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

12 **SAVATH DIPRASEUTH,**

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**
Director, San Diego Field Office,
CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center,

21 **Respondents.**

Civil Case No.: 25-cv-3471-JLS-BJW

Traverse in
Support of
Petition for Writ of
Habeas Corpus

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1 INTRODUCTION

2 Having received the government’s Return and exhibits, this Court should
3 grant Mr. Dipraseuth’s petition. To do so, the Court need only acknowledge the
4 government’s admissions of its failure to comply with the regulations and follow
5 the reasoning of recent decisions in this district and around the country.

6 First, this Court should grant the petition on Claim One because the
7 government admits it has not complied with its own regulations. For persons like
8 Mr. Dipraseuth, those regulations permit re-detention only if ICE:

9 (1) “determines that there is a significant likelihood that the alien may be removed
10 in the reasonably foreseeable future,” *id.* § 241.13(i)(2); (2) makes that finding
11 “on account of changed circumstances,” *id.*; (3) provides “an initial informal
12 interview promptly,” *id.* §§ 241.4(l)(1), 241.13(i)(3); and (4) “affords the [person]
13 an opportunity to respond to the reasons for revocation,” *id.*

14 Yet ICE did none of these things when it arrested Mr. Dipraseuth on
15 October 7, 2025. The government admits that it did not provide Mr. Dipraseuth an
16 informal interview under 8 C.F.R. § 241.13(i)(3). Dkt. 9 at 2, 5; Dkt. 9-1 at ¶ 9.
17 And while it provided a Notice of Revocation of Release, this Notice did not give
18 the reasons for the revocation because it only alleged there were “changed
19 circumstances” without saying what these circumstances were. Dkt. 9-2, Exh. 3.
20 Though ICE claims to have received a travel document for Mr. Dipraseuth, other
21 judges in this district have granted relief and ordered the petitioner released due to
22 the regulatory violations of 8 C.F.R. § 241.4 even *after* ICE obtained a travel
23 document. *See, e.g., Truong v. Noem*, 25-cv-2597-JES-MMP, Dkt. 13 (S.D. Cal.
24 Oct. 22, 2025) (granting habeas because “the Government failed to follow its own
25 regulations” even though ICE had obtained travel document); *Khambounheuang*
26 *v. Noem*, 25-cv-2575-JO-SBC, Dkt. 17 (S.D. Cal. Oct. 23, 2025) (same); *Ngo v.*
27 *Noem*, 25-cv-2739-TWR-MMP, Dkt. 11 (S.D. Cal. Oct. 23, 2025) (same);

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1 *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025) (same);
2 *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Oct. 30, 2025) (same).

3 Second, this Court should grant the petition on Claim Two because the
4 government provides no independent evidence to satisfy the success element (“a
5 significant likelihood of removal”) or timing element (“in the reasonably
6 foreseeable future”) of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Though
7 Deportation Officer (“DO”) Press asserts that “ICE is routinely obtaining travel
8 documents for Laotian citizens” and purports to have removed some individuals
9 to Laos recently, Dkt. 9-1 at ¶ 15, he does not say what proportion of Laotian
10 citizens for whom travel documents are sought actually receive them. This
11 declaration also does not say *when* Mr. Dipraseuth will be removed—only that
12 ICE’s removal efforts “remain ongoing.” Dkt. 9-1 at ¶ 14. And the mere fact that
13 the government briefly transferred Mr. Dipraseuth to what it claims was a staging
14 area before bringing him back does not establish that the government will succeed
15 in the future. This Court should therefore grant the petition or a preliminary
16 injunction on either ground.

17 ARGUMENT

18 I. Mr. Dipraseuth’s claims succeed on the merits.

19 This Court need not speculate about whether Mr. Dipraseuth may succeed
20 on the merits. Because the government’s evidence is insufficient to justify
21 Mr. Dipraseuth’s detention, his petition should be granted outright, or the Court
22 should at least release him on a TRO pending further briefing.

