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Hen Ky Ton

7
8 **United States District Court**
9 **Central District of California**

10
11 Hen Ky Ton

12 Petitioner,

13 v.

14 Kristi Noem, Secretary of
15 Homeland
16 Security;

17 Pamela J. Bondi, Attorney General
18 of the United States;

19 Thomas Giles, Los Angeles Field
20 Office Director, Bureau of
21 Immigration and Customs
Enforcement;

22 James Pilkington, Assistant Field
23 Office Director, Adelanto Detention
24 Facility,

25 Warden, Geo Group Inc, Adelanto
26 Detention Facility

27 Respondents.
28

No. 25-3348

DHS No. A 

**Petition For a Writ of Habeas
Corpus By a Person in Federal
Custody Under 28 U.S.C. § 2241**

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Table of Contents

I.	INTRODUCTION & BACKGROUND	2
II.	HABEAS ALLEGATIONS	2
III.	CLAIMS & ARGUMENTS	3
	A. Ton must be released because there is no good reason to believe he will be deported to Vietnam in the reasonably foreseeable future.	3
	B. The Government violated both due process and INA regulations by reimprisoning Ton without notice and an opportunity to be heard.	5
	C. To the extent, Ton’s detention in immigration custody is to effectuate removal to a third country, that violates the Due Process Clause, because ICE has not given him sufficient notice of the proposed third country and an opportunity to request deferral or withholding of removal to that country under either statute or the Convention Against Torture.	7
	D. Removal to third countries where Ton might face imprisonment violates the constitutional prohibition on “punitive” removal practices.	8
IV.	CONCLUSION	9
V.	VERIFICATION	10

1 **I. INTRODUCTION & BACKGROUND**

2 Hen Ky Ton came to the United States as a refugee from Vietnam in 1990, at the
3 age of 15. In 1996, he sustained a conviction for robbery, and after serving his sentence
4 he was ordered removed from the country by an immigration court in September of
5 1997. However, the government was unable to remove him due to Vietnam’s
6 longstanding refusal to accept pre-1995 Vietnamese immigrants for deportation.
7 Instead, Ton remained in immigration detention for more than a year after his order of
8 removal became final until he was granted supervised release in July of 1999.



9 For the next 25 years, Ton checked in with immigration authorities on time and
10 without incident. He never violated his conditions of release and sustained no
11 additional criminal convictions. He had two children, both now grown, and currently
12 resides in Baldwin Park, California with his wife and daughter.

13 On November 14, 2025, ICE detained Ton at his regularly scheduled check-in.
14 He received no notice of any violation of his conditions of supervision, nor has ICE
15 identified any changed circumstances that make his removal more likely. He has not
16 had an opportunity to contest his detention, and has now been detained for almost a
17 month.

18 Through this petition and the accompanying motion for a temporary restraining
19 order and preliminary injunction, Ton seeks his immediate release from custody
20 because ICE’s revocation of his supervised release was unlawful and because his
21 removal is not reasonably foreseeable. Ton also seeks an injunction prohibiting the
22 government from removing him to a third country without the notice and opportunity to
23 be heard that the Constitution and immigration code require, and enjoining the
24 government from removing him to a third country for a punitive purpose and effect.

25 **II. HABEAS ALLEGATIONS**

26 Petitioner provides the following information related to his habeas petition:
27
28

- 1 • **Place of detention:** At the time of this filing, Petitioner is detained by
2 Immigration and Customs Enforcement (ICE) at the Adelanto Detention
3 Facility in Adelanto, California.
- 4 • **Name and location of court which imposed removal order:** Immigration
5 Court, 2409 La Brucherie Road, Imperial, CA 92251.
- 6 • **The immigration case number:** Department of Homeland Security, A# 
7 
- 8 • **The date upon which removal order was imposed:** Ton was ordered
9 removed by an Immigration Judge on September 9, 1997.
- 10 • **Did you appeal from the removal order?** Yes
- 11 • **If you did appeal, provide information related to that appeal:** Appeal
12 dismissed on June 28, 1998.
- 13 • **Previous petitions:** None.
- 14 • **Do you have any petition, appeal or parole matter pending in any court,**
15 **either state or federal, as to the removal order under attack?** No.

16 III. CLAIMS & ARGUMENTS

17 A. **Ton must be released because there is no good reason to believe he will** 18 **be deported to Vietnam in the reasonably foreseeable future.**

19 The Due Process Clause limits a “[noncitizen’s] post-removal-period detention to
20 a period reasonably necessary to bring about that [noncitizen’s] removal from the
21 United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Because of this
22 constitutional limitation, the immigration detention statute “does not permit indefinite
23 detention.” *Id.*; see 8 U.S.C. § 1231.

24 Immigration detention is presumptively limited to six months. “After this 6-
25 month period, once the [noncitizen] provides good reason to believe that there is no
26 significant likelihood of removal in the reasonably foreseeable future, the Government
27 must respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at
28 701.

