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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HUNG PHI NGUYEN,

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.: '25CV3756 CAB VET

Petition for Writ of Habeas Corpus

[28 U.S.C. § 2241]

INTRODUCTION

Hung Nguyen and his mother fled Vietnam in 1984. Once in the United States, he sustained convictions and was ordered removed in 2017. But there was a problem: Vietnam has a longstanding policy of not accepting pre-1995 Vietnamese immigrants for deportation. Thus, after detaining Mr. Nguyen for three months, ICE had to release him. Mr. Nguyen remained on supervision for 8 years, checking in with ICE when asked to do so.

Nevertheless, ICE re-detained him on June 19, 2025. He has now been **detained for over 6 months in 2025**, meaning that the **current administration** has tried without success to remove him for an entire *Zadvydas* grace period. Contrary to regulation, ICE did not tell Mr. Nguyen why he was being re-detained or give him an opportunity to contest re-detention. Worse yet, 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 circumstances, providing no meaningful opportunity to make a fear-based claim against removal.

Mr. Nguyen's detention violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), Mr. Nguyen's statutory and regulatory rights, and the Fifth Amendment. Mr. Nguyen must be released because ICE failed to follow its own regulations in re-detaining him. He also merits release under *Zadvydas* because—having proved unable to remove him for 8 years, including during a 6-month detention stint in 2025—the government cannot show that there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Finally, ICE may not remove Mr. Nguyen to a third country without providing an opportunity to assert a fear-based claim before an immigration judge. This Court should grant this petition on all three grounds.

STATEMENT OF FACTS

I. ICE proved unable to remove Mr. Nguyen to Vietnam for 8 years.

Hung Nguyen was born in Saigon, Vietnam [redacted] 1968. Exh. A at ¶ 1. His dad was an American soldier. His mom was Vietnamese. *Id.* His parents married, and his father would come to Vietnam every few months to be with the family. *Id.* Mr. Nguyen's father urged his wife to come to the United States with their son. But she wouldn't leave her family in Vietnam. *Id.* She lost contact with her husband in 1974. *Id.*

Over the next ten years, Mr. Nguyen and his mother faced persecution for their relationship to an American soldier. His mother was imprisoned for marrying a white man. Mr. Nguyen was bullied and treated as an enemy. *Id.* Finally, the U.S. government took responsibility for Mr. Nguyen, bringing him to the U.S. on account of his American ancestry. *Id.* He arrived on May 20, 1984 and received a green card. *Id.*

Over the next decades, Mr. Nguyen sustained criminal convictions, and he was ordered removed on September 19, 2017. *Id.* at ¶ 2; *Automated Case Information*; https://acis.eoir.justice.gov/en/caseInformation. He spent about three months in immigration detention before ICE released him. Exh. A at ¶ 2. While on release, he maintained a perfect check-in record from 2017 until the COVID-19 pandemic hit. *Id.* at ¶ 3. At that point, ICE told him to stop checking in. *Id.* So far as he understood, he never received a new check in date or any instructions to check in after that. *Id.*

On June 19, 2025, ICE returned Mr. Nguyen to immigration detention. *Id.* at ¶ 4. Mr. Nguyen has serious mental health conditions, which affect his understanding and memory—he takes ten medications for his mental and physical health. *Id.* at ¶ 6. But so far as he remembers and understands, ICE never told him why he was being re-detained; provided written notice of the reasons for redetention; or gave him an informal interview in which he could challenge his re-

detention. *Id.* at ¶ 5. No one told him what changed to make his removal more likely. *Id.*

It has now been six months since Mr. Nguyen entered custody, and ICE has neither removed him nor provided him with notice and an opportunity to be heard on his redetention. *Id.* ICE has, however, begun to investigate whether Mr. Nguyen is a U.S. citizen. About three weeks ago, ICE interviewed him for hours about his parentage and upbringing. *Id.* at ¶ 7.

