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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9

10 OUNONG SAYSANAVONG,

11 Petitioner,

12 v.

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

18 Respondents.
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CIVIL CASE NO. '25CV3624 CAB DEB

**PETITION FOR WRIT OF
HABEAS CORPUS**

**[Civil Immigration Habeas,
28 U.S.C. § 2241]**

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1
2 **INTRODUCTION**

3 Petitioner Ounong Saysanavong (“Mr. Saysanavong” or “Petitioner”) is a 63-
4 year-old man born in Laos in 1962. His father served in the Laotian military before
5 and during the Vietnam War and was captured by communist forces during the
6 conflict. Near the end of the war, he escaped from captivity. After the war ended in
7 1975, Mr. Saysanavong and his family fled to Thailand, where they lived in a
8 refugee camp.

9 Mr. Saysanavong was 19 years old when he came to the United States with
10 his family as a refugee in 1981 and soon became a lawful permanent resident. In
11 the last forty-four years, Mr. Saysanavong has dedicated himself to building a
12 productive and meaningful life in the United States. He has maintained long-term
13 employment and has deep roots in the community.

14 In 2008, he was ordered removed on the basis of a criminal conviction. But
15 when Laos would not accept him after about five to six months of detention, Mr.
16 Saysanavong was released on an order of supervision.

17 Mr. Saysanavong remained on supervision for the next 17 years. He dutifully
18 checked in with Immigration and Customs Enforcement (“ICE”) every year and
19 missed only a single appointment, which occurred several years ago while he was
20 hospitalized for heart failure. He accrued no new criminal convictions—not even a
21 traffic citation. When he went for his routine check-in appointment on November
22 12, 2025, ICE suddenly re-detained him without any advance notice or warning.
23 Contrary to regulation, ICE did not notify Mr. Saysanavong of any changed
24 circumstances that made his removal more likely. Nor did it give Mr. Saysanavong
25 an informal interview or an opportunity to contest his re-detention. He has now
26 been detained for over a month, with no information about whether ICE has sought
27 a travel document or even begun the process of seeking his deportation. Worse yet,
28 on July 9, 2025, ICE adopted a new policy permitting removals to third countries
with no notice, six hours’ notice, or 24 hours’ notice depending on the

1 circumstances, providing no meaningful opportunity to make a fear-based claim
2 against removal.

3 Mr. Saysanavong's detention violates his statutory and regulatory rights,
4 *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. Courts in this
5 district have agreed in similar circumstances as to each of Mr. Saysanavong's three
6 claims. Specifically:

7 (1) *Regulatory and due process violations*: Mr. Saysanavong must be
8 released because ICE's failure to follow its own regulations about notice and an
9 opportunity to be heard violate due process. *See, e.g., Constantinovici v. Bondi*, ___
10 F. Supp. 3d ___, No. 25-CV-2405 (RBM) (AHG), 2025 WL 2898985 (S.D. Cal. Oct.
11 10, 2025); *Rokhfirooz v. Larose*, No. 25-CV-2053 (RSH) (VET), 2025 WL
12 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, No. 25-CV-2422 (RBM)
13 (MSB), 2025 WL 2898977, at *3–5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, No.
14 25-CV-2433 (CAB), 2025 WL 2800037 (S.D. Cal. Sept. 30, 2025); *Van Tran v.*
15 *Noem*, No. 25-CV-2334 (JES), 2025 WL 2770623, at *3 (S.D. Cal. Sept. 29, 2025);
16 *Truong v. Noem*, No. 25-CV-2597 (JES), ECF No. 10 (S.D. Cal. Oct. 10, 2025);
17 *Khambounheuang v. Noem*, No. 25-CV-2575 (JO) (SBC), ECF No. 12 (S.D. Cal.
18 Oct. 9, 2025); *Sphabmixay v. Noem*, No. 25-CV-2648 (LL) (VET) (S.D. Cal. Oct.
19 30, 2025); *Sayvongsa v. Noem*, No. 25-CV-2867 (AGS) (DEB) (S.D. Cal. Oct. 31,
20 2025); *Thammavongsa v. Noem*, No. 25-CV-2836 (JO) (AHG) (S.D. Ca. Nov. 3,
21 2025) (all either granting temporary restraining orders releasing noncitizens, or
22 granting habeas petitions outright, due to ICE regulatory violations during recent
23 re-detentions of released noncitizens previously ordered removed).

24 (2) *Zadvydas violations*: Mr. Saysanavong must also be released under
25 *Zadvydas* because—having proved unable to remove him for the last 17 years—the
26 government cannot show that there is a “significant likelihood of removal in the
27 reasonably foreseeable future.” *Id.* at 701. *See, e.g., Conchas-Valdez v. Casey*, No.
28 25-CV-2469 (DMS) (JLB), 2025 WL 2884822, at *3 (S.D. Cal. Oct. 6, 2025);

1 *Rebenok v. Noem*, No. 25-CV-2171 (TWR), ECF No. 13 (S.D. Cal. Sept. 25, 2025)
2 (granting habeas petitions releasing noncitizens due to *Zadvydas* violations).

3 (3) *Third-country removal statutory and due process violations*: This Court
4 should enjoin ICE from removing Mr. Saysanavong to a third country without
5 providing an opportunity to assert fear of persecution or torture before an
6 immigration judge. *See, e.g., Rebenok v. Noem*, No. 25-CV-2171 (TWR), at ECF
7 No. 13; *Van Tran v. Noem*, 2025 WL 2770623, at *3; *Nguyen Tran v. Noem*, No.
8 25-CV-2391 (BTM), ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*,
9 No. 25-CV-2502 (JES), 2025 WL 2881578, at *4 (S.D. Cal. Oct. 9, 2025) (all either
10 granting temporary restraining orders or habeas petitions ordering the government
11 to not remove petitioners to third countries pending litigation or reopening of their
12 immigration cases).

