

1 Cuauhtemoc Ortega, Bar No. 257443
Federal Public Defender
2 Jonah Rosenbaum Bar No. 344667
(E-Mail: Jonah.Rosenbaum@fd.org)
3 Deputy Federal Public Defender
321 East 2nd Street
4 Los Angeles, California 90012
Telephone: (213) 894-4407
5 Facsimile: (213).894-0081

6 Proposed Attorneys for Petitioner
Dung Pham
7

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

10

11 Dung Pham,

No. 25-3373

12 Petitioner,

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

13 v.

14 Kristi Noem, Secretary of
Homeland
15 Security;

16
17 Pamela J. Bondi, Attorney General
of the United States;

18
19 Thomas Giles, Los Angeles Field
Office Director, Bureau of
20 Immigration and Customs
21 Enforcement;

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

25 Warden, Geo Group Inc, Adelanto
26 Detention Facility

27 Respondents.
28

Table of Contents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION & BACKGROUND3

II. HABEAS ALLEGATIONS4

III. FACTUAL ALLEGATIONS.....4

IV. CLAIMS & ARGUMENTS6

 A. There is no good reason to believe Pham will be deported to Vietnam in the reasonably foreseeable future.....6

 B. The Government violated both due process and INA regulations by reimprisoning Pham without notice and an opportunity to be heard. 11

 C. To the extent Pham’s detention in immigration custody is to effectuate removal to a third country, that violates the Due Process Clause. because ICE has not given her 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..... 12

 D. Removal to third countries where Pham might face imprisonment violates the constitutional prohibition on “punitive” removal practices. 13

V. CONCLUSION..... 15

VI. VERIFICATION 16

1 **I. INTRODUCTION & BACKGROUND**

2 Dung Pham was five years old when she fled Vietnam in August of
3 1975. She traveled with her sisters, mother, and father—a South
4 Vietnamese military official working with the United States—by small boat
5 on a precarious journey until they encountered a U.S. military vessel.
6 Pham’s father displayed his credentials from the American Consulate
7 General, *see* Ex. C, and they were taken aboard.

8 From there, the family traveled as refugees to the United States,
9 arriving on or about August 5, 1975. Pham received lawful permanent
10 resident status, but it was revoked after she was convicted of burglary and
11 fraud. After she served her criminal sentence, Pham was transferred to
12 immigration custody. A final order of removal was issued on August 5,
13 1992. Pham was detained for roughly 90 days and then released on
14 supervision.

15 For the past 33 years, Pham has complied with the conditions of that
16 supervision. But on October 13, 2025, during her regularly scheduled check-
17 in, Pham was placed on ankle monitoring. She was subsequently notified to
18 return on October 31, 2025, at which time she was detained. No reason was
19 provided for her detention and no reason justifies it.

20 Pham’s continued detention is not merely unconstitutional—it is
21 dangerous. Pham is an HIV-positive transgender woman who recently
22 survived colon cancer. She requires continued urgent medical care,
23 including a previously scheduled **oncology appointment on Tuesday,**
24 **December 16, 2025** to conduct lab work and an ultrasound. Pham is—or
25 was, prior to her detention—the primary caretaker for her 82-year-old
26 mother, who suffers from Parkinson’s disease and is immobilized as a
27 result. Pham fears for both her own health and her mother’s so long as she
28

1 remains in custody. Each day she remains in custody is unlawful, as there
2 exists no significant likelihood of her removal in the reasonably foreseeable
3 future. She must be released.

4 II. HABEAS ALLEGATIONS

5 Petitioner provides the following information related to her habeas
6 petition:

- 7 • **Place of detention:** At the time of this filing, Petitioner is
8 detained by Immigration and Customs and Enforcement (ICE) at
9 the Adelanto Detention Facility in Adelanto, California.
- 10 • **Name and location of court which imposed removal order:**
11 West Los Angeles Immigration Court, 5245 Pacific Concourse Dr.
12 #100 Los Angeles, CA 90045
- 13 • **The immigration case number:** Department of Homeland
14 Security, A# 022-023-724
- 15 • **The date upon which removal order was imposed:** Petitioner
16 was ordered removed by an Immigration Judge on August 5, 1992.
- 17 • **Did you appeal from the removal order?** No.
- 18 • **If you did appeal, provide information related to that**
19 **appeal:** N/A.
- 20 • **Previous petitions:** None.
- 21 • **Do you have any petition, appeal or parole matter pending**
22 **in any court, either state or federal, as to the removal order**
23 **under attack?** No.
- 24
- 25