II. Vietnam has a longstanding policy of not accepting Vietnamese immigrants who entered before 1995.

There is an obvious reason why ICE has proved unable to remove Mr. Nguyen for the last 8 years: Vietnam has a longstanding policy of not accepting pre-1995 Vietnamese immigrants for deportation. In 2008, Vietnam and the United States signed a repatriation treaty under which Vietnam agreed to consider accepting certain Vietnamese immigrants for deportation. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-1995 Vietnamese immigrants, providing, "Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995." Agreement Between the United States of America and Vietnam, at 2 (Jan. 22, 2008).[1]

Despite that limit, the first Trump administration detained Vietnamese immigrants and held them for months, while the administration tried to pressure Vietnam to take them. *See Trinh*, 466 F. Supp. 3d at 1083–84. That possibility did not materialize. "In total, between 2017 and 2019, ICE requested travel documents for pre-1995 Vietnamese immigrants 251 times. Vietnam granted

[1] available at https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf

those requests only 18 times, in just over seven percent of cases." *Id.* at 1084. The administration was forced to release many of these detainees in 2018. *See id.*

Eventually, in 2020, the administration secured a Memorandum of Understanding ("MOU") with Vietnam, which created a process through which the Vietnamese government could consider some pre-1995 Vietnamese immigrants for removal.[2] The MOU limited consideration to persons meeting certain criteria, but many these criteria have been shielded from public view. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *14 (W.D. Wash. Aug. 21, 2025). When an immigrant does 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 v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025).

Even after signing the MOU, Vietnam overwhelmingly declined to timely issue travel documents for pre-1995 immigrants. By October 2021, ICE had adopted a "policy of generally finding that 'pre-1995 Vietnamese immigrants' . . . are not likely to be removed in the reasonably foreseeable future." Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).[3] That admission aligned with two years' worth of quarterly reports that ICE agreed to submit as part of a class action settlement. Those quarterly reports showed that between September 2021 and September 2023, only four immigrants who came to the U.S. before 1995 were given travel documents and deported. Asian Law Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul.

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[2] https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf.

[3] https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf.

15, 2025) (providing links to all quarterly reports).[4] During the same period, ICE made 14 requests for travel documents that, as of 2023, had not been granted, including requests made months or years before the September 2023 cutoff. *See id.* (proposed counsel's count based on quarterly reports).

On June 9, 2025, the Trump administration rescinded ICE's policy of generally finding that pre-1995 Vietnamese immigrants were not likely to be removed in the reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *7 (W.D. Wash. Aug. 21, 2025). But since then, several courts have found that facts on the ground likely have not changed enough to show that these detainees will be timely removed to Vietnam. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025); *Hoac*, 2025 WL 1993771, at *4; *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *5 (D. Mass. June 20, 2025).

III. The government is carrying out deportations to third countries without providing sufficient notice and opportunity to be heard.

When immigrants cannot be removed to their home country—including Vietnamese immigrants—ICE has begun deporting those individuals to third countries without adequate notice or a hearing. The Trump administration reportedly has negotiated with at least 58 countries to accept deportees from other nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York Times reported that seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are not their own citizens. *Id.* Since then, ICE has carried out highly publicized third country deportations to South Sudan and Eswatini.

[4] https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports

The Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to South Sudan. *See* Wong, *supra*. On July 15, ICE deported five men to the tiny African nation of Eswatini, including one man from Vietnam, where they are reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human rights abuses or instability. For instance, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first. *See* Wong, *supra*.

On June 23 and July 3, 2025, the Supreme Court issued a stay of a national class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional requirements before removing an individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).[5] On July 9, 2025, ICE rescinded previous

[5] Though the Supreme Court's order was unreasoned, the dissent noted that the government had sought a stay based on procedural arguments applicable only to class actions. *Dep't of Homeland Sec. v. D.V.D.,* 145 S. Ct. 2153, 2160 (2025)

guidance meant to give immigrants a "'meaningful opportunity' to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country" like the ones just described. Exh. B.