13 This Court should grant this habeas petition and issue appropriate injunctive
14 relief on all three grounds.

15 STATEMENT OF FACTS

16
17 **A. Mr. Saysanavong is ordered removed, held in ICE custody about**
18 **five to six months, and released as ICE proves unable to deport**
19 **him for the next 17 years, until he is arrested at his routine check-**
20 **in.**

21 Mr. Saysanavong was born in Laos and came to the United States as a refugee
22 with his family in 1981. (Exhibit A, Declaration of Ounong Saysanavong
23 (“Saysanavong Decl.”), ¶¶ 1, 2.) When they arrived in the United States, they all
24 became lawful permanent residents. (*Id.* ¶ 2.) Mr. Saysanavong started working as
25 soon as he arrived in the United States and spent over 30 years working for several
26 meatpacking companies. (*Id.* ¶ 3.)

27 In 2003, Mr. Saysanavong was convicted of a nonviolent drug-related
28 offense. (*Id.* ¶ 4.) As a result of this conviction, Mr. Saysanavong was placed in

1 removal proceedings. (*Id.*) An immigration judge ordered him removed on
2 September 22, 2008. (*Id.* ¶ 5.)

3 But ICE was not able to effectuate Mr. Saysanavong’s removal to Laos. ICE
4 tried and failed to obtain travel documents for him. (*Id.* ¶ 6.) ICE officials informed
5 Mr. Saysanavong that they were not able to deport him “because Laos would not
6 take [him].” (*Id.*) Finally, ICE gave up and released him on an order of supervision.
7 (*Id.* ¶ 7.) Mr. Saysanavong was in ICE detention for about five to six months in
8 total before being released from custody. (*Id.*)

9 This is at minimum the government’s own admission that Mr. Saysanavong
10 could remain in the United States, given the government’s stated inability to deport
11 anyone to Laos. In reliance on this, Mr. Saysanavong went on to build a life in the
12 United States. Mr. Saysanavong engaged in long-term employment working for
13 several meatpacking companies and has developed deep roots in the community.
14 (*Id.* ¶ 3.) In the years since his removal order, Mr. Saysanavong dutifully checked
15 in with ICE every year and missed only a single appointment, which occurred
16 several years ago while he was hospitalized for heart failure. (*Id.* ¶ 8.) He accrued
17 no new criminal convictions, not even a traffic citation. (*Id.*)

18 On November 12, 2025, ICE officials arrested Mr. Saysanavong during his
19 routine check-in appointment. (*Id.* ¶ 9.) They did not provide him any notice or give
20 him an interview or an opportunity to contest his detention. (*Id.*)

21 Mr. Saysanavong suffers from several health conditions, including a serious
22 heart condition that requires ongoing medication, as well as hypertension and high
23 cholesterol. (*Id.* ¶ 11.) He was previously hospitalized for heart failure. (*Id.*) Prior
24 to his arrest by ICE, Mr. Saysanavong had stopped working because of his heart
25 condition. (*Id.*) Mr. Saysanavong also has a history of other health conditions,
26 including kidney disease and diabetes. (*Id.*)
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1 **B. Laos has no repatriation agreement with the United States and a**
2 **longstanding policy of refusing to accept deportees.**

3 The Lao People’s Democratic Republic is an authoritarian state and one of
4 the poorest nations in Asia.¹ When the communist party came to power in Laos in
5 1975, hundreds of thousands of refugees fled, including many who had fought
6 alongside the U.S. government in the Vietnam War.² During the war, the United
7 States had dropped over 2.5 million tons of bombs on Laos in what remains the
8 largest bombardment of any country in history.³

9 No repatriation agreement exists between Laos and the United States. Laos
10 has also been historically unwilling to accept deportees from the United States
11 through informal negotiations. As a result, there are around 4,800 nationals of Laos
12 living in the United States with final removal orders who have not been removed.⁴
13 Last year, zero people were removed to Laos; in the five years before that, between
14 0 and 11 people were removed per year.⁵

18 ¹ See Ben Dolven, CONG. RSCH. SERV., IF10236, IN FOCUS: LAOS (Dec. 2,
19 2024), <https://www.congress.gov/crs-product/IF10236> (“2024 CRS”).

20 ² See Dolven, *supra* note 1; see also *America’s Secret War in Laos*, THE
21 ECONOMIST (Jan. 21, 2017), <https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-laos>.

22 ³ See Dolven, *supra* note 1; see also *America’s Secret War in Laos*, THE
23 ECONOMIST (Jan. 21, 2017), <https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-laos>.

24 ⁴ Asian Law Caucus, *Status of Ice Deportations to Southeast Asian*
25 *Countries: Laos* (Oct. 9, 2025), <https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation>.

26 ⁵ See U.S. Immigration and Customs Enforcement, *Annual Report: Fiscal*
27 *Year 2024*, at 100 (Dec. 19, 2024),
28 <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

1 In 2018, the United States issued visa sanctions on Laos “due to lack of
2 cooperation in accepting their citizens who have been ordered removed.”⁶ The
3 federal government explained that Laos had not “established repeatable processes
4 for issuing travel documents to their nationals ordered removed from the United
5 States.”⁷

6 In June of this year, President Trump reiterated, “Laos has historically failed
7 to accept back its removable nationals.”⁸ As a result, he included Laos as one of 19
8 countries in his travel ban, banning all Lao immigrants, tourists, students, and
9 exchange visitors from entering the United States.⁹ In response, the Lao
10 government has issued travel documents to a few dozen nationals of Laos with final
11 removal orders.¹⁰

12 Since then, several courts have rejected the Trump administration’s efforts
13 to re-detain a Laotian immigrant without following its own regulations. *See*
14

15
16 ⁶ *DHS Announces Implementation of Visa Sanctions*, HOMELAND SECURITY
17 (July 8, 2018), [https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-
implementation-visa-sanctions](https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions).

18 ⁷ *Id.*

19 ⁸ *See* Presidential Proclamation, Restricting the Entry of Foreign Nationals
20 to Protect the United States from Foreign Terrorists and Other National Security
21 and Public Safety Threats, Sec. 3(c)(i) (June 4, 2025),
22 [https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-
foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-
national-security-and-public-safety-threats/](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/).

23 ⁹ *Id.*; *see also* American Immigration Council, *Trump’s 2025 Travel Ban*
24 (Aug. 6, 2025), [https://www.americanimmigrationcouncil.org/report/trump-2025-
travel-ban/](https://www.americanimmigrationcouncil.org/report/trump-2025-travel-ban/).