26 III. FACTUAL ALLEGATIONS

27 Dung Pham was born in Vietnam and fled to the United States as a
28 refugee in 1975, when she was five years old. (Ex. A, Pham Decl., ¶3.) She

1 has lived in the United States ever since and has never left the country.
2 (*Id.*) Pham received LPR status upon her arrival, but it was revoked after
3 she was convicted of burglary and fraud. (*Id.* ¶4.) Pham was detained and,
4 on August 5, 1992, she was ordered removed from the United States. (*Id.*)
5 While in custody, she signed the self-declaration form required to apply for
6 a passport from Vietnam. She never received the passport. (*Id.* ¶5.)

7 Pham was released after approximately 90 days and placed on
8 supervision. (*Id.* ¶6.) She complied with the conditions of that supervision
9 without incident for 33 years. (*Id.*) Consistent with that compliance, Pham
10 arrived on time for her regularly scheduled October 13, 2025 check-in. (*Id.*
11 ¶7.) She was placed on electronic ankle monitoring without explanation.
12 (*Id.*) Then, on October 31, 2025, Pham received a notification instructing
13 her to return for an additional check-in. She complied and was detained
14 upon her arrival. She was provided no explanation for her detention. (*Id.*)

15 Pham's prolonged illegal detention poses critical risks, both to her own
16 health and to her mother's survival. Pham recently recovered from colon
17 cancer and remains under intensive medical supervision to ensure it does
18 not return. (*Id.* ¶8.) She has an oncology appointment on Tuesday,
19 December 16th with Dr. Brian J. LeBerthon. Dr. LeBerthon's office
20 informed undersigned counsel that (1) an ultrasound and bloodwork will be
21 performed at this appointment; and (2) should Pham miss this or future
22 appointments, her health would be at risk. (Ex. B, Rosenbaum Decl. ¶¶ 8-
23 9.)

24 Pham's mother, who is 82 years old, suffers from Parkinson's disease
25 and is immobilized as a result. (Pham Decl. ¶8.) She is also blind in one eye
26 and deaf in one ear. Pham is her primary caretaker. (*Id.*)
27
28

1 **IV. CLAIMS & ARGUMENTS**

2 **A. There is no good reason to believe Pham will be deported**
3 **to Vietnam in the reasonably foreseeable future.**

4 The Due Process Clause limits a “[noncitizen’s] post-removal-period
5 detention to a period reasonably necessary to bring about that [noncitizen’s]
6 removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689
7 (2001). Because of this constitutional limitation, the immigration detention
8 statute “does not permit indefinite detention,” *Id.*; *see also* 8 U.S.C. § 1231,
9 and detention is presumptively limited to six months. “After this 6-month
10 period, once the [noncitizen] provides good reason to believe that there is no
11 significant likelihood of removal in the reasonably foreseeable future, the
12 Government must respond with evidence sufficient to rebut that showing.”
13 *Zadvydas*, 533 U.S. at 701.

14 Pham was previously held in ICE custody for approximately 3 months
15 in late 1992 or early 1993. She was again detained by ICE on October 31,
16 2025, and remains in custody today. Release and rearrest do not restart the
17 six-month presumptive limitation, so Pham has spent roughly four and a
18 half months in detention. *See Sied v. Nielson*, 2018 WL 1876907, at *6 (N.D.
19 Cal. Apr. 19, 2018) (“Several courts have held that the six-month period
20 does not reset when the government detains an alien . . . , releases him from
21 detention, and then re-detains him again.”); *see also S.F. v. Bostock*, 2025
22 WL 2841022, at *4 (D. Or. Oct. 7, 2025) (collecting cases where presumption
23 of reasonableness did not apply when cumulative detention exceeded sixth
24 months); *Nguyen v. Scott*, 2025 WL 2419288, at *13 (W.D. Wash. Aug.
25 21, 2025) (same); *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D.
26 La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220
27 (W.D. La. Nov. 13, 2019). Indeed, to hold otherwise would create an obvious
28

1 end run around *Zadvydas*: ICE could detain an immigrant indefinitely by
2 releasing and quickly rearresting them every six months.