Under the new guidance, ICE may remove any immigrant to a third country "without the need for further procedures," as long as—in the view of the State Department—the United States has received "credible" "assurances" from that country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours' notice. But "[i]n exigent circumstances," a removal may take place in as little as six hours, "as long as the alien is provided reasonably means and opportunity to speak with an attorney prior to the removal." *Id.*

Upon serving notice, ICE "will not affirmatively ask whether the alien is afraid of being removed to the country of removal." *Id.* (emphasis original). If the noncitizen "does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, [ICE] may proceed with removal to the country identified on the notice." *Id.* at 2. If the noncitizen "does affirmatively state a fear if removed to the country of removal" then ICE will refer the case to U.S. Citizenship and Immigration Services ("USCIS") for a screening for eligibility for withholding of removal and protection under the Convention Against Torture ("CAT"). *Id.* at 2. "USCIS will generally screen within 24 hours." *Id.* If USCIS determines that the noncitizen does not meet the standard, the individual will be removed. *Id.* If USCIS

(Sotomayor, J., dissenting). Thus, "even if the Government [was] correct that classwide relief was impermissible" in *D.V.D.*, Respondents still "remain[] obligated to comply with orders enjoining [their] conduct with respect to individual plaintiffs" like Mr. Nguyen. *Id.* Thus, the Supreme Court's decision does not override courts' authority to grant individual injunctive relief. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal proceedings "for the sole purpose of determining eligibility for [withholding of removal protection] and CAT" or designate another country for removal. *Id.*

CLAIMS FOR RELIEF

This Court should grant this petition and order Mr. Nguyen's immediate release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Nguyen, for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001). ICE's own regulations require changed circumstances before re-detention, as well as a chance to contest a re-detention decision. And due process requires ICE to provide notice and an opportunity to be heard before any removal to a third country.

I. Count 1: ICE failed to comply with its own regulations before re-detaining Mr. Nguyen, violating his rights under the Fifth Amendment and the Administrative Procedures Act.

The Department of Homeland Security has enacted a series of regulations to protect the due process rights of someone who, like Mr. Nguyen, is re-detained following a period of release. Title 8 C.F.R. § 241.4(*l*) applies to re-detention generally, while 8 C.F.R. § 241.13(i) applies to persons released after providing good reason to believe that they will not be removed in the reasonably foreseeable future, *see Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025), as Mr. Nguyen was.

ICE is required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established."). A court may review a re-detention decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-

01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)). Many judges in this district have granted habeas petitions or temporary restraining orders when ICE failed to follow 8 C.F.R. §§ 241.4(l), 241.13(i). *See, e.g.*, *Constantinovici v. Bondi*, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).[6]

Here, ICE violated § 241.13 in at least four respects.[7]

First, ICE did not comply with § 241.13(i)'s informal interview requirement. No matter the reason for re-detention, the re-detained person is entitled to "an initial informal interview promptly," during which they "will be notified of the reasons for revocation." *Id.* §§ 241.4(*l*)(1), 241.13(i)(3). The interviewer must "afford[] the

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[6] Courts in other districts have done the same. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3fd 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

[7] Some of these violations also constitute § 241.4(*l*) violations, but because § 241.13(i) is more comprehensive, Mr. Nguyen focuses his arguments on that regulation.

[person] an opportunity to respond to the reasons for revocation," allowing them to "submit any evidence or information" relevant to re-detention and evaluating "any contested facts." *Id.* But Mr. Nguyen has been detained for six months without ever receiving an interview. Exh. A at ¶ 5. Any interview conducted now would not be prompt. *See, e.g.*, *M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (27-day delay not prompt); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (two-month delay not prompt); *Soryadvongsa v. Noem*, 24-cv-2663-AGS-DDL, 2025 WL 3126821, at *1 (S.D. Cal. Nov. 8, 2025) (29-day delay not prompt). That alone is enough to grant the petition.

Second, ICE did not comply with § 241.13(i)'s requirement that, "upon revocation," the re-detained person be "notified of the reasons for revocation." As Judge Moskowitz recently explained, the regulation's text and due process require that the notice be written. *Tran v. Noem*, 25-cv-2391-BTM, Dkt. 16, at 5–6 (S.D. Cal. Oct. 27, 2025). Here, Mr. Nguyen has never received written notice of why his release was revoked, let alone notice upon revocation. Exh. A at ¶ 5.

Third, there is no indication that the appropriate officials made the proper determinations prior to Mr. Nguyen's revocation. Regulations permit ICE to "return [a releasee] to custody" because they "violate[d] any of the conditions of release." 8 C.F.R. § 241.13(i)(1). Otherwise, § 241.13(i) permits revocation of release only if the appropriate official (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," and (2) makes that finding "on account of changed circumstances." *Id.* Here, if the government is unable to produce "any documented determination, made prior to Petitioner's arrest," that any of the prerequisites to re-detention were met, then Mr. Nguyen must be released on those grounds, too. *Rokhfirooz v. Larose*, 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025).

