
28 “determines that there is a significant likelihood that the alien may be removed in

1 the reasonably foreseeable future,” and makes that finding “on account of changed  
2 circumstances,” § 241.13(i)(2). Section “241.13(i)(2) requires that this  
3 determination is made before the removable alien has had his release revoked.”  
4 *Nugyen*, 2025 WL 3101979 at \*2 (quoting *Tran v. Noem*, No. 25-cv-2391-BTM-  
5 BLM, 2025 WL 3005347, \*2 (S.D. Cal. Oct. 27, 2025)).

6 No matter the reason for re-detention, the re-detained person is also entitled  
7 to certain procedural protections during and after re-detention.

8 First, “[u]pon revocation,’ the noncitizen ‘will be notified of the reasons for  
9 revocation of his or her release or parole.’” *Phan*, 2025 WL 2898977 at \*3, \*4  
10 (quoting §§ 241.4(l)(1), 241.13(i)(3)). A noncitizen must receive “adequate notice  
11 of the basis for the revocation decision such that he c[an] meaningfully respond at  
12 the post-detention informal interview.” *Rasakhamdee v. Noem*, No. 25-cv-2817-  
13 RBM, ECF No. 10 at 7 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No. 25-  
14 cv-1079-JLT, 2025 WL 2581575, \*8 (E.D. Cal. Sept. 5, 2025)).

15 Second, the person “‘will be afforded an initial informal interview promptly  
16 after his or her return’ to be given ‘an opportunity to respond to the reasons for  
17 revocation stated in the notification.’” 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1).  
18 “[P]romptly,” commonly understood, “means ‘[q]uickly; without delay’ or ‘[a]s  
19 soon as practicable.’” *Soryadvongsa*, 2025 WL 3126821 at \*3 (quoting *Promptly*,  
20 Black’s Law Dictionary (12th ed. 2024)). “The chance to advocate for release must  
21 ordinarily come within days of a criminal arrest. Surely, it must happen at least that  
22 quickly in the more constitutionally protected civil-arrest arena, too.” *Id.*

23 Third, in the case of someone released under § 241.13(i), the regulations also  
24 explicitly require the interviewer to allow the re-detained person to “submit any  
25 evidence or information that he or she believes shows there is no significant  
26 likelihood he or she be removed in the reasonably foreseeable future, or that he or  
27 she has not violated the order of supervision.” § 241.13(i)(3).

28 ICE followed none of its substantive or procedural regulatory prerequisites

1 to re-detention or continued detention here.

2 First, ICE did not make an individualized, pre-arrest determination that, “on  
3 account of changed circumstances,” there is “a significant likelihood that [Mr.  
4 Pham] may be removed in the reasonably foreseeable future,” § 241.13(i)(2). To  
5 the contrary, it is apparent that agents did not know the basic facts of Mr. Pham’s  
6 case when arresting him, as his revocation notice wrongly states that he received  
7 withholding of removal. Exhibit B. Nor is there, in fact, any individualized reason  
8 to think that, having been unable to remove Mr. Pham for the last fifteen years, ICE  
9 is likely to do so in the foreseeable future.

10 Second, ICE did not notify Mr. Pham of the “reasons” for his re-detention  
11 “upon revocation” of release. *See* 8 C.F.R. §§ 241.13(i)(3); 241.4(l). He was re-  
12 detained around October 10, 2025. Exhibit A ¶ 7. ICE gave him a paper in English,  
13 but he is a Vietnamese speaker who does not speak English very well. *Id.* They told  
14 him to sign the papers, but he could not understand them and does not know what  
15 he signed. *Id.* ¶ 8.

16 Regardless, even if Mr. Pham did know English, the information provided in  
17 ICE’s “Notice of Revocation of Release” was not sufficient to explain why his  
18 detention was being revoked under ICE’s own regulations. Exhibit B. The notice  
19 said only that, “based on a review of your official alien file,” ICE had made “a  
20 determination that there are changed circumstances in your case.” *Id.* “Simply to  
21 say that circumstances had changed or there was a significant likelihood of removal  
22 in the foreseeable future is not enough.” *Sarail A. V. Bondi*, \_\_ F. Supp. 3d \_\_, 2025  
23 WL 2533673, \*10 (D. Minn. 2025). “Petitioner must be told *what* circumstances  
24 had changed or *why* there was now a significant likelihood of removal in order to  
25 meaningfully respond to the reasons and submit evidence in opposition.” *Id.* The  
26 notice here included no information about what had changed or why. Exhibit B.  
27 Nor did it even allege that there was now a significant likelihood of Mr. Pham’s  
28 removal in the foreseeable future. *Id.*