23 A. Claim One: ICE did not adhere to the regulations governing re- 24 detention.

25 ICE’s admitted regulatory violations alone are sufficient to grant the habeas
26 petition or TRO. First, the government admits that ICE did not provide
27 Mr. Dipraseuth the mandatory interview the regulations require. Dkt. 9 at 2, 5;
28 Dkt. 9-1 at ¶ 9; 8 C.F.R. § 241.13(i)(3). In *M.S.L. v. Bostock*, Civ. No. 6:25-cv-

1 01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025), a district court
2 recently granted a habeas petition because an informal interview given 27 days
3 after petitioner was taken into ICE custody “cannot reasonably be construed as . . .
4 prompt.” And in *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31,
5 2025), Judge Schopler relied on this case and others to hold that a three-week
6 delay was not “prompt.” Here, ICE has not even provided an interview, and even
7 if it were to do so immediately, the two-month delay “cannot reasonably be
8 construed as . . . prompt.” 2025 WL 2430267.

9 Second, the Notice of Revocation of Release simply states that this
10 revocation was “based on a review of your official alien file and a determination
11 that there are changed circumstances in your case.” Dkt. 8-2, Exhibit 2. But
12 “[s]imply to say that circumstances had changed or there was a significant
13 likelihood of removal in the foreseeable future is not enough.” *Sarail A. v. Bondi*,
14 No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). Rather,
15 “Petitioner must be told *what* circumstances had changed or *why* there was now a
16 significant likelihood of removal in order to meaningfully respond to the reasons
17 and submit evidence in opposition, as allowed under § 241.13(i)(3).” *Id.* By
18 “identif[ying] the category—‘changed circumstances’—but fail[ing] to notify
19 [Petitioner] of the reason—the circumstances that changed and created a
20 significant likelihood of removal in the reasonably foreseeable future—[ICE]
21 failed to follow the relevant regulation.” *Id.*

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

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

9 The fact that ICE claims to have received a travel document for
10 Mr. Dipraseuth does not negate these regulatory violations. As noted, other judges
11 in this district have ordered petitioners released due to regulatory violations even
12 after ICE obtained a travel document. *See, e.g., Truong v. Noem*, 25-cv-2597-JES-
13 MMP, Dkt. 13 (S.D. Cal. Oct. 22, 2025) (granting habeas because “the
14 Government failed to follow its own regulations” even though ICE had obtained
15 travel document); *Khambounheuang v. Noem*, 25-cv-2575-JO-SBC, Dkt. 17 (S.D.
16 Cal. Oct. 23, 2025) (same); *Ngo v. Noem*, 25-cv-2739-TWR-MMP, Dkt. 11 (S.D.
17 Cal. Oct. 23, 2025) (same); *Sphabmixay v. Noem*, 25-cv-2648-LL (S.D. Cal. Oct.
18 30, 2025) (same); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Cal. Oct.
19 30, 2025) (same).

20 **B. Claim Two: The government has not proved that there is a**
21 **significant likelihood of removal in the reasonably foreseeable**
22 **future.**

23 Second, the government provides insufficient assurances that
24 Mr. Dipraseuth will likely be removed to Laos in the reasonably foreseeable
25 future.

26 As an initial matter, DO Press admits that Mr. Dipraseuth was detained for
27 a year after being ordered removed. Dkt. 9-1 at ¶¶ 6, 7 (stating that Mr. Dipraseuth
28 was ordered removed on January 13, 2010, and released from custody on January

1 3, 2011). Yet the government appears to contend that the six-month grace period
2 starts over every time ICE re-detains someone. Dkt. 9 at 3. “Courts . . . broadly
3 agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6
4 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL
5 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-
6 LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases);
7 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash.
8 Aug. 21, 2025).