3 *Zadvydas* does not provide the government a six-month license to
4 detain individuals *before* it must demonstrate that removal is reasonably
5 foreseeable. *See Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 392
6 (D.N.J. June 24, 2025) (rejecting the notion that *Zadvydas* “effectively
7 allows the government to detain a person for six months without judicial
8 review.”); *see also Zavvar v. Scott*, 2025 WL 2592543, at *5 (D. Md. Sept. 8,
9 2025) (collecting numerous cases for this same proposition). And Pham’s
10 removal to Vietnam is exceedingly unlikely—not reasonably foreseeable.

11 Start with the historical record: “Until 2008, Vietnam refused to
12 repatriate Vietnamese immigrants whom the United States had ordered
13 removed.” *Tran v. Scott*, ___ F. Supp. 3d ___, No. 2:25-CV-01886-TMC-BAT,
14 2025 WL 2898638, at *2 (W.D. Wash. Oct. 12, 2025) (citing *Hoang Trinh*,
15 *supra*). Though Vietnam agreed in 2008 to consider certain repatriation
16 requests, the agreement excluded Vietnamese immigrants who, like Pham,
17 had arrived in the United State before 1995. *Id.*

18 All the while—save for a brief period of renegotiations during 2017
19 when Vietnam “verbally committed” to consider travel document requests
20 for pre-1995 immigrants—ICE continued to “concede[] that ... in general,
21 the removal of these individuals was still not significantly likely.” *Id.*

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

1 But even after signing the MOU, Vietnam overwhelmingly declined to
2 issue travel documents for pre-1995 immigrants. By October 2021, ICE had
3 adopted a “policy of generally finding that ‘pre-1995 Vietnamese
4 immigrants’ . . . are not likely to be removed in the reasonably foreseeable
5 future.” Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-
6 CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).¹ That admission
7 aligned with two years’ worth of quarterly reports that ICE agreed to
8 submit as part of a class action settlement. Those quarterly reports showed
9 that between September 2021 and September 2023, only four immigrants
10 who came to the U.S. from Vietnam before 1995 were given travel
11 documents and deported. See Asian Law Caucus, *Resources on Deportation*
12 *of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul. 15, 2025)
13 (providing links to all quarterly reports).² During the same period, ICE
14 made 14 requests for travel documents that, as of 2023, had not been
15 granted, including requests made months or years before the September
16 2023 cutoff. See *id.* (proposed counsel’s count based on quarterly reports).

17
18 Indeed, the October 2025 *Tran* order granting habeas relief notes that
19 the petitioner there alleged that from September 2021 to September 2023,
20 the total number of repatriations of pre-1995 immigrants was four. *Tran*,
21 2025 WL 2898638, at *2. Also noted was a declaration from a paralegal
22 working with detained Vietnamese nationals at the Northwest Ice
23 Processing Center: Of the 30 Vietnamese detainees (of whom she was
24

25
26 ¹ See
27 <https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf>.

28 ² Available at <https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports>

1 aware) detained since March 2025, *zero* were removed. *Id.* at *2. The *Tran*
2 decision is in accord with various other courts that have found that removal
3 to Vietnam for a Petitioner, like Pham who emigrated before 1995, was not
4 reasonably foreseeable. *See, e.g., Hoac v. Becerra*, No. 2:25-cv-1740 (C.D.
5 Cal. July 16, 2025); *Nguyen v. Hyde*, 788 F.Supp.3d 144 (D.Mass. June 20,
6 2025).

7 The government's position changed again on June 9, 2025. This time,
8 the Trump administration rescinded ICE's policy of generally finding that
9 pre-1995 Vietnamese immigrants were not likely to be removed in the
10 reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-01398,
11 2025 WL 2419288, at *7 (W.D. Wash. Aug. 21, 2025). But several courts
12 have since disagreed with ICE's appraisal, determining that facts on the
13 ground likely *have not* changed in a manner sufficient to demonstrate that
14 detainees will be timely removed to Vietnam. *See Nguyen v. Scott*, No. 2:25-
15 CV-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025); *Hoac*,
16 2025 WL 1993771, at *4; *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL
17 1725791, at *5 (D. Mass. June 20, 2025).