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26 ¹⁰ *See* Ben Warren, *Hmong Refugees from Michigan Among Those Deported*
27 *to Laos, Despite Calls for Release*, THE DETROIT NEWS (Aug. 15, 2025, at 6:04 p.m.
28 ET), [https://www.detroitnews.com/story/news/local/michigan/2025/08/15/hmong-
refugees-among-those-deported-to-laos/85680464007/](https://www.detroitnews.com/story/news/local/michigan/2025/08/15/hmong-refugees-among-those-deported-to-laos/85680464007/) (noting that 32 Laotian
nationals were deported on a flight in August).

1 *Phetsadakone v. Scott*, No. 25-CV-1678 (JNW), 2025 WL 2579569, at *2–6 (W.D.
2 Wash. Sept. 5, 2025) (granting TRO to Laotian national in light of the government’s
3 failure to follow its regulations regarding re-detention and questions regarding the
4 validity of his underlying criminal conviction); *Khambounheuang v. Noem*, No. 25-
5 CV-2575 (JO) (SBC), ECF No. 12 (S.D. Cal. Oct. 9, 2025) (granting habeas petition
6 for Laotian citizen and ordering immediate release); *Truong v. Noem*, No. 25-CV-
7 2597 (JES), ECF No. 10 (S.D. Cal. Oct. 10, 2025) (same); *Sphabmixay v. Noem*,
8 No. 25-CV-2648 (LL) (VET) (S.D. Cal. Oct. 30, 2025) (same); *Sayvongsa v. Noem*,
9 No. 25-CV-2867 (AGS) (DEB) (S.D. Cal. Oct. 31, 2025) (same); *Thammavongsa*
10 *v. Noem*, No. 25-CV-2836 (JO) (AHG) (S.D. Ca. Nov. 3, 2025) (same).

11 **C. The government is carrying out deportations to third countries**
12 **without providing sufficient notice and opportunity to be heard.**

13 When immigrants cannot be removed to their home country, ICE has begun
14 deporting those individuals to third countries without adequate notice or a hearing.¹¹
15 This summer and fall, ICE has carried out highly publicized third country
16 deportations to prisons in South Sudan, Eswatini, Ghana, and Rwanda.¹² At least
17 four men deported to Eswatini have remained in a maximum-security prison there
18 for nearly three months without charge and without access to counsel; another six
19 are detained incommunicado in South Sudan, and another seven are being held in
20 an undisclosed facility in Rwanda.¹³

21
22 ¹¹ See Edward Wong, et al., *Inside the Global Deal-Making Behind Trump’s*
23 *Mass Deportations*, N.Y. TIMES (June 25, 2025),
24 [https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html)
[deportations.html](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html).

25 ¹² Nokukhanya Musi & Gerald Imray, *10 More Deportees from the US Arrive*
26 *in the African Nation of Eswatini*, ASSOCIATED PRESS (Oct. 6, 2025),
27 [https://apnews.com/article/eswatini-deportees-us-trump-immigration-](https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2)
[74b2f942003a80a21b33084a4109a0d2](https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2).

28 ¹³ *Id.*

1 In February 2025, Panama and Costa Rica imprisoned hundreds of deportees
2 in hotels, a jungle camp, and a detention center.¹⁴

3 On July 9, 2025, ICE rescinded previous guidance meant to give immigrants
4 a “‘meaningful opportunity’ to assert claims for protection under the Convention
5 Against Torture . . . before initiating removal to a third country” like the ones just
6 described. (Exhibit C, July 9, 2025 Memo (“ICE Memo”), at 1.) Instead, under new
7 guidance, ICE may remove any immigrant to a third country “without the need for
8 further procedures,” as long as—in the view of the State Department—the United
9 States has received “credible” “assurances” from that country that deportees will
10 not be persecuted or tortured. (*Id.* at 1.) If a country fails to credibly promise not to
11 persecute or torture releasees, ICE may still remove immigrants there with minimal
12 notice. (*Id.*) Ordinarily, ICE must provide 24 hours’ notice. But “[i]n exigent
13 circumstances,” a removal may take place in as little as six hours, “as long as the
14 alien is provided reasonable means and opportunity to speak with an attorney prior
15 to removal.” (*Id.*)

16 Under this policy, the United States has deported noncitizens to prisons and
17 military camps in Rwanda, Eswatini, South Sudan, and Ghana. Many are still
18 detained to this day, in countries to which they have never been, without charge.¹⁵

20 ARGUMENT

21 This Court should grant this petition and order two forms of relief.

23 ¹⁴ Vanessa Buschschluter, *Costa Rican Court Orders Release of Migrants*
24 *Deported from U.S.*, BBC (Jun. 25, 2025),
25 <https://www.bbc.com/news/articles/cwyrn42kp7no>; Bill Frelick, Martina Rapido
26 Ragozzino & Michael Garcia Bochenek, ‘*Nobody Cared, Nobody Listened*’: *The*
27 *US Expulsion of Third-Country Nationals to Panama*, Human Rights WATCH (Apr.
28 24, 2025), <https://www.hrw.org/report/2025/04/24/nobody-cared-nobody-listened/the-us-expulsion-of-third-country-nationals-to>.

¹⁵ See Musi & Gerald Imray, *supra* note 12.

1 First, it should order Mr. Saysanavong's immediate release. ICE failed to
2 follow its own regulations requiring changed circumstances before re-detention, as
3 well as a chance to promptly contest a re-detention decision. And *Zadvydas v. Davis*
4 holds that immigration statutes do not authorize the government to detain
5 immigrants like Mr. Saysanavong, for whom there is "no significant likelihood of
6 removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001).

7 Second, it should enjoin the Respondents from removing Mr. Saysanavong
8 to a third country without first providing notice and a sufficient opportunity to be
9 heard before an immigration judge.

10 **A. Claim One: ICE failed to comply with its own regulations before**
11 **re-detaining Mr. Saysanavong, violating his rights under**
12 **applicable regulations and due process.**

13 Two regulations establish the process due to someone who is re-detained in
14 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
15 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
16 framework to persons released upon good reason to believe that they will not be
17 removed in the reasonably foreseeable future, as Mr. Saysanavong was. *See Phan*
18 *v. Noem*, No. 25-CV-2422 (RBM) (MSB), 2025 WL 2898977, *3–5 (S.D. Cal. Oct.
19 10, 2025) (explaining this regulatory framework and granting a habeas petition for
20 ICE's failure to follow these regulations); *Rokhfirooz*, 2025 WL 2646165, at *2
21 (same as to an Iranian national).

