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10 **United States District Court**
11 **Central District of California**

12 Cuong Tu Hong

13 Petitioner,

14 v.

15 Kristi Noem, Secretary of
16 Homeland 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
22 Enforcement;

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

24 Warden, Geo Group Inc, Adelanto
25 Detention Facility

26 Respondents.

No. 5:25-cv-03353

DHS No. A 

**Petition for a Writ of Habeas
Corpus under 28 U.S.C. § 2241 by
Noncitizen in ICE Detention;
Exhibits**

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1 Other than the government's appeal from the IJ's September 2025
2 order terminating his removal proceedings, Hong has no petition, appeal
3 or parole matter pending in any court, either state or federal, as to the
4 removal order under attack.

5 **III.**

6 **FACTUAL ALLEGATIONS**

7 **A. 1970: Birth in Vietnam**

8 Hong was born in Vietnam on  When he was still a
9 boy, around ten years old, his mother fled Vietnam for the United States.
10 After she left, his grandmother and uncle continued to raise him. Life in
11 Vietnam was hard, but he hoped one day to be reunited with his mother,
12 and for a better life with her in the United States.

13 **B. 1984: Emigration to the U.S.**

14 Some four or five years later, his mother was able to sponsor both
15 him and his grandmother as refugees in the United States. He was finally
16 reunited with his mother and brother, arriving in the U.S. in November
17 of 1984, now a legal permanent resident.

18 **C. 1989–2000: Difficulties adjusting, felony convictions,**
19 **incarceration.**

20 But adjusting to life here was more difficult than he'd imagined. He
21 didn't know English. He was unfamiliar with American culture. It was
22 hard to fit in at school. He often felt lonely, misunderstood, and
23 frustrated. Desperate for friendship and community, he started hanging
24 out with the wrong crowd in high school. He later suffered two felony
25 convictions under California law, both by guilty plea, the first, in 1989,
26 the second, in 1994.

1 While in prison, though, he made use of his time. He reflected on his
2 past decisions, and dedicated himself to change. He took classes. He
3 studied English. He learned trades like dry-cleaning. For most of his
4 time, he worked in the Prison Industry Authority.

5 He was also visited by ICE officials. There they told him that he
6 was deportable, and that he should just sign a voluntary departure form.
7 He did not know English well at the time, and did not know his rights. So
8 he relied on what these officials told him—that he would never be
9 deported anyway because Vietnam was not accepting deportees.

10 **D. 2000–2024: ICE detention, removal order, release, and**
11 **rehabilitation**

12 Around 2000 he was released from prison and taken into ICE
13 custody on a warrant issued on December 22, 2000. On January 31, 2001,
14 he was ordered removed. He was detained for at least 90 days after that,
15 on conditions that included regular check-ins, graduating from monthly
16 at first to one every three months, then after six months, then annually
17 after that. In the ensuing 24 years, he would never miss a check-in.

18 Once released from ICE detention, he kept up with the good habits
19 he'd cultivated in prison. He took adult education courses at Alhambra
20 High School. He got his diploma. He found a job at a print shop. He
21 reintegrated back into society. He was rehabilitated.

22 **E. 2024–25: Vacatur of his unlawful convictions—the sole basis**
23 **for Hong's removal order.**

24 Before pleading guilty in his felony cases years before, he'd never
25 been advised that those convictions would lead to adverse immigration
26 consequences. He didn't know he would be deported. Because he was thus

1 deprived of the effective assistance of counsel during those plea
2 negotiations, both convictions were vacated as legally invalid in 2024 and
3 2025.

4 **F. August–September 2025: Re-detention by ICE without**
5 **changed circumstances, notice, or an opportunity to be**
6 **heard.**

7 Despite Hong’s unblemished record of compliance with supervised
8 release conditions since his release, ICE began adding more burdensome
9 conditions in 2025. They made him start checking in more often. On
10 August 12, 2025, they added an ankle monitor—ostensibly so that they
11 wouldn’t have to detain him.

12 But in his next check-in about a month later, on September 11,
13 2025, they detained him anyway. This, even though his immigration
14 attorney showed them proof that she’d just moved to reopen and
15 terminate just the day before. Undaunted, ICE officials said that they were
16 taking him into custody because he had a prior order of removal. They
17 gave no other reasons. No notice of any violations or changed
18 circumstances. No interview in which to address whatever reasons they
19 could have given. They told him nothing about their deportation plans.
20 Nothing about whether they’d requested or obtained travel documents.
21 He himself had no travel documents, and still has none. ICE officials did
22 ask him if he had any family in Vietnam. He does not, and told them so.