18
19 Regardless, Vietnam has accepted few pre-1995 immigrants under
20 any circumstances. And the Respondents have concealed the precise factors
21 the Vietnamese government considers in making these determinations, as
22 "this information has been redacted from the publicly available version of
23 the 2020 MOU, and [the government] has not offered it." *Nguyen*, 796
24 F.Supp.3d at 722. But we are not without clues. "The form [attached to the
25 MOU that an individual must complete to request travel documents] ask[s]
26 for a permanent address before leaving Vietnam, any relatives in Vietnam,
27 any other relatives abroad, and with whom and where a repatriated
28 Vietnamese citizen will live." *Id.* Here, as in *Nguyen*, "Petitioner has none of

1 these things, and no connections that [s]he knows of in Vietnam
2 whatsoever.” *Id.* She would enter the country knowing no one and
3 nothing—including the language—with little money, nowhere to stay, and
4 in need of urgent, prolonged medical care. Finally, it bears mention that the
5 United States Government has included Pham in a list it has branded:
6 “Arrested: The Worst of the Worst.” *See* Ex. D. Though Pham’s inclusion on
7 this list is difficult to comprehend, it nevertheless represents the judgment
8 of the United States government and thus makes it still more unlikely that
9 Vietnam would accept Pham’s repatriation.

10 And just like petitioner in *Nguyen*, Pham is not merely an immigrant
11 from Vietnam who happened to arrive in the United States before 1995. She
12 “is a refugee who fled Vietnam . . . because [her] father had assisted the
13 U.S. military in the Vietnam war.” *Id.* at 723. Vietnam seldom accepts pre-
14 1995 immigrants under any circumstances. It is not reasonably foreseeable
15 that the exception to this rule is a woman: (1) with no ties to Vietnam; (2)
16 whose father fought alongside the United States against the Vietnamese
17 government, (3) who would require immediate, permanent medical and
18 financial assistance upon her arrival; and (4) branded by the United States
19 as “the worst of the worst.”

20 Further, upon information and belief, Pham has neither a Vietnamese
21 passport nor the necessary travel documents to effectuate her removal to
22 Vietnam. And so long as Vietnam does not recognize Pham as a citizen, she
23 cannot be removed to Vietnam. Pham’s continued detention in immigration
24 custody thus violates the Due Process Clause of the Fifth Amendment.

1 **B. The Government violated both due process and INA**
2 **regulations by reimprisoning Pham without notice and an**
3 **opportunity to be heard.**

4 Due process rights extend to noncitizens present in the United States,
5 including those subject to final removal orders. *Zadvydas*, 533 U.S. at 693–
6 94; *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). The fundamental
7 requirements of procedural due process are that a person be afforded notice
8 and opportunity to be heard “at a meaningful time and in a meaningful
9 manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333, (1976).

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

16 Courts have consistently interpreted these provisions to require
17 findings prior to re-detention, as well as an opportunity to contest re-
18 detention. *See, e.g., Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL
19 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v.*
20 *Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025);
21 *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D.
22 Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB
23 (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-
24 2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-
25 JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No.
26 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).

1 Pham was not merely denied the meaningful process to which she is
2 entitled: She received no process at all. She received *no advance notice* that
3 her Order of Supervision was revoked. She received *no opportunity to be*
4 *heard* prior to her re-arrest. And it is axiomatic that Pham has been unable
5 to “respond to the reasons for revocation” because none have been provided.
6 Finally, the government has failed to sufficiently demonstrate the changed
7 circumstances that render Pham’s removal significantly likely in the
8 reasonably foreseeable future.