Finally, if Mr. Nguyen was in fact detained for a violation of his release conditions, his detention past six months would still violate ICE regulations. Under § 241.13(i)(1), "if a noncitizen 'violates any of the conditions of release,' then the noncitizen 'may be continued in detention for an additional six months in order to effect the alien's removal, if possible, and to effect the conditions under which the alien had been released.'" *Vu v. Noem*, No. 1:25-CV-01366-KES-SKO (HC), 2025 WL 3114341, at *7 n.8 (E.D. Cal. Nov. 6, 2025). Because it has been more than six months, any conditions violation cannot justify Mr. Nguyen's detention today.

"[B]ecause officials did not properly revoke petitioner's release pursuant to the applicable regulations, that revocation has no effect, and [Mr. Nguyen] is entitled to his release (subject to the same Order of Supervision that governed his most recent release)." *Liu*, 2025 WL 1696526, at *3.

II. Count 2: Mr. Nguyen's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

Beyond these regulatory violations, Mr. Nguyen's detention violates the statute authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Nguyen: Federal law requires ICE to detain an immigrant during the "removal period," which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir.

2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives.

If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

As an initial matter, *Zadvydas* held that detention is "presumptively reasonable" for at least six months. *Id.* at 701. This acts as a kind of grace period for effectuating removals.

Following the six-month grace period, courts must use a burden-shifting framework to decide whether detention remains authorized. First, the petitioner must make a prima facie case for relief: He must prove that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

If he does so, the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.* Ultimately, then, the burden of proof rests with the government: The government must prove that there is a "significant likelihood of removal in the reasonably foreseeable future," or the immigrant must be released. *Id.*

Using this framework, Mr. Nguyen can make all the threshold showings needed to shift the burden to the government.

B. The six-month grace period expired long ago, and he has been detained for another, full six-month *Zadvydas* grace period in 2025.

As an initial matter, the six-month grace period has long since ended. The *Zadvydas* grace period lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Nguyen's order of removal was

entered in September 2017. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six months after he was ordered removed and three months after the removal period expired, both of which occurred in March 2018. Not only that, but over six months have elapsed since Mr. Nguyen was re-detained in 2025. *Id.* at ¶ 4. ICE has therefore had an entire, second *Zadvydas* grace period to remove him but has proved unable to do so. Thus, this threshold requirement is indisputably met.

C. Vietnam's decades-long policy of not repatriating most pre-1995 Vietnamese immigrants provides good reason to believe that Mr. Nguyen will not likely be removed reasonably soon.

Because the six-month grace period has passed, this Court must evaluate Mr. Nguyen's *Zadvydas* claim using the burden-shifting framework. At the first stage of the framework, Mr. Nguyen must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

"Good reason to believe." The "good reason to believe" standard is a relatively forgiving one. "A petitioner need not establish that there exists no possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "'[g]ood reason to believe' . . . place a burden upon the detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or show that his detention is indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says: Petitioners need only give a "good reason"—not prove anything to a certainty.

"Significant likelihood of removal." This component focuses on <u>whether</u> Mr. Nguyen will likely be removed: Continued detention is permissible only if it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533

U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities, but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words, even if "there remains *some* possibility of removal," a petitioner can still meet its burden if there is good reason to believe that successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

"In the reasonably foreseeable future." This component of the test focuses on when Mr. Nguyen will likely be removed: Continued detention is permissible only if removal is likely to happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's removal efforts. If the Court has "no idea of when it might reasonably expect [Petitioner] 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." *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Nguyen "would *eventually* receive" a travel document, he can still meet his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

Mr. Nguyen readily satisfies this standard for four reasons.

First, as explained above, Vietnam historically has not accepted pre-1995 Vietnamese immigrants for deportation. Even after Vietnam signed the 2020 MOU, ICE had to admit that there was no reasonable likelihood of removing such immigrants in the reasonably foreseeable future, Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—an admission amply backed up by two years' experience under the

MOU, Asian Law Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports). Though the Trump administration rescinded this admission, *Nguyen*, 2025 WL 2419288, at *7, several courts have found that these barriers continue to obstruct removal for people like Mr. Nguyen. *See Nguyen*, 2025 WL 2419288; *Hoac*, 2025 WL 1993771; *Nguyen*, 2025 WL 1725791.