9 But even a cursory review of § 1231(a)(1)(B) shows that that is not true.
10 The statute defines three, specific starting dates for the removal period, none of
11 which involve re-detention. *See Bailey v. Lynch*, No. CV 16-2600 (JLL), 2016
12 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (explaining this). The six-month grace
13 period has therefore ended, and so—contrary to the government’s claims—
14 Mr. Dipraseuth need not rebut the “presumptively reasonable period of
15 detention.” Dkt. 9 at 3.

16 Because the six-month grace period has passed, this court moves on to the
17 burden-shifting framework. The government does not deny that Mr. Dipraseuth
18 has provided “good reason” to doubt his reasonably foreseeable removal, thereby
19 forfeiting the issue. *See* Dkt. 9 at 4. *Moallin v. Cangemi*, 427 F. Supp. 2d 908, 928
20 (D. Minn. 2006). The burden therefore shifts to the government to prove that there
21 is a “significant likelihood of removal in the reasonably foreseeable future.”
22 *Zadvydas*, 533 U.S. at 701. That standard has a success element (“significant
23 likelihood of removal”) and a timing element (“in the reasonably foreseeable
24 future”).

25 For the reasons previously explained, the government has provided
26 insufficient assurances of either. DO Press asserts that “ICE is routinely obtaining
27 travel documents for Laotian citizens” and purports to have removed some
28 individuals to Laos recently, Dkt. 9-1 at ¶ 15, but he does not say what proportion

1 of Laotian citizens for whom travel documents are sought actually receive them.
2 This declaration also does not say *when* Mr. Dipraseuth will be removed—only
3 that ICE’s removal efforts “remain ongoing.” Dkt. 9-1 at ¶ 14. And the mere fact
4 that the government briefly transferred Mr. Dipraseuth to what it claims was a
5 staging area before bringing him back does not establish that the government will
6 do so again in the future. Because these facts render the certainty of removal
7 speculative, Mr. Dipraseuth therefore succeeds under *Zadvydas*, too.

8 **II. The remaining TRO factors decidedly favor Mr. Dipraseuth.**

9 This Court need not evaluate the other factors related to a TRO—the Court
10 may simply grant the petition outright. But if the Court does decide to evaluate
11 irreparable harm and balance of harms/public interest, Mr. Dipraseuth should
12 prevail.

13 On the irreparable harm prong, “[i]t is well established that the deprivation
14 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres*
15 *v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government’s
16 arguments, the Ninth Circuit has specifically recognized the “irreparable harms
17 imposed on anyone subject to immigration detention.” *Hernandez v. Sessions*, 872
18 F.3d 976, 995 (9th Cir. 2017). Furthermore, “[i]t is beyond dispute that Petitioner
19 would face irreparable harm from removal to a third country.” *Nguyen*, 2025 WL
20 2419288, at *26.

21 On the balance-of-equities/public-interest prong, the government is correct
22 that there is a “public interest in prompt execution of removal orders.” *Nken v.*
23 *Holder*, 556 U.S. 418, 436 (2009). But that interest is diminished here because the
24 government likely cannot remove Mr. Dipraseuth in the reasonably foreseeable
25 future, and even if it could, it is equally “well-established that ‘our system does
26 not permit agencies to act unlawfully even in pursuit of desirable ends.’” *Nguyen*,
27 2025 WL 2419288, at *28 (quoting *Ala. Ass'n of Realtors v. Dep't of Health &*
28 *Hum. Servs.*, 594 U.S. 758, 766 (2021)). It also “would not be equitable or in the

1 public's interest to allow the [government] to violate the requirements of federal
2 law” with respect to detention and re-detention, *Arizona Dream Act Coal. v.*
3 *Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (cleaned up), or to imperil the
4 “public interest in preventing aliens from being wrongfully removed,” *Nken*, 556
5 U.S. 418, 436.

6 **Conclusion**

7 For all these reasons, this Court should grant the petition, or at least enter a
8 temporary restraining order and injunction. In either case, the Court should order
9 Mr. Dipraseuth’s immediate release.

10 Respectfully submitted,

11 Dated: December 16, 2025

s/ Kara Hartzler

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