22 These regulations permit an official to "return [the person] to custody" only
23 when the person "violate[d] any of the conditions of release," 8 C.F.R.
24 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official
25 "determines that there is a significant likelihood that the alien may be removed in
26 the reasonably foreseeable future," and makes that finding "on account of changed
27 circumstances," 8 C.F.R. § 241.13(i)(2).

28 No matter the reason for re-detention, the re-detained person is entitled to

1 certain procedural protections. For one, “[u]pon revocation,’ the noncitizen ‘will
2 be notified of the reasons for revocation of his or her release or parole[.]’” *Phan*,
3 2025 WL 2898977, at *3 (quoting 8 C.F.R. § 241.4(l)(1)). Further, the person “‘will
4 be afforded an initial informal interview promptly after his or her return’ to be given
5 ‘an opportunity to respond to the reasons for revocation stated in the notification.’”
6 *Id.* at *3 (quoting 8 C.F.R. § 241.4(l)(1)), 4 (quoting 8 C.F.R. § 241.13(i)(3)).

7 In the case of someone released under § 241.13(i), the regulations also
8 explicitly require the interviewer to allow the re-detained person to “submit any
9 evidence or information that he or she believes shows there is no significant
10 likelihood he or she be removed in the reasonably foreseeable future, or that he or
11 she has not violated the order of supervision.” § 241.13(i)(3).

12 ICE is required to follow its own regulations. *United States ex rel. Accardi*
13 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162
14 (9th Cir. 2004) (“The legal proposition that agencies may be required to abide by
15 certain internal policies is well-established.”). A court may review a re-detention
16 decision for compliance with the regulations, and “where ICE fails to follow its
17 own regulations in revoking release, the detention is unlawful and the petitioner’s
18 release must be ordered.” *Rokhfirooz*, 2025 WL 2646165, at *4 (collecting cases);
19 *accord Phan*, 2025 WL 2898977, at *5.

20 ICE followed none of its regulatory prerequisites to re-detention here.

21 First, ICE did not identify a proper reason under the regulations to re-detain
22 Mr. Saysanavong. Mr. Saysanavong was not returned to custody because of a
23 conditions violation, and there was apparently no determination before or at his
24 arrest that there are “changed circumstances” such that there is “a significant
25 likelihood that [Mr. Saysanavong] may be removed in the reasonably foreseeable
26 future.” 8 C.F.R. § 241.13(i)(2).

27 Second, ICE did not notify Mr. Saysanavong of the reasons for his re-
28 detention upon revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He

1 was re-detained on November 12, 2025. (Saysanavong Decl. ¶ 9.) As he has
2 explained, “[t]hey did not tell me why they were revoking my supervision[.]” (*Id.*)

3 Third, Mr. Saysanavong has yet to receive an informal interview where an
4 officer explained the purported “changed circumstances” underlying his revocation.
5 “Simply to say that circumstances had changed or there was a significant likelihood
6 of removal in the foreseeable future is not enough.” *Sarail A. v. Bondi*, No. 25-CV-
7 2144 (ECT) (JFD), 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). Rather,
8 “Petitioner must be told *what* circumstances had changed or *why* there was now a
9 significant likelihood of removal in order to meaningfully respond to the reasons
10 and submit evidence in opposition, as allowed under § 241.13(i)(3).” *Id.* By
11 “identif[ying] the category—‘changed circumstances’—but fail[ing] to notify
12 [Petitioner] of the reason—the circumstances that changed and created a significant
13 likelihood of removal in the reasonably foreseeable future—so [ICE] failed to
14 follow the relevant regulation.” *Id.* This failure to identify any changed
15 circumstances also means he has not been afforded a meaningful opportunity to
16 respond to the reasons for revocation or submit evidence rebutting his re-detention.
17 (Saysanavong Decl. ¶ 9.)

18 Numerous courts have released re-detained immigrants after finding that ICE
19 failed to comply with applicable regulations this summer and fall. These have
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1 included courts in this District,¹⁶ as well as courts outside this District.¹⁷

2 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
3 the applicable regulations, that revocation has no effect, and [Mr. Saysanavong] is
4 entitled to his release (subject to the same Order of Supervision that governed his
5 most recent release).” *Liu v. Carter*, No. 25-CV-3036 (JWL), 2025 WL 1696526,
6 at *3 (D. Kan. June 17, 2025).

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11 ¹⁶ See, e.g., *Constantinovici v. Bondi*, ___ F. Supp. 3d ___, No. 25-CV-2405
12 (RBM), 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No.
13 25-CV-2053 (RSH), 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*,
14 No. 25-CV-2422 (RBM) (MSB), 2025 WL 2898977, at *3–5 (S.D. Cal. Oct. 10,
2025); *Sun v. Noem*, No. 25-CV-2433 (CAB), 2025 WL 2800037 (S.D. Cal. Sept.
15 30, 2025); *Van Tran v. Noem*, No. 25-CV-2334 (JES) (MSB), 2025 WL 2770623,
16 at *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-CV-2597 (JES), ECF No.
10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-CV-2575 (JO)
17 (SBC), ECF No. 12 (S.D. Cal. Oct. 9, 2025); *Truong v. Noem*, No. 25-CV-2597
(JES), ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Sphabmixay v. Noem*, No. 25-CV-
18 2648 (LL) (VET) (S.D. Cal. Oct. 30, 2025); *Sayvongsa v. Noem*, No. 25-CV-2867
(AGS) (DEB) (S.D. Cal. Oct. 31, 2025); *Thammavongsa v. Noem*, No. 25-CV-2836
19 (JO) (AHG) (S.D. Ca. Nov. 3, 2025) (same).