1 ICE has detained Ton well beyond the presumptively reasonable six-month
2 period. At the time of filing this petition, Ton has been detained from November 14 to
3 December 11, 2025, a period of 27 days. He was previously detained for more than a
4 year, from June 28, 1998—when his immigration appeal was dismissed and his order of
5 removal became final—to July 21, 1999. When analyzing a *Zadvydas* claim, courts
6 examine the total period of time in ICE custody and do not restart the six-month grace
7 period each time a petitioner is released and rearrested. *See Sied v. Nielson*, 2018 WL
8 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (“Several courts have held that the six-month
9 period does not reset when the government detains an alien . . . , releases him from
10 detention, and then re-detains him again.”); *see also S.F. v. Bostock*, 2025 WL
11 2841022, at *4 (D. Or. Oct. 7, 2025) (collecting cases where presumption of
12 reasonableness did not apply when cumulative detention exceeded sixth months);
13 *Nguyen v. Scott*, 796 F. Supp. 3d 703, 721-22 (W.D. Wash. 2025) (same); *Diaz-Ortega*
14 *v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and*
15 *recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019). Indeed, to
16 hold otherwise would create an obvious end run around *Zadvydas*, because ICE could
17 detain an immigrant indefinitely by releasing and quickly rearresting them every six
18 months.

19 There no significant likelihood Ton will be removed to Vietnam in the
20 reasonably foreseeable future. As another court in this district recently recognized:
21 Vietnam has had a longstanding policy of not accepting back Vietnamese
22 immigrants, such as Petitioner, who left the country before 1995. Though that
23 policy has been amended throughout the years, there is currently a
24 [Memorandum of Understanding] in place where Vietnam considers some pre-
25 1995 Vietnamese immigrants for removal. However, in actuality, very few
26 people have been accepted back by Vietnam that left the country before 1995.
27 Between September 2021 and September 2023, only four Vietnamese
28 immigrants who came to the U.S. before [1995] were given travel documents and

1 deported. ICE made several requests during this time period that were not
2 granted by the Vietnamese government.
3 Order at 2, *Nguyen Tai Tran v. Noem*, No. 5:25-cv-02881-DOC-KS (C.D. Cal. Nov. 7,
4 2025, ECF No. 8) (internal citations omitted); *see also id.* at 7-8 (granting TRO and
5 ordering petitioner’s release on grounds that petitioner was likely to succeed on his
6 claim that his removal to Vietnam remained unlikely); Order at 7-9, *Phu Van Ta v.*
7 *Noem*, No. 5:25-cv-02902-MEMF-JDE (C.D. Cal. Nov. 10, 2025, ECF No. 14) (same);
8 Order at 5 & n.3, *Hien Quang Vo v. Bowen*, No. 5:25-cv-02880-KK-SSC (C.D. Cal.
9 Nov. 12, 2025, ECF No. 10) (holding that the mere fact that ICE renewed their request
10 to Vietnam for travel documents for Petitioner did not constitute changed
11 circumstances making his removal any more likely than before absent indicia that
12 Vietnam was going to respond differently than it had in the past).

13 Even if this Court does not consider the time Ton has spent in ICE custody
14 cumulatively, this petition is not premature because Ton’s removal is not reasonably
15 foreseeable. *Zavvar v. Scott*, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025)
16 (collecting numerous cases). Ton came to the United States in 1990, and is therefore in
17 the category of potential deportees that Vietnam has historically refused to accept. He
18 was released on supervision because he could not be removed in 1999, and ICE has
19 cited no changed circumstances indicating his removal is any more likely now. As
20 such, his detention is not likely to bring about his removal in the reasonably foreseeable
21 future and is therefore unlawful.

22 **B. The Government violated both due process and INA regulations by**
23 **reimprisoning Ton without notice and an opportunity to be heard.**

24 Due process rights extend to noncitizens present in the United States, including
25 those subject to final removal orders. *Zadvydas*, 533 U.S. at 693–94; *Trump v. J.G.G.*,
26 604 U.S. 670, 673 (2025). The fundamental requirements of procedural due process are
27 that a person be afforded notice and opportunity to be heard “at a meaningful time and
28 in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333, (1976).

1 If a noncitizen has been previously released, before reimprisonment, the
2 regulations require the noncitizen “will be notified of the reasons for revocation of his
3 or her release,” and will be given “an initial informal interview promptly after his or her
4 return to Service custody to afford the alien an opportunity to respond to the reasons for
5 revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1); § 241.13(i)(3).

6 Courts have consistently interpreted these provisions to require findings prior to
7 re-detention, as well as an opportunity to contest re-detention. *See, e.g., Constantinovici*
8 *v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct.
9 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal.
10 Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5
11 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D.
12 Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3
13 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D.
14 Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No.
15 12 (S.D. Cal. Oct. 9, 2025).

16 Here, however, the Government never: (1) provided Ton with notice that his
17 Order of Supervision was revoked; (2) conducted an informal interview or afforded
18 Ton an opportunity to be heard; or (3) sufficiently demonstrated the changed
19 circumstances that render his removal significantly likely in the reasonably foreseeable
20 future. Ton is therefore entitled to relief and must be released.