23

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1 **G. September 2025: The immigration judge’s termination of**
2 **removal proceedings—and Hong’s continued detention in**
3 **ICE custody in spite of it.**

4 On Hong’s motion to reopen and terminate removal proceedings, the
5 immigration judge had no difficulty ruling in Hong’s favor. His
6 convictions had been vacated as legally invalid. (Ex. 1 at tk.) He’d been
7 diligent in seeking that relief. (Ex. 1 at 3.) And in fact the DHS hadn’t
8 even opposed. (*Id.*) “The sole basis for [his] removability” was thus void.
9 (Ex. 1 at 1.) Hong’s removal was thus terminated on September 30, 2025.
10 (Ex. 2.)

11 Yet the government didn’t release him. Instead, after waiting
12 another 23 days, the government appealed. (Ex. 2 at 2.) And it has
13 continued to hold him—despite its failure to oppose the motion. (See Ex. 1
14 at 3.)

15 **H. Hong’s continuing deep ties to his family here in the U.S.**
16 **and the hardships due to his ongoing detention.**

17 Hong’s re-detention has been a blow. He is now 55 years old. He’s
18 proud of the life he’s built in the United States. Proud that he’s been able
19 to turn his life around. Until he was re-detained, he worked as a team
20 leader at a warehouse in Walnut, California, where over ten years he’d
21 climbed the company ladder through discipline and hard work; he
22 believes and hopes that they will still have his job there for him when
23 he’s released. Married in 2014, he and his wife have three young U.S.
24 citizen children, ages 9, 11, and 14. He is dedicated to supporting his
25 family and to being a father they can look up to. He is the family’s main
26 provider. He cannot imagine being separated from them. And his re-

1 detention—and continued detention despite the IJ’s termination of his
2 removal proceedings—has caused his family great emotional and
3 financial hardship.

4 IV.

5 GROUNDNS FOR RELIEF

6 **A. GROUND ONE: Hong is entitled to release because he has**
7 **been detained more than six months with no significant**
8 **likelihood of removal in the reasonably foreseeable future.**

9 When a noncitizen has been found to be unlawfully present in the
10 United States and a final order of removal has issued, the government
11 ordinarily secures the noncitizen’s removal during a subsequent 90-day
12 statutory “removal period,” during which the alien is normally held in
13 custody. *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001); 8 U.S.C.
14 § 1231(a)(1). And if during those 90 days the government fails to remove
15 the noncitizen, detention “beyond the removal period” is also authorized.
16 8 U.S.C. § 1231(a)(6)

17 But in *Zadvydas*, the Supreme Court held that this residual
18 provision does not authorize “indefinite ... detention,” since interpreting
19 the provision otherwise would “rase a serious constitutional problem”
20 under the Due Process Clause. 533 U.S. at 690. Continued detention is
21 thus “no longer authorized” “once removal is no longer reasonably
22 foreseeable.” *Id.* at 699. And the longer the postremoval confinement, the
23 less reasonably foreseeable removal becomes. *Id.* at 701.

24 Finding it thus “practically necessary to recognize some
25 presumptively reasonable period of detention” postremoval, *Zadvydas*
26 adopted a period of six months. *Id.* at 701. Once that six months elapses,

1 and if the noncitizen provides “good reason to believe that there is no
2 significant likelihood of removal in the reasonably foreseeable future,” the
3 government “must respond with evidence sufficient to rebut that
4 showing.” *Zadvydas*, 533 U.S. at 701. If it can’t, the government must
5 release the noncitizen. *Id.*

6 Here, Hong has been held beyond the six months that *Zadvydas*
7 held presumptively reasonable: He was held for the entire removal 90-
8 day removal period after his release from prison in 2000. He was then re-
9 detained on September 11, 2025, and has been held since—another 90
10 days as of December 10, 2025. Since under the approach correctly taken
11 by “most courts” the *Zadvydas* clock is “cumulative,” *Phan v. Warden of*
12 *Otay Mesa Det. Facility*, ___ F. Supp. 3d ___, No. 25-CV-02369-AJB-BLM,
13 2025 WL 3141205, at *3 (S.D. Cal. Nov. 10, 2025), Hong has thus been
14 detained for more than 180 days.