20 ¹⁷ See, e.g., *Grigorian v. Bondi*, No. 25-CV-22914 (RAR), 2025 WL
21 2604573 (S.D. Fla. Sept. 9, 2025); *Delkash v. Noem*, No. 5:25-CV-1675 (HDV)
(AGR), 2025 WL 2683988 (C.D. Cal. Aug. 28, 2025); *Ceesay v. Kurzdorfer*, 781
22 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463
23 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu*
v. Genalo, No. 1:25-CV-6523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug.
24 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-1204 (AA), 2025 WL 2430267, at *10–
25 12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-182 (MJT), 2025 WL
26 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-CV-1740
(DC) (JDP), 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu v. Carter*, No.
27 25-CV-3036 (JWL), 2025 WL 1696526, at *2 (D. Kan. June 17, 2025); *M.Q. v.*
United States, No. 1:22-CV-10680 (ALC) (KHP), 2025 WL 965810, at *3, 5 n.1
28 (S.D.N.Y. Mar. 31, 2025).

1 **B. Claim Two: Mr. Saysanavong’s detention violates *Zadvydas* and 8**
2 **U.S.C. § 1231.**

3 **1. Legal background**

4 In *Zadvydas v. Davis*, the Supreme Court considered a problem affecting
5 people like Mr. Saysanavong: federal law requires ICE to detain an immigrant
6 during the “removal period,” which typically spans the first 90 days after the
7 immigrant is ordered removed. 533 U.S. 678 (2001); 8 U.S.C. § 1231(a)(1)-(2).
8 After that 90-day removal period expires, detention becomes discretionary—ICE
9 may detain the migrant while continuing to try to remove them. 8 U.S.C.
10 § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as
11 removal happens within days or weeks. But some detainees cannot be removed
12 quickly. Perhaps their removal “simply require[s] more time for processing,” or
13 they are “ordered removed to countries with whom the United States does not have
14 a repatriation agreement,” or their countries “refuse to take them,” or they are
15 “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v.*
16 *Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances,
17 detained immigrants can find themselves trapped in detention for months, years,
18 decades, or even the rest of their lives. If federal law were understood to allow for
19 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
20 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
21 constitutional concern by interpreting Section 1231(a)(6) to incorporate implicit
22 limits. *Id.* at 689.

23 *Zadvydas* held that Section 1231(a)(6) presumptively permits the
24 government to detain an immigrant for 180 days after his or her removal order
25 becomes final. After those 180 days have passed, the immigrant must be released
26 unless his or her removal is reasonably foreseeable. *Id.* at 701. After six months
27 have passed, the petitioner must only make a prima facie case for relief—there is
28 “good reason to believe that there is no significant likelihood of removal in the

1 reasonably foreseeable future.” *Id.* Then the burden shifts to “the Government [to]
2 respond with evidence sufficient to rebut that showing.” *Id.*

3 Further, even before the 180 days have passed, the immigrant must still be
4 released if he *rebutts* the presumption that his detention is reasonable. *See, e.g.,*
5 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases on
6 rebutting the *Zadvydas* presumption before six months have passed); *Zavvar v.*
7 *Scott*, No. 25-CV-2104 (TDC), 2025 WL 2592543, at *6 (D. Md. Sept. 8, 2025)
8 (finding the presumption rebutted for a person who was released and, years later,
9 re-detained for less than six months).

10 Mr. Saysanavong can make all the threshold showings needed to prove his
11 *Zadvydas* claim and shift the burden to the government.

12 **2. Mr. Saysanavong’s detention is presumptively unreasonable as**
13 **it is beyond the six-month mark.**

14 Here, Mr. Saysanavong’s detention is presumptively unreasonable as it is
15 beyond the six-month mark. (Saysanavong Decl. ¶ 7.) For his initial ICE detention,
16 Mr. Saysanavong was detained for at least five to six months in total before being
17 released from custody. (*Id.*) As of the date of this filing, he has been re-detained
18 for over one month. (*Id.* ¶ 8.) The clock does not restart upon each new re-
19 detention. *See Nguyen v. Scott*, 796 F. Supp. 3d 703, 721–22 (W.D. Wash. 2025);
20 *Said v. Nielsen*, No. 17-CV-6785 (LB), 2018 WL 1876907, at *6 (N.D. Cal. Apr.
21 18, 2018) (noting that “the six month period does not reset when the government
22 detains a[] [noncitizen]. . . , releases him from detention, and then re-detains him
23 again”); *Chen v. Holder*, No. 6:14-CV-2530, 2015 WL 13236635, at *2 (W.D. La.
24 Nov. 20, 2015) (“Surely, under the reasoning of *Zadvydas*, a series of releases and
25 re-detentions by the government . . . while technically not in violation of the
26 presumptively reasonable jurisprudential six month removal period, in essence
27 results in an indefinite period of detention, albeit executed in successive six month
28 intervals.”).

1 This Court uses a burden-shifting framework to evaluate Mr. Saysanavong's
2 *Zadvydas* claim. At the first stage of the framework, Mr. Saysanavong must
3 "provide[] good reason to believe that there is no significant likelihood of removal
4 in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can
5 be broken down into three parts.

6 **"Good reason to believe."** The "good reason to believe" standard is a
7 relatively forgiving one. "A petitioner need not establish that there exists no
8 possibility of removal." *Freeman v. Watkins*, No. B:09-CV-160, 2009 WL
9 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "[g]ood reason to
10 believe' . . . place a burden upon the detainee to demonstrate no reasonably
11 foreseeable, significant likelihood of removal or show that his detention is
12 indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-6215 (EAW),
13 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F.
14 Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
15 petitioners need only give a "good reason"—not prove anything to a certainty.

16 **"Significant likelihood of removal."** This component focuses on whether
17 Mr. Saysanavong will likely be removed: continued detention is permissible only
18 if it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533
19 U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities,
20 but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F.
21 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words, even
22 if "there remains *some* possibility of removal," a petitioner can still meet its burden
23 if there is good reason to believe that successful removal is not significantly likely.
24 *Kacanic v. Elwood*, No. 02-CV-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8,
25 2002) (emphasis added).

