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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HIEN NGOC HUYNH,

Petitioner,

v.

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

Respondents.

Civil Case No.: 25-cv-3601-LL-AHG

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

Having received the government's Return and supporting evidence, this Court should grant Mr. Huynh's petition on the basis of either claim. To do so, the Court need only follow recent decisions in this district and around the country.

First, this Court should grant the petition on Claim One because the government has not complied with 8 C.F.R. §§ 241.4, 241.13. For persons like Mr. Huynh, those regulations permit re-detention only if ICE (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2), (2) makes that finding "on account of changed circumstances," *id.*, (3) provides "an initial informal interview promptly," *id.* §§ 241.4(*l*)(1), 241.13(i)(3), and (4) "affords the [person] an opportunity to respond to the reasons for revocation," *id.* Although ICE provided Mr. Huynh a Notice of Revocation of his supervised release alleging there were "changed circumstances," it never explained what those "changed circumstances" were. Nor can it, as the government could not remove Mr. Huynh in 2004 and admits that it has not obtained a travel document since that time. And while the government provided Mr. Huynh an informal interview, its failure to explain the "changed circumstances" did not provide him a meaningful opportunity to contest his revocation and detention at that interview.

Second, this Court must grant the petition on Claim Two because the government provides no evidence to satisfy the success element ("a significant likelihood of removal") or timing element ("in the reasonably foreseeable future") of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Though Deportation Officer ("DO") Cole asserts that "ICE routinely obtains travel documents for Vietnamese citizens, including those who entered the United States before 1995," Doc. 5-1 at ¶ 13, he does not say (1) what proportion of Vietnamese citizens for whom travel documents are sought actually receive them, or (2) whether Mr. Huynh qualifies for removal at all under the 2020 Memorandum of Understanding ("MOU"). (The

government does not dispute that he may not be removed under the 2008 treaty.) Nor does DO Cole give any indication of how long it takes to get travel documents for pre-1995 Vietnamese citizens—no statistics, no estimations, no anecdotes, no nothing. The government instead relies on ICE's mere efforts to seek travel documents without distinguishing these from the same efforts it made 21 years ago.

This Court should therefore grant the petition—or at least a temporary restraining order ("TRO")—on either ground.

ARGUMENT

I. In light of the government's response, Mr. Huynh succeeds on the merits.

With the government's response in hand, this Court need not speculate about whether Mr. Huynh may succeed on the merits. Because the government's evidence is plainly insufficient to justify Mr. Huynh's detention, his petition should be granted outright, or the Court should at least release him on a TRO pending further briefing.

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

First, ICE has not complied with 8 C.F.R. §§ 241.4, 241.13. The government does not deny that these regulations apply to Mr. Huynh, that Mr. Huynh may challenge them in this habeas case, or that failure to comply with them is grounds for release. *See* Doc. 5 at 10–13. To the contrary, the government appears to agree that Mr. Huynh's release was revoked under 8 C.F.R. § 241.4(l)(2)(iii) and 8 C.F.R. § 241.13(i)(2). Doc. 5 at 10–12. But the government claims that ICE complied with these regulations. *Id.* ICE did not.

Begin with 8 C.F.R. § 241.13(i)(2). That section provides that ICE may "revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable

future." 8 C.F.R. § 241.13(i)(2) (emphasis added). That "regulation require[s] (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023).

But the Notice of Revocation of Release simply states that this revocation was "based on a review of your official alien file and a determination that there are changed circumstances in your case." Dkt. 5-2, Exhibit 2. "Simply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough." *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). Rather, "Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3)." *Id.* By "identif[ying] the category—'changed circumstances'—but fail[ing] to notify [Petitioner] of the reason—the circumstances that changed and created a significant likelihood of removal in the reasonably foreseeable future—[ICE] failed to follow the relevant regulation." *Id.*

Nor *have* there been any "changed circumstances." Neither the government's return, nor DO Cole's declaration, ever explain what has changed since the government's last unsuccessful attempt to remove Mr. Huynh in 2004. Dkt. 5 at 10-13; 5-1. Nevertheless, the government argues that "ICE's revived ability to obtain travel documents from the Vietnamese government and to schedule routine removal flights to Vietnam" constitutes "changed circumstances," claiming that the government has carried out "at least 587" removals in 2025, while it carried out "less than 100" in each of the years prior. Dkt. 5 at 12. But the government never provides statistics about how many individuals it *tried* to remove in 2025 compared to the years prior. For instance, if ICE tried to remove 1,000 people in 2025 but only 200 people in the years prior to that, its success rate would be roughly the same. Without this critical context, there is no evidence of

any "changed circumstances"—only that the government simply decided to detain Mr. Huynh again to try to deport him.