15 Meanwhile, at least three facts give good reason to believe that
16 there is no significant likelihood of Hong’s removal to Vietnam in the
17 reasonably foreseeable future.

18 First, an immigration judge has already terminated Hong’s removal
19 proceedings. This alone is “good reason” to doubt a significant likelihood
20 of removal—particularly since the government failed to file any response
21 to Hong’s motion to reopen, forfeiting any arguments it could raise on
22 appeal. *See Matter of W-Y-C- & H-O-B-*, 27 I. & N. Dec. 189, 190 (BIA
23 2018) (“We have long held that we generally will not consider an
24 argument or claim that could have been, but was not, advanced before the
25 Immigration Judge.”).

26

1 Second, Hong has been given no notice of any facts that suggest his
2 removal is in the offing. For example, before a Vietnamese immigrant
3 without a passport or other travel document can be repatriated, Vietnam
4 must issue a passport or other travel document in response to a request
5 from ICE. *See Trinh v. Homan*, 466 F. Supp. 3d at 1077, 1083 (C.D. Cal.
6 2020). Hong has no such documents, nor has he received notice that any
7 have even been requested in his case, much less issued.

8 And third, removal to Vietnam is unlikely given historical practice.
9 “Until 2008, Vietnam refused to repatriate Vietnamese immigrants whom
10 the United States had ordered removed.” *Tran v. Scott*, ___ F. Supp. 3d
11 ___, No. 2:25-CV-01886-TMC-BAT, 2025 WL 2898638, at *2 (W.D. Wash.
12 Oct. 12, 2025) (citing *Trinh, supra*. Though Vietnam agreed in 2008 to
13 consider certain repatriation requests, the agreement excluded
14 Vietnamese immigrants who, like Hong, had arrived in the United State
15 before 1995. *Id.* All the while, save for a brief period of renegotiations
16 during 2017, during which Vietnam “verbally committed” to considering
17 to consider travel document requests for pre-1995 immigrants, ICE
18 continued to “concede[] that ... in general, the removal of these
19 individuals was still not significantly likely.” *Id.*

20 It’s true that in 2020 there was a change in *stated* policy, when the
21 United States and Vietnam signed a Memorandum of Understanding
22 (“MOU”) to create a process for deporting pre-1995 Vietnamese
23 immigrants. *Id.* Also true, Vietnam affirmed in the MOU that it “intends
24 to issue travel documents where needed, and otherwise to accept the
25 removal of an individual subject to a final order of removal from the
26 United States” if the person met certain conditions. *Id.*

1 But that nominal change has made little if any practical difference
2 to the pre-1995 cohort. Though Hong does not have access to statistical
3 evidence of deportations under the MOU, the October 2025 *Tran* order
4 granting habeas relief notes that the petitioner there alleged that for the
5 *two years* spanning September 2021 to September 2023, the *total* number
6 of repatriations of pre-1995 Vietnamese immigrants was four. *Id.* Also
7 noted in *Tran* was a declaration from a paralegal working with detained
8 Vietnamese nationals at NWIPC, who averred that of 30 Vietnamese
9 detainees she is aware of who'd been detained since March 2025, the
10 number removed to Vietnam was zero. 2025 WL 2898638, at *2. Zero. The
11 government's only evidence in response to this evidence was a contested
12 declaration that it had secured a travel document for a different
13 immigrant. *Id.* at *3. And even *that* allegation the court declined to
14 credit. *Id.* at *4.

15 In sum, because Hong has been re-detained more than six months
16 with no significant likelihood of removal in the reasonably foreseeable
17 future, he is entitled to release under *Zadvydas*.

18 **B. GROUND TWO: The government violated due process by re-**
19 **detaining Hong without following its own regulations.**

20 "The Due Process Clause of the Fifth Amendment prohibits the
21 Government from depriving individuals of their life, liberty, or property,
22 without due process of law." *Hernandez v. Sessions*, 872 F.3d 976, 990
23 (9th Cir. 2017). This guaranty "applies to all persons within the United
24 States, including aliens, whether their presence is lawful, unlawful,
25 temporary, or permanent." *Zadvydas*, 533 U.S. at 679. The right to notice
26 and an opportunity to be heard, in a meaningful manner and at a

1 meaningful time, is the essence of procedural due process. *Mathews v.*
2 *Eldridge*, 424 U.S. 319, 335 (1976). Fundamental fairness thus requires
3 that, like any other agency, ICE follow its own regulations when
4 disregard of those rules impinges on due process. *Martinez v. Barr*, 817 F.
5 App'x 472 (9th Cir. 2020); see *United States ex rel. Accardi v.*
6 *Shaughnessy*, 347 U.S. 260, 268 (1954) (holding that agency's failure to
7 follow "existing valid regulations" deprived petitioner of due process they
8 required).