Second, Mr. Nguyen's own experience in years past bears this out. ICE has now had 8 years to deport him, including 5 years under the MOU. He has fully cooperated with ICE's removal efforts throughout that time, including at yearly check-ins. Exh. A ¶¶ 3, 7. Yet ICE has proved unable to remove him.

Third, Mr. Nguyen's experience in 2025 reaffirms that he will not be removed in the reasonably foreseeable future. He has already been detained for six months since his arrest in mid-June. *Id.* at ¶ 5. The current administration has therefore had an entire *Zadvydas* grace period to remove him. It still has not been able to do so.

Fourth, ICE is investigating whether Mr. Nguyen is a United States citizen because of his parentage. *Id.* at ¶ 7. That investigation may cause further delays.

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

III. Count 3: ICE may not remove Mr. Nguyen to a third country without adequate notice and an opportunity to be heard.

In addition to unlawfully detaining him, ICE's policies threaten his removal to a third country without adequate notice and an opportunity to be heard. These policies violate the Fifth Amendment, the Convention Against Torture, and implementing regulations.

A. Legal background

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

Similarly, Congress codified protections enshrined in the CAT prohibiting the government from removing a person to a country where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

The government must also "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the

necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what was said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041.

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

"[L]ast minute" notice of the country of removal will not suffice, *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and for good reason: To have a meaningful opportunity to apply for fear-based protection from removal, immigrants must have time to prepare and present relevant arguments and evidence. Merely telling a person where they may be sent, without giving them a chance to look into country conditions, does not give them a meaningful chance to determine whether and why they have a credible fear.

B. The June 6, 2025 memo's removal policies violate the Fifth Amendment, 8 U.S.C. § 1231, the Conviction Against Torture, and Implementing Regulations.

The policies in the June 6, 2025 memo do not adhere to these requirements. First, under the policy, ICE need not give immigrants *any* notice or hearing before removing them to a country that—in the State Department's estimation—has provided "credible" "assurances" against persecution and torture. Exh. B. By depriving immigrants of any chance to challenge the State Department's view, this policy violates "[t]he essence of due process," "the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

Second, even when the government has obtained no credible assurances against persecution and torture, the government can still remove the person with between 6 and 24 hours' notice, depending on the circumstances. Exh. B. Practically speaking, there is not nearly enough time for a detained person to assess their risk in the third country and martial evidence to support any credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know nothing about a third country, like Eswatini or South Sudan, when they are scheduled for removal there. Yet if given the opportunity to investigate conditions, immigrants would find credible reasons to fear persecution or torture—like patterns of keeping deportees indefinitely and without charge in solitary confinement or extreme instability raising a high likelihood of death—in many of the third countries that have agreed to removal thus far. Due process requires an adequate chance to identify and raise these threats to health and life. This Court must prohibit the government from removing Mr. Nguyen without these due process safeguards.

IV. This Court must hold an evidentiary hearing on any disputed facts.

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

V. Prayer for relief

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

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(*l*), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to any country other than Vietnam, unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
    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.

Respectfully submitted,

Dated: December 24, 2025

s/ Katie Hurrelbrink

KATIE HURRELBRINK
Federal Defenders of San Diego, Inc.
Email: Katie_Hurrelbrink@fd.org

PROOF OF SERVICE

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Date: 12/24/2025

/s/ *Katie Hurrelbrink*
Katie Hurrelbrink

Exhibit A

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Attorneys for Mr. Nguyen

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HUNG PHI NUGYEN,

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.:

First Declaration of Hung Nguyen

I, Hung Nguyen, declare:

1. My name is Hung Nguyen. I was born in Saigon, Vietnam on [redacted] 1968. My dad was an American soldier. He married my mom, and he would come to Vietnam every few months. He wanted to bring us to the United States, but my grandmother didn't want to lose me and my mom, so we didn't go. We lost contact with my dad in 1974. Over time, the Vietnamese government started persecuting me and my mom. My mom was imprisoned

for marrying a white man, and I was treated as an enemy. Eventually, the U.S. government tested my blood, and they allowed me to come to the U.S. because of my American ancestry. I arrived here as a refugee on May 20, 1984. I received a green card.