26 **"In the reasonably foreseeable future."** This component of the test focuses
27 on when Mr. Saysanavong will likely be removed: continued detention is
28 permissible only if removal is likely to happen "in the reasonably foreseeable

1 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
2 removal efforts. If the Court has “no idea of when it might reasonably expect
3 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
4 is likely to occur—or even that it might occur—in the reasonably foreseeable
5 future.” *Palma v. Gillis*, No. 5:19-CV-112 (DCB) (MTP), 2020 WL 4880158, at *3
6 (S.D. Miss. July 7, 2020), *R&R adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19,
7 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)).
8 Thus, even if this Court concludes that Mr. Saysanavong “would eventually
9 receive” a travel document, he can still meet his burden by giving good reason to
10 anticipate sufficiently lengthy delays. *Younes v. Lynch*, No. 16-CV-13556, 2016
11 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

12 Mr. Saysanavong satisfies this standard for two reasons.

13 First, as explained above, Laos generally does not accept deportees. In 2024,
14 zero people were removed to Laos; in the five years before that, between 0 and 11
15 people were removed per year.¹⁸ Although President Trump has pressured Laos to
16 begin accepting deportees, that has resulted in Laos issuing travel documents for
17 only a few dozen nationals out of thousands of Laotians. And since then, multiple
18 courts have rejected the Trump administration’s efforts to re-detain Laotian
19 immigrants without following its own regulations. *See, e.g., Khambounheuang*, No.
20 25-CV-2575 (JO) (SBC), ECF No. 12 (S.D. Cal. Oct. 9, 2025); *Phetsadakone v.*
21 *Scott*, No. 25-CV-1678 (JNW), 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5,
22 2025).

23 Second, Mr. Saysanavong’s own experience bears this out. ICE has now had
24 17 years to deport him. He has no new criminal convictions and has cooperated
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27 ¹⁸ See U.S. Immigration and Customs Enforcement, *Annual Report: Fiscal*
28 *Year 2024*, at 100 (Dec. 19, 2024),
<https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

1 with ICE’s removal efforts throughout that time, including by attending yearly
2 routine check-ins. (Saysanavong Decl. ¶ 8.) Yet ICE has proved unable to remove
3 him.

4 Thus, Mr. Saysanavong has met his initial burden, and the burden shifts to
5 the government. Unless the government can prove a “significant likelihood of
6 removal in the reasonably foreseeable future,” Mr. Saysanavong must be released.
7 *Zadvydas*, 533 U.S. at 701.

8 **3. Even if the Court were to somehow find that the period of Mr.**
9 **Saysanavong’s confinement has not yet reached the six-month**
10 **mark, he must still be released because Laos’s refusal to accept**
11 **Mr. Saysanavong, along with its longstanding policy of not**
12 **accepting deportees, provides good reason to believe that Mr.**
13 **Saysanavong will not likely be removed in the reasonably**
14 **foreseeable future.**

15 Notably, courts in this Circuit and around the country have found that the
16 “six-month presumption of reasonableness is merely a tool to ‘guide lower court[s]’
17 in making those ‘determinations.’ To hold otherwise would condone detention in
18 cases where removal is not reasonably foreseeable or even functionally impossible,
19 so long as it did not exceed six months.” *Id.* (internal citations omitted). Therefore,
20 “[a]lthough the Supreme Court established a six-month period of presumptively
21 reasonable detention, it did not preclude a detainee from challenging the
22 reasonableness of his detention before such time.” *Id.* at 395. Courts in this Circuit
23 and around the country have concluded that an alien being detained pursuant to
24 § 1231(a)(6) must still be released if he rebuts the presumption that his detention is
25 reasonable even if the period of confinement has not yet reached the six-month
26 mark. *See, e.g., Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D Cal. 2020) (“At
27 no point did the *Zadvydas* Court preclude a noncitizen from challenging their
28 detention before the end of the presumptively reasonable six-month period. Instead,
it held that detention for less than six months was *presumptively* reasonable but left

1 the lower courts to determine whether detention has ‘exceed[ed] a period
2 reasonably necessary to secure removal’ in individual cases. . . . *Zadvydas*
3 established a ‘guide’ for approaching detention challenges, not a categorical
4 prohibition on claims challenging detention less than six months.” (internal
5 citations omitted)); *Sweid v. Cantu*, No. 25-CV-3590 (DWL), 2025 WL 3033655,
6 at *4 (D. Ariz. Oct. 30, 2025) (noting that the petitioner was not foreclosed from
7 bringing a *Zadvydas* claim when his detention had not yet exceeded the six-month);
8 *Zavvar v. Scott*, No. 25-CV-2104 (TDC), 2025 WL 2592543, at *6 (D. Md. Sept.
9 8, 2025) (“[T]he fact that Zavvar has not yet been detained for six months does not
10 preclude his argument that his detention is unlawful, both because the six-month
11 presumption does not necessarily control in cases in which the petitioner was not
12 subject to continuous detention from the issuance of the removal order, and because
13 the six-month presumption is rebuttable.”); *Munoz-Saucedo v. Pittman*, 789 F.
14 Supp. 3d 387, 396 (D.N.J. 2025) (“Although some courts have read *Zadvydas* as
15 creating a bright-line rule—one that effectively allows the government to detain a
16 person for at least six months without judicial review, even if there was no
17 possibility of removal—a close reading of *Zadvydas* does not support that
18 interpretation.”); *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wisc. 2008)
19 (“Nothing about this scheme supports the conclusion drawn by many courts that
20 the presumptive legality of detention within the first six months is irrebuttable. The
21 *Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing
22 inherent in the operation of the presumption itself that requires it to be
23 irrebuttable.”); *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 703, 706–07 (S.D.
24 Tex. 2020) (“This six-month presumption is not a bright line, . . . and *Zadvydas* did
25 not automatically authorize all detention until it reaches constitutional limits.”); *see*
26 *also* Ian Bratlie & Adriana Lafaille, *A 180-Day Free Pass? Zadvydas and Post-*
27 *Order Detention Challenges Brought Before the Six-Month Mark*, 30 GEO. IMMIGR.
28 L.J. 213, 239 (2016) (“[T]he Supreme Court did not hold that it would be

1 impossible for detention to violate the statute or the Constitution until six months
2 have expired.”). “The presumption of reasonableness is the default, but if a person
3 ‘can prove’ that his removal is not reasonably foreseeable, then he can overcome
4 that presumption. *Munoz-Saucedo*, 789 F. Supp. 3d at 397.