9 **C. To the extent Pham’s detention in immigration custody is**
10 **to effectuate removal to a third country, that violates the**
11 **Due Process Clause, because ICE has not given her**
12 **sufficient notice of the proposed third country and an**
13 **opportunity to request deferral or withholding of removal**
14 **to that country under either statute or the Convention**
15 **Against Torture.**

16 “It is well established that the Fifth Amendment entitles [noncitizens]
17 to due process of law in the context of removal proceedings.” *Trump v.*
18 *J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) (quoting *Reno v. Flores*,
19 507 U.S. 292, 306 (1993)). Noncitizens are thus entitled to “notice and an
20 opportunity to be heard appropriate to the nature of the case.” *Id.* (quoting
21 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306,313 (1950)). As
22 relevant here, this means that purported non-citizens are entitled to notice
23 that they are to be removed to a third country “within a reasonable time
24 and in such a manner as will allow them to actually seek habeas relief in
25 the proper venue before such removal occurs.” *Id.*

26 Pham has not been formally ordered removed to any country other
27 than Vietnam. As such, she has never had an opportunity to contest
28

1 removal to any third country on the grounds that she may face persecution
2 or torture if she is removed to that country.

3 To the extent that Pham’s detention is meant to facilitate her removal
4 to a third country, *see generally Zadvydas*, 533 U.S. at 690 (suggesting that
5 detention following a removal order is intended to facilitate removal), if
6 such a removal is accomplished in violation of his due-process rights, then
7 her detention is illegal. This due-process claim “necessarily impl[ies] the
8 invalidity of [her] confinement and removal” to a third country not yet
9 named in any removal order. *J.G.G.*, 145 S. Ct. at 1005. Thus, her due-
10 process claim is properly brought in a habeas petition, and a court order
11 that she be released from detention is a proper remedy for such a violation.

12 **D. Removal to third countries where Pham might face**
13 **imprisonment violates the constitutional prohibition on**
14 **“punitive” removal practices.**

15 The U.S. Supreme Court long ago held that the government may not
16 inflict upon individuals an “infamous punishment” atop deportation as a
17 penalty for an immigration violation, absent criminal charges, a judicial
18 trial, and related constitutional protections. *Wong Wing v. United States*,
19 163 U.S. 228, 236-38 (1896). More than a century later the Court reaffirmed
20 the point, holding that while it is within the constitutional power of
21 Congress to remove those unlawfully present in the United States,
22 “punitive measures c[annot] be imposed upon [noncitizens]” merely by dint
23 of their removal, as “all persons within the territory of the United States
24 are entitled to the protection’ of the Constitution.’” *Zadvydas*, 533 U.S. at
25 694 (*quoting Wong Wing*, 163 U.S. at 238).

26 Yet the purposes of the government’s third-country removal program
27 are substantially punitive. As one district court recently held, government
28

1 officials have made public statements, judicially noticeable, that “offer
2 evidence that third country deportation is occurring as a punishment.”
3 *Nguyen v. Scott*, ___ F. Supp. 3d ___, 2025 WL 2419288, at *24 (W.D. Wash.
4 Aug. 21, 2025). These include an official video of President Donald J. Trump
5 stating, “[I]f illegal aliens choose to remain in America, they're remaining
6 illegally and they will face severe consequences,” with “punishments ...
7 including ... sudden deportation in a place and manner solely of our
8 discretion.” *Nguyen v. Scott*, 2025 WL 2419288, at *24 (W.D. Wash. Aug. 21,
9 2025). “Other courts [too] across the country have recognized that the
10 government is intentionally removing individuals to countries where they
11 will be imprisoned” in facilities where “ ‘torture is pervasive’ ” and “ ‘human
12 rights violations’ ” “ ‘widespread,’ ” under “ ‘horrific prison conditions
13 [engineered] for the specific purpose of inflicting suffering.’ ” *Id.* at *24
14 (quoting cases).

15 Removal to such countries under the Government’s current policy
16 would thus violate the constitutional prohibition on punitive removal
17 practices as well.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. 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 her 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 her from their custody; and
- Grant any other relief that is just and practicable.

Respectfully submitted,

Cuauhtemoc Ortega
Federal Public Defender

Dated: December 12, 2025 By: /s/ Jonah Rosenbaum
Jonah Rosenbaum
Deputy Federal Public Defender

Proposed Attorneys for Petitioner
Dung Pham

1 **VI. VERIFICATION**

2 I, Jonah Rosenbaum, declare as follows:

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

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

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

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

12 */s/ Jonah Rosenbaum*
13 Jonah Rosenbaum

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28