2. Following convictions, I was ordered removed. I spent 3 months in immigration detention before ICE released me.

3. While I was on release, I always checked in with ICE when they told me to. ICE told me to stop checking in during COVID-19. As far as I understood, I was not supposed to check in after that.

4. ICE agents put me back in immigration detention on June 19, 2025. ICE did not tell me why I was being redetained. I do not remember getting any paperwork saying why I was being detained.

5. I have now been detained for six months. As far as I remember and understand, no one has ever provided me with any written reason why I was being redetained. No one has ever given me a chance to challenge my redetention. No one has told me what changed to make my removal more likely.

6. I have serious mental health conditions, which affect my understanding and memory. I take ten medications for my medical and mental health conditions. My conditions make it very stressful to be in custody. A couple of months ago, I had to go to the emergency room because I was throwing up blood as

a result of the combination of medications Otay Mesa gave me. Even though I struggle with memory, everything in this declaration is based on my best understanding and recollection.

7. About three weeks ago, ICE interviewed me for a couple of hours to see whether I was a citizen. I've also been asked to sign paperwork, but I'm not sure what the paperwork was for. I have always signed any paperwork when ICE asked me to. Sometimes I would tell ICE that I didn't understand the paperwork, but they told me to sign anyway. I have always cooperated with ICE.

8. I have no savings or bank account. I am not making any money while in custody. When I was released, I got money from the government because I could not work as a result of my mental illness. I got $335 per month. I am no longer getting those benefits while in custody.

Exhibit B

PLAINTIFFS' EXHIBIT NO. 2
CASE NO. [redacted]
IDENTIFICATION: JUL 10 2025
ADMITTED: JUL 10 2025

To All ICE Employees
July 9, 2025

Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the district court's nationwide preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required certain procedures related to providing a "meaningful opportunity" to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country. Accordingly, all previous guidance implementing the district court's preliminary injunction related the third country removals issued in *D.V.D.* is hereby rescinded. Absent additional action by the Supreme Court, the stay will remain in place until any writ of certiorari is denied or a judgment following any decision issues.

Effective immediately, when seeking to remove an alien with a final order of removal—other than an expedited removal order under section 235(b) of the Immigration and Nationality Act (INA)—to an alternative country as identified in section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, as detailed below. A "third country" or "alternative country" refers to a country other than that specifically referenced in the order of removal.

If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures. ICE will seek written confirmation from the Department of State that such diplomatic assurances were received and determined to be credible. HSI and ERO will be made aware of any such assurances. In all other cases, ICE must comply with the following procedures:

- An ERO officer will serve on the alien the attached Notice of Removal. The notice includes the intended country of removal and will be read to the alien in a language he or she understands.
- ERO will not affirmatively ask whether the alien is afraid of being removed to the country of removal.
- ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal.
    - Any determination to execute a removal order under exigent circumstances less than 24 hours following service of the Notice of Removal must be approved by the DHS General Counsel, or the Principal Legal Advisor where the DHS General Counsel is not available.

- If the alien does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, ERO may proceed with removal to the country identified on the notice. ERO should check all systems for motions as close in time as possible to removal.
- If the alien does affirmatively state a fear if removed to the country of removal listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS will generally screen the alien within 24 hours of referral.
    - USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.
    - If USCIS determines that the alien has not met this standard, the alien will be removed.
    - If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the immigration court, USCIS will refer the matter to the immigration court for further proceedings. In cases where the alien was previously in proceedings before the immigration court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform ICE. In such cases, ERO will alert their local Office of the Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with the immigration court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under section 241(b)(3) of the INA and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.

Notably, the Supreme Court's stay of removal does not alter any decisions issued by any other courts as to individual aliens regarding the process that must be provided before removing that alien to a third country.

Please direct any questions about this guidance to your OPLA field location.

Thank you for all you continue to do for the agency.

Todd M. Lyons
Acting Director
U.S. Immigration and Customs Enforcement

Attachments:

- U.S. Supreme Court Order
- Secretary Noem's Memorandum
- Notice of Removal