1 Third, as of December 1, 2025, Mr. Pham has not yet received the informal  
2 interview required by regulation. §§ 241.13(i)(2); 241.4(l)(1); see Exhibit A ¶ 9. If  
3 he were to receive one now, such an interview would not be “prompt[ ],” as required  
4 by regulation. *Id.* “The regulatory context is civil detention, which is a strictly  
5 limited form of restraint on liberty.” *Soryadvongsa*, 2025 WL 3126821 at \*2 (citing  
6 *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018)). “The chance to advocate  
7 for release must ordinarily come within days of a criminal arrest. Surely, it must  
8 happen at least that quickly in the more constitutionally protected civil-arrest arena,  
9 too.” *Id.*; see also *id.* at \*1 (29 days after arrest not prompt); *M.S.L. v. Bostock*, Civ.  
10 No. 6:25-cv-01204-AA, 2025 WL 2430267, at \*11 (D. Or. Aug. 21, 2025) (27 days  
11 after arrest not prompt).

12 Fourth, Mr. Pham has not been afforded a meaningful opportunity to respond  
13 to the reasons for revocation or submit evidence rebutting his re-detention.  
14 §§ 241.13(i)(2); 241.4(l)(1); see Exhibit A ¶ 9. He notes, “No one has given me a  
15 chance to fight my re-detention. No one has told me what changed to make it more  
16 likely that I can be deported to Vietnam.” *Id.*

17 Numerous courts have released re-detained immigrants after finding that ICE  
18 failed to comply with some or all of the applicable regulations this summer and fall.  
19 See, e.g., *Villanueva v Tate*, \_\_ F. Supp. 3d \_\_, 2025 WL 2774610 (S.D. Tex. Sept.  
20 26, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *Zhu*  
21 *v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at \*7–9 (S.D.N.Y. Aug.  
22 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at \*10–  
23 12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL  
24 2491782, at \*2–3 (E.D. Tex. July 18, 2025); *Hoac*, 2025 WL 1993771 at \*4; *Liu v.*  
25 *Carter*, 2025 WL 1696526, \*2 (D. Kan. June 17, 2025); *M.Q. v. United States*, 2025  
26 WL 965810, at \*3, \*5 n.1 (S.D.N.Y. Mar. 31, 2025); *Bui*, No. 25-cv-2111-JES,  
27 ECF No. 18; *Thai*, No. 25-cv-2436-RBM, ECF No. 10, 12; *Constantinovici v.*  
28 *Bondi*, 2025 WL 2898985; *Sun*, 2025 WL 280003; *Rokhfirooz*, 2025 WL 2646165.

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

5 **V. Claim 2: Mr. Pham’s detention violates *Zadvydas* and 8 U.S.C. § 1231.**

6 **A. Legal background: The statute renders detention mandatory for**  
7 **three months after removal, presumptively acceptable for six**  
8 **months after removal is ordered, and allowable six months after**  
9 **removal is ordered only if there is a significant likelihood of**  
10 **removal in the reasonably foreseeable future.**

11 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a  
12 problem affecting people like Mr. Pham: Federal law requires ICE to detain an  
13 immigrant during the “removal period,” which typically spans the first 90 days after  
14 the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day  
15 removal period expires, detention becomes discretionary—ICE may detain the  
16 migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this  
17 scheme would not lead to excessive detention, as removal happens within days or  
18 weeks. But some detainees cannot be removed quickly. Perhaps their removal  
19 “simply require[s] more time for processing,” or they are “ordered removed to  
20 countries with whom the United States does not have a repatriation agreement,” or  
21 their countries “refuse to take them,” or they are “effectively ‘stateless’ because of  
22 their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9<sup>th</sup>  
23 Cir. 2001). In these and other circumstances, detained immigrants can find  
24 themselves trapped in detention for months, years, decades, or even the rest of their  
25 lives. If federal law were understood to allow for “indefinite, perhaps permanent,  
26 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at  
27 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by  
28 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* At 689.