Just as importantly, courts have "demanded an individualized analysis" of why *this* person—Mr. Huynh—will likely be removed. *Nguyen*, 2025 WL 2419288, at *17 (citing *Nguyen*, 2025 WL 1725791, at *4). Because "[t]he government has not provided any evidence of [Vietnam's] eligibility criteria or why it believes *Petitioner* now meets it," the government's evidence is insufficient. *Id.* at *18 (emphasis added). Absent a travel document specific to Mr. Huynh—which the government has not received, Dkt. 5-1 at ¶ 12—nothing is different from the last time ICE tried to remove him.

In *Rokhfirooz*, Judge Huie determined the fourth requirement was not met on a record materially indistinguishable from this one. 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025). There, the government failed to produce "any documented determination, made prior to Petitioner's arrest, that his release should be revoked." *Id.* at *3. The only documentation was "an arrest warrant, issued on DHS Form I-200, merely recit[ing] that there is probable cause to believe that Petitioner is 'removable from the United States,' that is, subject to removal, which would be accurate whether or not Petitioner's release was revoked." *Id.*

That is roughly the same documentation the government has produced here: The government provides no documented, pre-arrest determination that Mr. Huynh's release should be revoked. Rather, ICE's documents confirm that his arrest was premised entirely on his status as a removable immigrant, not a determination that release should be revoked because the government had obtained a travel document.

Judge Huie also remarked in *Rokhfirooz* that the government had produced "no record constitut[ing] a determination even after Petitioner's arrest that there is a significant likelihood that Petitioner can be removed in the reasonably

foreseeable future." 2025 WL 2646165, at *3. "In connection with defending [that] lawsuit, Respondents prepared and filed a declaration from a Supervisory Detention and Deportation Officer assigned to the detention center where Petitioner is housed," which stated that "[ICE Enforcement and Removal Operations] determined that there is a significant likelihood of removal and resettlement in a third country in the reasonably foreseeable future and re-detained Petitioner to execute his warrant of removal." *Id.* Judge Huie deemed that post-hoc determination insufficient, because the declarant did not produce underlying documentation showing that any such determination had actually been made—let alone that it had been made pre-arrest. *Id.* The Court therefore "decline[d] to rely on" those statements. *Id.*

Here, the evidence is even weaker. The Cole Declaration states that ICE previously tried to remove Mr. Huynh but had to release him "due to an inability to remove Petitioner to Vietnam." Doc. 5-1 at ¶ 8. Other than blank assertions, DO Cole does not explain or provide any evidence showing what has changed for Mr. Huynh since then that would somehow make a travel document "available." Accordingly, there is "no evidence that DHS has made such a determination as to the revocation of Petitioner's release even after the fact of arrest, up to the present day." *Rokhfirooz*, 2025 WL 2646165, at *4. And "Respondents have not provided any details about why a travel document could not be obtained in the past, nor have they attempted to show why obtaining a travel document is more likely this time around." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025). Respondents have announced only their "intent to eventually complete a travel document request for Petitioner," which "does not constitute a changed circumstance." *Id.*

Finally, all of the above goes only to ICE's violations of 8 C.F.R. § 241.13(i)(2). Sections 241.4(l) and 241.13(i)(3) mandate additional procedures: "[B]oth require ICE to provide 'an initial informal interview promptly ... to afford

the alien an opportunity to respond to the reasons for revocation.'" *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (quoting 8 C.F.R. §§ 241.4(*l*)(2), 241.13(i)(3)). Although ICE purportedly provided Mr. Huynh an informal interview on the day of his re-arrest, this interview did not allow him to "respond to the reasons for revocation," 8 C.F.R. § 241.13(i)(3), because those reasons were not provided in the Notice of Revocation.