9 Once ICE releases a noncitizen on supervised release, then, "ICE's
10 ability to re-detain that noncitizen is constrained by its own regulations."
11 *Roble v. Bondi*, ___ F. Supp. 3d ___, No. 25-CV-3196 (LMP/LIB), 2025 WL
12 2443453, at *3 (D. Minn. Aug. 25, 2025). Among the regulations that ICE
13 must follow are 8 C.F.R §§ 241.4(l) and 241.13(i). See *Johnson v. Guzman*
14 *Chavez*, 594 U.S. 523, 529 (2021) (noting that § 241.4 sets out procedures
15 that DHS "must follow" if it imposes postremoval detention).

16 Under these provisions, ICE may re-detain a noncitizen released on
17 an order of supervised release "if, on account of changed circumstances,
18 [ICE] determines that there is a significant likelihood that the alien may
19 be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).
20 Or it may re-detain the noncitizen if he "violates any of the conditions of
21 release." *Id.* § 241.13(i)(1). Either way, if ICE chooses to re-detain, the
22 noncitizen must "be notified of the reasons for revocation" and be afforded
23 "an initial informal interview promptly after his return to ... custody to
24 afford [him] an opportunity to respond to the reasons for revocation
25 stated in the notification." *Id.* § 241.13(i)(3). The non citizen may "submit
26 any evidence or information that [he] believes shows there is no

1 significant likelihood [he may] be removed in the reasonably foreseeable
2 future, or that [he] has not violated the order of supervision.” *Id.* Courts
3 have consistently held that failure to follow these requirements when re-
4 detaining a noncitizen violates due process. *See, e.g., Ngo v. Noem*, ___ F.
5 Supp. 3d ___, No. 25-CV-3234 JLS (MMP), 2025 WL 3470438, at *2–*5
6 (S.D. Cal. Dec. 3, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No.
7 10 (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-
8 2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL
9 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v.*
10 *Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29,
11 2025).

12 That failure is evidence here: ICE cited no changed circumstances
13 that made removal significantly likely. Nor any violations by Hong of his
14 supervised release conditions. ICE failed to notify Hong of the reasons for
15 his revocation. They failed to afford him an initial informal interview
16 after his return to custody to give him a chance to respond to them. They
17 gave him no opportunity to submit evidence or information to show no
18 significant likelihood or removal.

19 In short, the government re-detained Hong without following its
20 own regulations, and therefore violated due process. Until he is provided
21 that process, he is entitled to immediate release. *See, e.g., Ngo*, 2025 WL
22 3470438, at *5.

1 **C. GROUND THREE: Hong’s removal to any third country**
2 **would violate due process because ICE has given him**
3 **neither notice of the proposed third country nor an**
4 **opportunity to request deferral or withholding of removal.**

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

15 The immigration laws specify the procedures by which a country
16 may be designated for removal. See 8 U.S.C. § 1231(b) (“Countries to
17 which aliens may be removed”). While a fallback provision allows for
18 removal of a person to a third country other than one the person himself
19 designates or that otherwise has some connection to his citizenship,
20 residency, or territorial areas he passed through during his emigration to
21 the U.S., cf. *id.* § 1231(b)(2)(A)–(D), in no event is removal to a third
22 country permitted where the person’s life or freedom would be threatened
23 in that country due to a protected characteristic such as race or religion,
24 *id.* § 1231(b)(3)(A)—a protection referred to in governing regulations as
25 “withholding of removal.” 8 C.F.R. §§ 208.16, 1208.16. That protection is
26 mandatory.

1 So, too, the protections under the Convention Against Torture
2 (“CAT”), which Congress implemented to prohibit the government from
3 removing a person to a country where they would be tortured, and
4 charged the appropriate agencies to prescribe regulations to promote that
5 policy. *Edu v. Holder*, 624 F.3d 1137, 1145 (9th Cir. 2010). These
6 regulations were promulgated in 8 C.F.F. §§ 1208.16 through 1208.18,
7 with the recognition that CAT “does not permit any discretion or provide
8 for any exceptions.” *Id.*

9 The Fifth Amendment, the Immigration and Nationality Act, and
10 the CAT thus all mandate meaningful notice and opportunity to respond
11 to any attempt to remove Hong to a third country in reopened removal
12 proceedings. They also entitle Hong to the opportunity to make a fear-
13 based claim against removal to a third country in reopened removal
14 proceedings.