*Zadvydas* held that § 1231(a)(6) presumptively permits the government to  
detain an immigrant for 180 days after his or her removal order becomes final. After

1 those 180 days have passed, the immigrant must be released unless his or her  
2 removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six months  
3 have passed, the petitioner must only make a prima facie case for relief— there is  
4 “good reason to believe that there is no significant likelihood of removal in the  
5 reasonably foreseeable future.” *Id.* Then the burden shifts to “the Government [to]  
6 respond with evidence sufficient to rebut that showing.” *Id.*

7 Further, even before the 180 days have passed, the immigrant must still be  
8 released if he *rebut*s the presumption that his detention is reasonable. *See, e.g.*,  
9 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases on  
10 rebutting the *Zadvydas* presumption before six months have passed); *Zavvar v.*  
11 *Scott*, Civil No. 25-2104-TDC, 2025 WL 2592543, \*6 (D. Md. Sept. 8, 2025)  
12 (finding the presumption rebutted for a person who was immediately released after  
13 being ordered removed and, years later, re-detained for less than six months).

14 Mr. Pham can make all the threshold showings needed to prove his *Zadvydas*  
15 claim and shift the burden to the government.

16 **B. Mr. Pham’s six-month grace period expired in April 2011.**

17 The six-month grace period has long since ended. The *Zadvydas* grace period  
18 is linked to the date the final order of removal is issued. It lasts for “*six months* after  
19 a final order of removal—that is, *three months* after the statutory removal period  
20 has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9<sup>th</sup> Cir. 2001); *see*  
21 *also* 8 U.S.C. § 1231(a)(1)(B) (linking the statutory removal period to issuance of  
22 the final order and other proceedings associated with the original removal order).

23 Here, Mr. Pham’s order of removal was entered in October 2010. Exhibit A  
24 ¶ 3.<sup>7</sup> Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B).  
25 The *Zadvydas* grace period expired in April 2011, three months after the removal  
26 period ended.

27 \_\_\_\_\_  
28 <sup>7</sup> EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1           **C. Mr. Pham’s personal experience, and Vietnam’s general policy of**  
2           **not repatriating most pre-1995 Vietnamese immigrants, provide**  
3           **good reason to believe that Mr. Pham will not likely be removed**  
4           **in the reasonably foreseeable future.**

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

10           “Good reason to believe.” The “good reason to believe” standard is a  
11           relatively forgiving one. “A petitioner need not establish that there exists no  
12           possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL  
13           10714999, at \*3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to  
14           believe’ . . . place a burden upon the detainee to demonstrate no reasonably  
15           foreseeable, significant likelihood of removal or show that his detention is  
16           indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,  
17           2020 WL 3972319, at \*3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F.  
18           Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:  
19           Petitioners need only give a “good reason”—not prove anything to a certainty.

20           “Significant likelihood of removal.” This component focuses on whether  
21           Mr. Pham will likely be removed: Continued detention is permissible only if it is  
22           “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533 U.S.  
23           at 701. This inquiry targets “not only the *existence* of untapped possibilities, but  
24           also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F. Supp.  
25           2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words, even if  
26           “there remains *some* possibility of removal,” a petitioner can still meet its burden  
27           if there is good reason to believe that successful removal is not significantly likely.  
28           *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at \*4 (E.D. Pa. Nov.  
          8, 2002) (emphasis added).

1           **“In the reasonably foreseeable future.”** This component of the test focuses  
2 on when Mr. Pham will likely be removed: Continued detention is permissible only  
3 if removal is likely to happen “in the reasonably foreseeable future.” *Zadvydas*, 533  
4 U.S. at 701. This inquiry places a time limit on ICE’s removal efforts. If the Court  
5 has “no idea of when it might reasonably expect [Petitioner] to be repatriated, this  
6 Court certainly cannot conclude that his removal is likely to occur—or even that it  
7 might occur—in the reasonably foreseeable future.” *Palma v. Gillis*, No. 5:19-CV-  
8 112-DCB-MTP, 2020 WL 4880158, at \*3 (S.D. Miss. July 7, 2020), *report and*  
9 *recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting  
10 *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this  
11 Court concludes that Mr. Pham “would *eventually* receive” a travel document, he  
12 can still meet his burden by giving good reason to anticipate sufficiently lengthy  
13 delays. *Younes v. Lynch*, 2016 WL 6679830, at \*2 (E.D. Mich. Nov. 14, 2016).

14           Mr. Pham satisfies this standard for two reasons.

15           First, Mr. Pham’s own experience bears this out. ICE has now had fifteen  
16 years to deport him, including five years under the MOU. Yet ICE has proved  
17 unable to remove him.