"When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(*l*) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). "The procedures in § 241.4" and § 241.13 therefore "are not meant merely to facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees." *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R. §§ 241.4, 241.13 are "intended to provide due process to individuals in [Mr. Huynh's] position," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable. Thus, this Court should order Mr. Huynh released on the basis of Claim One alone.

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

Second, the government provides no evidence that Mr. Huynh will likely be removed to Vietnam at all, let alone in the reasonably foreseeable future.

1. The government provides no evidence to support a "significant likelihood of removal" to Vietnam.

As an initial matter, DO Cole admits that ICE has detained Mr. Huynh for approximately six months since his removal order. Dkt. 5-1 at ¶ 7, 8, 9. Yet the government appears to contend that the six-month grace period starts over every time ICE re-detains someone. Dkt. 5 at 7. "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen,* No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025).

Even a cursory review of § 1231(a)(1)(B) shows that that is not true. The statute defines three, specific starting dates for the removal period, none of which involve re-detention. *See Bailey v. Lynch*, No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (explaining this). The six-month grace period has therefore ended, and so—contrary to the government's claims—Mr. Huynhg need not rebut the "presumptively reasonable period of detention." Dkt. 5 at 7.

Because the six-month grace period has passed, the burden shifts to the government to prove that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. That standard has a success element ("significant likelihood of removal") and a timing element ("in the reasonably foreseeable future"). The government meets neither.

As an initial matter, the government has not shown that Mr. Huynh's removal to Vietnam is "significant[ly] like[ly]." *Zadvydas*, 533 U.S. at 701.

First, as previously explained, DO Cole's assertion that "ICE routinely obtains travel documents for Vietnamese citizens," Doc. 5-1 at ¶ 13, does not show that a high *proportion* of Vietnamese citizens are successfully removed

when ICE seeks travel documents. "[I]f the total number of requests that were made to Vietnam was disclosed, [this Court] might be able to gauge how likely it is that Petitioner would be removed to Vietnam. If DHS submitted 350 requests and Vietnam issued travel documents for 328 individuals, Respondents may very well have shown that removal is significantly likely in the reasonably foreseeable future. On the other hand, if DHS submitted 3,500 requests and only 328 individuals received travel documents, Respondents would not be able to meet their burden." *Nguyen*, 2025 WL 1725791, at *4; *accord Hoac*, 2025 WL 1993771, at *5. DO Cole provides no ratio of requests to travels documents issued, precluding this kind of analysis.

Just as importantly, courts have "demanded an individualized analysis" of why *this* person—Mr. Huynh—will likely be removed. *Nguyen*, 2025 WL 2419288, at *17 (citing *Nguyen*, 2025 WL 1725791, at *4). This Court cannot know if Mr. Huynh qualifies at all under the MOU, because (1) the MOU applies only to persons meeting certain criteria, but (2) the government has never disclosed in full what those criteria are. *Id.* at *6. And even for those who qualify, the MOU provides only that Vietnam has "discretion whether to issue a travel document," which it exercises "on a case-by-case basis." *Hoac*, 2025 WL 1993771, at *5. By itself, then, "the MOU has repeatedly been deemed insufficient to show a significant likelihood of remova[l] in the reasonably foreseeable future." *Nguyen*, 2025 WL 2419288, at *17. Because "[t]he government has not provided any evidence of Vietnam's eligibility criteria or why it believes Petitioner now meets it," the government's evidence is insufficient. *Id.* at *18.

Second, good faith efforts to secure a travel document do not themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show

that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, "the Government is required to demonstrate the likelihood of not only the *existence* of untapped possibilities, but also of a probability of success in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010).

Here, then, "[w]hile the respondent asserts that [Mr. Huynh's] travel document requests with [the Vietnamese] Consulate[]" will be lodged, "this is insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019). Many courts have agreed that requesting travel documents does not itself make removal reasonably likely. *See, e.g.*, *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case was "still under review and pending a decision" did not meet respondents' burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might

be forthcoming or why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

2. The government provides no evidence to support that any such removal will occur "in the reasonably foreseeable future."