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1 **C. To the extent, Ton’s detention in immigration custody is to effectuate**
2 **removal to a third country, that violates the Due Process Clause.**
3 **because ICE has not given him sufficient notice of the proposed third**
4 **country and an opportunity to request deferral or withholding of**
5 **removal to that country under either statute or the Convention Against**
6 **Torture.**

7 “It is well established that the Fifth Amendment entitles [noncitizens] to due
8 process of law in the context of removal proceedings.” *Trump v. J.G.G.*, 145 S. Ct.
9 1003, 1006 (2025) (per curiam) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).
10 Noncitizens are thus entitled to “notice and an opportunity to be heard appropriate to
11 the nature of the case.” *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339
12 U.S. 306,313 (1950)). As relevant here, this means that purported non-citizens are
13 entitled to notice that they are to be removed to a third country “within a reasonable
14 time and in such a manner as will allow them to actually seek habeas relief in the
15 proper venue before such removal occurs.” *Id.*

16 Ton has not been formally ordered removed to any country other than Vietnam.
17 As such, he has never had an opportunity to contest removal to any third country on the
18 grounds that he may face persecution or torture if he is removed to that country.

19 To the extent that Ton’s detention is meant to facilitate his removal to a third
20 country, *see generally Zadvydas*, 533 U.S. at 690 (suggesting that detention following a
21 removal order is intended to facilitate removal), if such a removal is accomplished in
22 violation of his due-process rights, then his detention is illegal. This due-process claim
23 “necessarily impl[ies] the invalidity of [his] confinement and removal” to a third
24 country not yet named in any removal order. *J.G.G.*, 145 S. Ct. at 1005. Thus, his due-
25 process claim is properly brought in a habeas petition, and a court order that he be
26 released from detention is a proper remedy for such a violation.

1 **D. Removal to third countries where Ton might face imprisonment violates**
2 **the constitutional prohibition on “punitive” removal practices.**

3 The U.S. Supreme Court long ago held that the government may not inflict upon
4 individuals an “infamous punishment” atop deportation as a penalty for an immigration
5 violation, absent criminal charges, a judicial trial, and related constitutional protections.
6 *Wong Wing v. United States*, 163 U.S. 228, 236-38 (1896). More than a century later
7 the Court reaffirmed the point, holding that while it is within the constitutional power
8 of Congress to remove those unlawfully present in the United States, “punitive
9 measures c[annot] be imposed upon [noncitizens]” merely by dint of their removal, as
10 “all persons within the territory of the United States are entitled to the protection’ of the
11 Constitution.” *Zadvydas*, 533 U.S. at 694 (quoting *Wong Wing*, 163 U.S. at 238).

12 Yet the purposes of the government’s third-country removal program are
13 substantially punitive. As one district court recently held, government officials have
14 made public statements, judicially noticeable, that “offer evidence that third country
15 deportation is occurring as a punishment.” *Nguyen*, 796 F. Supp. 3d at 733. These
16 include an official video of President Donald J. Trump stating, “[I]f illegal aliens
17 choose to remain in America, they’re remaining illegally and they will face severe
18 consequences,” with “punishments ... including ... sudden deportation in a place and
19 manner solely of our discretion.” *Id.* at 733-34. “Other courts [too] across the country
20 have recognized that the government is intentionally removing individuals to countries
21 where they will be imprisoned” in facilities where “‘torture is pervasive’ ” and “‘human
22 rights violations’ ” “‘widespread,’ ” under “‘horrific prison conditions [engineered] for
23 the specific purpose of inflicting suffering.’ ” *Id.* at 734 (quoting cases).

24 Removal to such countries under the Government’s current policy would thus
25 violate the constitutional prohibition on punitive removal practices as well.
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IV. CONCLUSION

For the foregoing reasons, this Court should:

- Order the government to answer this petition,
- Expedite any briefing and relief, as Petitioner’s current custody is illegal;
- Allow him to conduct discovery in order to support his claim for relief;
- Convene an evidentiary hearing, if needed to resolve disputed facts;
- Order Respondents to release him from their custody; and
- Grant any other relief that is just and practicable.

Respectfully submitted,
Cuauhtemoc Ortega
Federal Public Defender

Dated: December 11, 2025 By: /s/ Daniel Lemer
Daniel Lemer
Deputy Federal Public Defender
Proposed Attorneys for Petitioner
Hen Ky Ton

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V. VERIFICATION

I, Daniel Lemer, declare as follows:

I am an attorney with the Office of the Federal Public Defender, and I am admitted to practice law in the State of California.

I am authorized to file this petition on behalf of petitioner, who is restrained in violation of his liberty.

Based on information and belief, I declare under penalty of perjury under the laws of the United States and the State of California that the contents of this petition are true and correct to the best of my knowledge and belief.

Executed December 11, 2025, at Los Angeles, California.

/s/ Daniel Lemer
Daniel Lemer