15 None of these detailed requirements have been met. Indeed, they
16 are violated by the government’s policy for third country removals on its
17 face, since that policy directs ICE agents to remove people to third
18 countries either (1) without any notice or process at all as long as
19 diplomatic assurances are received, and (2) a mere six- to 24-hour notice
20 if no such assurances are received. *Y.T.D. v. Andrews*, ___ F. Supp. 3d
21 ___, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *10 (E.D. Cal.
22 Sept. 18, 2025).

23 In any event, Hong has never had an opportunity to contest such a
24 removal on the grounds that he may face persecution or torture if
25 removed to such a country. His removal to any third country would
26 therefore violate federal law.

1 To the extent that Hong’s detention is meant to facilitate his
2 removal to a third country, his detention is illegal for that reason as well.
3 And because his due process claim “necessarily impl[ies] the invalidity of
4 [my] confinement and removal” to a third country not yet named in any
5 removal order, *J.G.G.*, 145 S. Ct. at 1005, it is properly raised in a habeas
6 petition, and an order for his release a proper remedy.

7 Finally, the risk of third country removal is more than speculative.
8 ICE’s own third country removal “policy alone could make [Hong’s]
9 removal to a third country an imminent threat given the low likelihood of
10 his removal to Vietnam.” *Nguyen v. Scott*, 796 F. Supp. 3d 703, 736 (W.D.
11 Wash. 2025). But the court in *Nguyen* also heard and credited testimony
12 from two witnesses about two pre-1995 Vietnamese arrivals who’d been
13 deported to third countries out of the blue. *Id.* at 737. “Coupled with
14 ICE’s own policy, this is sufficient evidence to demonstrate that, without
15 an injunction, [Hong] faces a likelihood of removal to a third country with
16 no meaningful opportunity to challenge that decision.” *Id.*

17 **D. GROUND FOUR: Removal to third countries where Hong**
18 **might face imprisonment violates the constitutional**
19 **prohibition on “punitive” removal practices.**

20 The U.S. Supreme Court long ago held that the government may
21 not inflict upon individuals an “infamous punishment” atop deportation
22 as a penalty for an immigration violation, absent criminal charges, a
23 judicial trial, and related constitutional protections. *Wong Wing v. United*
24 *States*, 163 U.S. 228, 236–38 (1896). More than a century later the Court
25 reaffirmed the point, holding that while it is within the constitutional
26 power of congress to remove those unlawfully present in the United

1 States, “punitive measures c[annot] be imposed upon [noncitizens]”
2 merely by dint of their removal, as “all persons within the territory of the
3 United States are entitled to the protection’ of the Constitution.’ ”
4 *Zadvydas*, 533 U.S. at 694 (quoting *Wong Wing*, 163 U.S. at 238).

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

20 Removal to such countries under the government’s current policy would thus
21 violate the constitutional prohibition on punitive removal practices as well.
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V.

CONCLUSION

For the foregoing reasons, this Court should:

- order the government to answer this petition,
- expedite any briefing and relief;
- allow Hong to conduct discovery to further prove his claims for relief;
- hold any evidentiary hearing needed to resolve disputed facts;
- order the government 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 12, 2025

s/ Michael T. Drake

MICHAEL T. DRAKE
Deputy Federal Public Defender

Proposed Counsel for Petitioner
CUONG TU HONG

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VI.
VERIFICATION

I declare:

1. I am an attorney with the Federal Public Defender’s Office in this district, and admitted to practice law in this Court and in the State of California.
2. Because petitioner Hong is restrained in violation of his liberty, I verify his habeas petition “in his behalf.” 28 U.S.C. § 2242.
3. He has authorized me to file the petition and any other papers needed to secure habeas relief.
4. After speaking with him and reviewing copies of court filings and related records that I believe to be accurate, I declare under penalty of perjury under the laws of the United States that the contents of this petition are true and correct to the best of my knowledge.

Executed December 12, 2025, at Los Angeles, California.

s/ Michael T. Drake
MICHAEL T. DRAKE
Deputy Federal Public Defender