18           Second, the general experience of other Vietnamese immigrants also bears  
19 this out. Vietnam often does not accept pre-1995 Vietnamese immigrants for  
20 deportation. Even after Vietnam signed the still-operative 2020 MOU, ICE had to  
21 admit that there was no reasonable likelihood of removing such immigrants in the  
22 reasonably foreseeable future, Order on Joint Motion for Entry of Stipulated  
23 Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—  
24 an admission backed up by two years’ experience under the MOU, Asian Law  
25 Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the U.S.*  
26 *Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports).

27           In the past two months, several courts have explained that barriers continue  
28 to obstruct removal for pre-1995 immigrants like Mr. Pham. *See, e.g., Phan*, 2025

1 WL 3141205 at \*4-\*5; *Nguyen*, No. 25-cv-2760-TWR, ECF No. 12; *Vo*, No. 25-  
2 cv-3031-JO, ECF No. 14.

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

7 **VI. Claim 3: ICE may not remove Mr. Pham to a third country without**  
8 **adequate notice and an opportunity to be heard.**

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

13 **A. The Convention Against Torture, statutory withholding of**  
14 **removal, and due process prohibit deportation to third countries**  
15 **without meaningful notice and an opportunity to be heard.**

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

25 Similarly, Congress codified protections enshrined in the CAT prohibiting  
26 the government from removing a person to a country where they would be tortured.  
27 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of  
28 the United States not to expel, extradite, or otherwise effect the involuntary return

1 of any person to a country in which there are substantial grounds for believing the  
2 person would be in danger of being subjected to torture, regardless of whether the  
3 person is physically present in the United States.”); 28 C.F.R. § 200.1; *id.*  
4 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

12 The government must also “ask the noncitizen whether he or she fears  
13 persecution or harm upon removal to the designated country and memorialize in  
14 writing the noncitizen’s response. This requirement ensures DHS will obtain the  
15 necessary information from the noncitizen to comply with section 1231(b)(3) and  
16 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.  
17 3d at 1019. “Failing to notify individuals who are subject to deportation that they  
18 have the right to apply for asylum in the United States and for withholding of  
19 deportation to the country to which they will be deported violates both INS  
20 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at  
21 1041.

22 If the noncitizen claims fear, measures must be taken to ensure that the  
23 noncitizen can seek asylum, withholding, and relief under CAT before an  
24 immigration judge in reopened removal proceedings. The amount and type of  
25 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and  
26 circumstances, he would have a reasonable opportunity to raise and pursue his  
27 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009  
28 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132

1 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at \*1 (requiring the  
2 government to move to reopen the noncitizen’s immigration proceedings if the  
3 individual demonstrates “reasonable fear” and to provide “a meaningful  
4 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening  
5 of their immigration proceedings” if the noncitizen is found to not have  
6 demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice  
7 and time for a respondent to file a motion to reopen and seek relief).

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

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

18 The policies in the June 6, 2025 memo do not adhere to these requirements.  
19 The memo “contravenes Ninth Circuit law.” *Nguyen v. Scott*, No. 25-CV-1398,  
20 2025 WL 2419288, \*19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9,  
21 2025 ICE memo contravenes Ninth Circuit law on the process due to noncitizens  
22 in detail); *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-  
23 MSB (S.D. Cal. Sept. 29, 2025) (granting temporary restraining order preventing a  
24 noncitizen’s deportation to a third country pending litigation in light of due process  
25 problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No. 6 (S.D.  
26 Cal. Sept. 18, 2025) (same).

27 First, under the policy, ICE need not give immigrants *any* notice or *any*  
28 opportunity to be heard before removing them to a country that—in the State

1 Department’s estimation—has provided “credible” “assurances” against  
2 persecution and torture. Exhibit C. By depriving immigrants of any chance to  
3 challenge the State Department’s view, this policy violates “[t]he essence of due  
4 process,” “the requirement that a person in jeopardy of serious loss be given notice  
5 of the case against him and opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S.  
6 319, 348 (1976) (cleaned up).

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

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

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

23 **VII. This Court must hold an evidentiary hearing on any disputed facts.**

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

27 **VIII. Prayer for relief**

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



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**PROOF OF SERVICE**

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Date: 12/01/2025

/s/ Elizabeth Barros  
Elizabeth Barros