5 Here, Petitioner would be able to rebut any presumption that his detention is
6 reasonable because his removal to Laos is not significantly likely in the reasonably
7 foreseeable future. There is no evidence that Laos will issue a travel document to
8 Petitioner, making his removal foreseeable. As explained above, Laos generally
9 does not accept deportees. In 2024, zero people were removed to Laos; in the five
10 years before that, between 0 and 11 people were removed per year.¹⁹ Although
11 President Trump has pressured Laos to begin accepting deportees, that has resulted
12 in Laos issuing travel documents for only a few dozen nationals out of thousands
13 of Laotians. And since then, multiple courts have rejected the Trump
14 administration’s efforts to re-detain Laotian immigrants without following its own
15 regulations. *See, e.g., Khambounheuang*, No. 25-CV-2575 (JO) (SBC), ECF No.
16 12 (S.D. Cal. Oct. 9, 2025); *Phetsadakone v. Scott*, No. 25-CV-1678 (JNW), 2025
17 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025).

18 In addition, Mr. Saysanavong’s own experience further shows that his
19 removal to Laos is not significantly likely in the reasonably foreseeable future. ICE
20 has now had 17 years to deport him. He has no new criminal convictions and has
21 dutifully complied with the terms of his order of supervision since his release from
22 ICE custody. (Saysanavong Decl. ¶ 8.) Yet ICE has proved unable to remove him.
23 A 63-year-old man with a serious heart condition, Petitioner is categorically not a
24 flight risk or a danger to society. *Zadvydas*, 533 U.S. at 690; *Padilla v. ICE*, 704 F.

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27 ¹⁹ *See* U.S. Immigration and Customs Enforcement, *Annual Report: Fiscal*
28 *Year 2024*, at 100 (Dec. 19, 2024),
<https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

1 Supp. 3d 1163, 1172 (W.D. Wash. 2023). To the contrary, he has been the
2 foundation of support for his family. Moreover, to the extent detention is authorized
3 at all at this point under *Zadvydas*, even without a showing of flight risk or danger
4 to society, it can only be for the “narrow nonpunitive” purpose of securing a
5 person’s removal “*at the moment*” of removal. *Zadvydas*, 533 U.S. at 690, 699.
6 “Reasonableness” is measured “in terms of the statute’s basic purpose”: “assuring
7 the [noncitizen’s] presence at the moment of removal.” *Id.* at 699. Continued
8 detention is presumptively unreasonable, just as is continued detention only to
9 explore whether another country will take Petitioner. Detention for that purpose has
10 no definitive end and is not designed to facilitate the individual’s presence “at the
11 moment” of removal—indeed, there is no known moment of removal because it is
12 not known whether he can even be removed.

13 **4. *Zadvydas* unambiguously prohibits this Court from denying**
14 **Mr. Saysanavong’s petition because of his criminal history.**

15 If released on supervision, Mr. Saysanavong poses no risk of danger or flight.
16 He has been on supervision for 17 years. (Saysanavong Decl. ¶¶ 5–7.) He has
17 sustained no new convictions, not even a traffic citation. (*Id.* ¶ 8). And he has
18 dutifully checked in with ICE during this time, missing only a single appointment,
19 which occurred several years ago while he was hospitalized for heart failure. (*Id.*)

20 Regardless, *Zadvydas* squarely holds that danger or flight are not grounds for
21 detaining an immigrant when there is no reasonable likelihood of removal in the
22 reasonably foreseeable future. 533 U.S. at 684–91.

23 The two petitioners in *Zadvydas* both had significant criminal history.
24 Mr. *Zadvydas* himself had “a long criminal record, involving drug crimes,
25 attempted robbery, attempted burglary, and theft,” as well as “a history of flight,
26 from both criminal and deportation proceedings.” *Id.* at 684. The other petitioner,
27 Kim Ho Ma, was “involved in a gang-related shooting [and] convicted of
28 manslaughter.” *Id.* at 685. The government argued that both men could be detained

1 regardless of their likelihood of removal, because they posed too great a risk of
2 danger or flight. *Id.* at 690–91.

3 The Supreme Court rejected that argument. The Court appreciated the
4 seriousness of the government’s concerns. *Id.* at 691. But the Court found that the
5 immigrant’s liberty interests were weightier. *Id.* The Court had never countenanced
6 “potentially permanent” “civil confinement,” based only on the government’s
7 belief that the person would misbehave in the future. *Id.*

8 The Court also noted that the government was free to use the many tools at
9 its disposal to mitigate risk: “[O]f course, the alien’s release may and should be
10 conditioned on any of the various forms of supervised release that are appropriate
11 in the circumstances, and the alien may no doubt be returned to custody upon a
12 violation of those conditions.” *Id.* at 700. The Ninth Circuit later elaborated, “[a]ll
13 aliens ordered released must comply with the stringent supervision requirements
14 set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration
15 officer periodically, answer certain questions, submit to medical or psychiatric
16 testing as necessary, and accept reasonable restrictions on [their] conduct and
17 activities, including severe travel limitations. More important, if [they] engage[] in
18 any criminal activity during this time, including violation of [their] supervisory
19 release conditions, [they] can be detained and incarcerated as part of the normal
20 criminal process.” *Ma*, 257 F.3d at 1115.

21 These conditions have proved sufficient to protect the public over the last 17
22 years. They will continue to do so while ICE keeps trying to deport
23 Mr. Saysanavong.

24 **C. Claim Three: ICE may not remove Mr. Saysanavong to a third**
25 **country without adequate notice and an opportunity to be heard.**

26 In addition to unlawfully detaining him, ICE’s policies threaten his removal
27 to a third country without adequate notice and an opportunity to be heard. These
28 policies violate the Fifth Amendment, the Convention Against Torture (“CAT”),

1 and implementing regulations.

2 **1. Legal background**

3 U.S. law enshrines protections against dangerous and life-threatening
4 removal decisions. By statute, the government is prohibited from removing an
5 immigrant to any third country where they may be persecuted or tortured, a form
6 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The
7 government “may not remove [a noncitizen] to a country if the Attorney General
8 decides that the [noncitizen’s] life or freedom would be threatened in that country
9 because of the [noncitizen’s] race, religion, nationality, membership in a particular
10 social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16.
11 Withholding of removal is a mandatory protection.