Additionally, even if ICE will eventually remove Mr. Huynh, the government provides zero evidence that removal will happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. DO Cole provides no timetable for how long travel document requests like his typically take—no statistics, no estimations, no anecdotes, no nothing.

That is fatal. "[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun*, 2019 WL 78984, at *6. "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). "[I]f DHS has no idea of when it might reasonably expect [Mr. Huynh] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it *might* occur—in the reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

Courts have routinely granted habeas petitions where, as here, the government does not establish *Zadvydas*'s timing element. *See, e.g.*, *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020), *report and recommendation adopted,* No. 6:20-CV-00866, 2020 WL 6064881

(W.D. La. Oct. 14, 2020) ("[A] theoretical possibility of eventually being removed does not satisfy the government's burden[.]"); *Eugene v. Holder*, No. 408CV346-RH WCS, 2009 WL 931155, at *4 (N.D. Fla. Apr. 2, 2009) ("While Respondents contend Petitioner *could* be removed to Haiti, it has not been shown that it is significantly likely that Petitioner *will* be removed in the *reasonably foreseeable* future."); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D. Pa. 2004) (granting petition because even if "Petitioner's removal will ultimately be effected . . . the Government has not rebutted the presumption that removal is not likely to occur in the reasonably foreseeable future"); *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002) (granting petition where the government had not provided any "evidence . . . that travel documents will be issued in a matter of days or weeks or even months").

In sum, then, there could be "some possibility that Vietnam will accept Petitioner at some point. But that is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future." *Nguyen*, 2025 WL 2419288, at *16. Mr. Huynh therefore succeeds under *Zadvydas*, too.

II. Section 1252(g) does not deprive this Court of jurisdiction.

Finally, this Court has jurisdiction. Contrary to the government's arguments, § 1252(g) does not bar review of "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, 154 F.4th 989, 996 (9th Cir. Aug. 27, 2025) (quotations omitted).

In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed," *id.* at

997[1]—the same claim that Mr. Huynh raises here with respect to third-country removals. The Court reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, § 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 154 F.4th at 999.

The same logic applies to all of Mr. Huynh's claims, because he challenges only violations of ICE's mandatory duties under statutes, regulations, and the Constitution. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Huynh's] continued detention and the process required in relation to third country removal." *Y.T.D.*, 2025 WL 2675760, at *5. Many courts agree. *See, e.g.*, *Kong*, 62 F.4th at 617 ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention

[1] Mr. Ibarra-Perez raised this claim in a post-removal Federal Tort Claims Act ("FTCA") case, *id.* at *2, while this is a pre-removal habeas petition. But the analysis under § 1252(g) remains the same, because both Mr. Ibarra-Perez and Mr. Huynh are challenging the same kind of agency action. *See Kong*, 62 F.4th at 616–17 (explaining that a decision about § 1252(g) in an FTCA case would also affect habeas jurisdiction).

order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing] detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (§ 1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard prior to removal of an alien to a third country").

III. The remaining TRO factors decidedly favor Mr. Huynh.

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

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

On the balance-of-equities/public-interest prong, the government is correct that there is a "public interest in prompt execution of removal orders." *Nken v. Holder*, 556 U.S. 418, 436 (2009). But that interest is diminished here because the government likely cannot remove Mr. Huynh in the reasonably foreseeable future, and even if it could, it is equally "well-established that 'our system does not permit agencies to act unlawfully even in pursuit of desirable ends.'" *Nguyen*, 2025 WL 2419288, at *28 (quoting *Ala. Ass'n of Realtors v. Dep't of Health &*

Hum. Servs., 594 U.S. 758, 766 (2021)). It also "would not be equitable or in the public's interest to allow the [government] to violate the requirements of federal law" with respect to detention and re-detention, *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (cleaned up), or to imperil the "public interest in preventing aliens from being wrongfully removed," *Nken*, 556 U.S. 418, 436.

CONCLUSION

For all these reasons, this Court should grant the petition, or at least enter a temporary restraining order and injunction.

Respectfully submitted,

Dated: December 31, 2025

s/ Kara Hartzler

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