12 Similarly, Congress codified protections enshrined in the CAT prohibiting
13 the government from removing a person to a country where they would be tortured.
14 *See* Foreign Affairs Reform and Restructuring Act, Pub. L. No. 105-277, § 2242,
15 112 Stat. 2681-822 (1998) (codified at 8 U.S.C. § 1231 note) (“It shall be the policy
16 of the United States not to expel, extradite, or otherwise effect the involuntary
17 return of any person to a country in which there are substantial grounds for
18 believing the person would be in danger of being subjected to torture, regardless of
19 whether the person is physically present in the United States.”); 28 C.F.R. § 200.1;
20 *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

21 To comport with the requirements of due process, the government must
22 provide notice of the third country removal and an opportunity to respond. Due
23 process requires “written notice of the country being designated” and “the statutory
24 basis for the designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v.*
25 *Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S.*
26 *Dep’t of Homeland Sec.*, No. 25-CV-10676 (BEM), 2025 WL 1453640, at *1 (D.
27 Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

28 The government must also “ask the noncitizen whether he or she fears

1 persecution or harm upon removal to the designated country and memorialize in
2 writing the noncitizen's response. This requirement ensures the Department of
3 Homeland Security will obtain the necessary information from the noncitizen to
4 comply with Section 1231(b)(3) and avoids [a dispute about what the officer and
5 noncitizen said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing to notify individuals who
6 are subject to deportation that they have the right to apply for asylum in the United
7 States and for withholding of deportation to the country to which they will be
8 deported violates both [Immigration and Naturalization Service] regulations and
9 the constitutional right to due process." *Andriasian*, 180 F.3d at 1041.

10 If the noncitizen claims fear, measures must be taken to ensure that the
11 noncitizen can seek asylum, withholding, and relief under CAT before an
12 immigration judge in reopened removal proceedings. The amount and type of
13 notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and
14 circumstances, he would have a reasonable opportunity to raise and pursue his
15 claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009
16 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976); *Kossov v. I.N.S.*, 132 F.3d
17 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring the
18 government to move to reopen the noncitizen's immigration proceedings if the
19 individual demonstrates "reasonable fear" and to provide "a meaningful
20 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening
21 of their immigration proceedings" if the noncitizen is found to not have
22 demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice
23 and time for a respondent to file a motion to reopen and seek relief).

24 "[L]ast minute" notice of the country of removal will not suffice, *Andriasian*,
25 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and
26 for good reason: To have a meaningful opportunity to apply for fear-based
27 protection from removal, immigrants must have time to prepare and present
28 relevant arguments and evidence. Merely telling a person where they may be sent,

1 without giving them a chance to look into country conditions, does not give them a
2 meaningful chance to determine whether and why they have a credible fear.

3 **2. ICE’s July 9, 2025 removal policies violate the Fifth**
4 **Amendment, 8 U.S.C. § 1231, the Conviction Against Torture,**
5 **and Implementing Regulations.**

6 The policies in ICE’s currently applicable July 9, 2025 memo do not adhere
7 to these requirements. The memo “contravenes Ninth Circuit law.” *Nguyen v. Scott*,
8 No. 25-CV-1398, 2025 WL 2419288, at *19 (W.D. Wash. Aug. 21, 2025)
9 (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit law on the
10 process due to noncitizens in detail); *see also Van Tran v. Noem*, No. 25-CV-2334
11 (JES) (MSB), 2025 WL 2770623, at *3 (S.D. Cal. Sept. 29, 2025) (granting
12 temporary restraining order preventing a noncitizen’s deportation to a third country
13 pending litigation in light of due process problems); *Nguyen Tran v. Noem*, No. 25-
14 CV-2391 (BTM) (BLM), ECF No. 6 (S.D. Cal. Sept. 18, 2025) (same).

15 First, under the policy, ICE need not give immigrants *any* notice or *any*
16 opportunity to be heard before removing them to a country that—in the State
17 Department’s estimation—has provided “credible” “assurances” against
18 persecution and torture. (ICE Memo, at 1.) By depriving immigrants of any chance
19 to challenge the State Department’s view, this policy violates “[t]he essence of due
20 process,” “the requirement that a person in jeopardy of serious loss be given notice
21 of the case against him and opportunity to meet it.” *Mathews*, 424 U.S. at 348
22 (cleaned up).

23 Second, even when the government has obtained no credible assurances
24 against persecution and torture, the government can still remove the person with
25 between 6 and 24 hours’ notice, depending on the circumstances. (ICE Memo, at
26 1.) Practically speaking, there is not nearly enough time for a detained person to
27 assess their risk in the third country and martial evidence to support any credible
28 fear—let alone a chance to file a motion to reopen with an immigration judge.

1 An immigrant may know nothing about a third country, like Eswatini or
2 South Sudan, when they are scheduled for removal there. Yet if given the
3 opportunity to investigate conditions, immigrants would find credible reasons to
4 fear persecution or torture—like patterns of keeping deportees indefinitely and
5 without charge in solitary confinement or extreme instability raising a high
6 likelihood of death—in many of the third countries that have agreed to removal thus
7 far.

8 Due process requires an adequate chance to identify and raise these threats
9 to health and life. This Court must prohibit the government from removing Mr.
10 Saysanavong without these due process safeguards.

11 **D. This Court must hold an evidentiary hearing on any disputed**
12 **facts.**

13 Resolution of a prolonged-detention habeas petition may require an
14 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).
15 Mr. Saysanavong hereby requests such a hearing on any material, disputed facts.

16 **PRAYER FOR RELIEF**

17 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 18 1. Order Respondents to immediately release Petitioner from custody;
- 19 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
20 § 1231(a)(6) unless and until Respondents obtain a travel document for
21 his removal;
- 22 3. Enjoin Respondents from re-detaining Petitioner without first following
23 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other
24 applicable statutory and regulatory procedures;
- 25 4. Enjoin Respondents from removing Petitioner to any country other than
26 Laos, unless they provide the following process, *see D.V.D.*, 2025 WL
27 1453640, at *1:
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- a. written notice to both Petitioner and Petitioner’s counsel in a language Petitioner can understand;
 - b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
 - c. if Petitioner is found to have demonstrated “reasonable fear” of removal to the country, Respondents must move to reopen Petitioner’s immigration proceedings;
 - d. if Petitioner is not found to have demonstrated a “reasonable fear” of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.
5. Order all other relief that the Court deems just and proper.

Dated: December 16, 2025

DORSEY & WHITNEY LLP

By Nisha Verma
Nisha Verma
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