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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 DIEN PHONG NGUYEN VO,
13
14 Petitioner,

15 v.

16 KRISTI NOEM, Secretary of the
17 Department of Homeland Security,
18 PAMELA JO BONDI, Attorney General,
19 TODD M. LYONS, Acting Director,
20 Immigration and Customs Enforcement,
21 JESUS ROCHA, Acting Field Office
22 Director, San Diego Field Office,
23 CHRISTOPHER LAROSE, Warden at
24 Otay Mesa Detention Center,
25 Respondents.

CIVIL CASE NO.: 26-cv-74

**Traverse in Support of
Petition for a Writ
Of Habeas Corpus**

22 With the government’s return in hand, this Court should grant the petition
23 on all three counts. Mr. Vo did not get adequate notice prior to redetention. His
24 revocation notice claims that he received withholding to Vietnam and that the
25 government is trying to remove him to a third country. Not only is the
26 government’s desire to remove him to a third country not a changed circumstance.
27 The notice’s claims are also false—Mr. Vo did not receive withholding, and the
28 government is not trying to remove him to a third country. Because ICE did not

1 identify any changed circumstances—or any circumstances at all that actually
2 apply to Mr. Vo—he could not adequately respond at any informal interview. And
3 the informal interview form produced by the government was left blank,
4 supporting Mr. Vo’s claim that he did not receive an interview at all.

5 Furthermore, the government provides little meaningful evidence showing
6 that Mr. Vo can be removed to Vietnam and no evidence that that will happen in
7 the reasonably foreseeable future. And this Court does not lose jurisdiction over
8 Count 3 just because ICE disclaims any current plans to remove Mr. Nguyen to a
9 third country, as ICE policy allows ICE to change its mind with no notice, six
10 hours’ notice, or 24 hours’ notice depending on the circumstances. This Court
11 should therefore order Mr. Nguyen’s immediate release and prohibit third-country
12 removal without due process.

13 ARGUMENT

14 I. **Count 1: ICE failed to comply with its own regulations before re-** 15 **detaining Mr. Vo, violating his rights under the Fifth Amendment and** 16 **the Administrative Procedures Act.**

17 Mr. Vo’s petition identified several regulatory violations in connection with
18 his re-detention. With the government’s petition in hand, at least three remain.

19 *First*, ICE did not provide Mr. Vo with notice sufficient to allow him to
20 contest his re-detention. Respondents produced a revocation notice. Doc 4-2 at 17.
21 It provides two reasons for revocation, neither of which passes muster.

22 Initially, the notice says that the redetention decision was made “based on a
23 review of your alien file and a determination that there are changed circumstances
24 in your case.” *Id.* Many courts have found this language “insufficient to provide
25 notice,” because it does not say what the supposed changed circumstances are. *See,*
26 *e.g., Saengphet v. Noem*, No. 3:25-CV-2909-JES-BLM, 2025 WL 3240808, at *5
27 (S.D. Cal. Nov. 20, 2025); *Dipraseuth v. Noem*, No. 25-CV-3471 JLS (BJW), 2025
28 WL 3677674, at *2 (S.D. Cal. Dec. 18, 2025) (collecting cases).

1 Then, the notice says that Mr. Vo can be “expeditiously removed” because
2 he was “ordered removed to Vietnam . . . and were granted a withholding of
3 removal to Vietnam. Your case is under current review for removal to an alternate
4 country.” Doc. 4-2 at 17. If that were true, it would not constitute a changed
5 circumstance. It merely says that ICE would try to remove him to a third country—
6 not that they had identified any third country that even might take him. Absent any
7 evidence for “why obtaining a travel document is more likely this time around[,]”
8 Respondents’ intent to eventually complete a travel document request for Petitioner
9 does not constitute a changed circumstance.” *Hoac v. Becerra*, No. 2:25-CV-
10 01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v.*
11 *Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)).

12 But the notice’s claims are not true. Mr. Vo did not get withholding of
13 removal, and ICE is not trying to remove him to a third country. Doc. 4-1 at ¶¶ 7,
14 16. Thus, not only does the notice identify no changed circumstances, but it also
15 identifies no circumstances applicable to Mr. Vo at all.

16 *Second*, the defects in the notice deprived Mr. Vo of any chance at a
17 meaningful interview. “[D]ue to the notice’s insufficiency, [Mr. Vo] [was] not . . .
18 informed of the grounds for his revocation to adequately contest the revocation.”
19 *Van Ngo*, 2025 WL 3470438, at *3. “Petitioner must be told *what* circumstances
20 had changed or *why* there was now a significant likelihood of removal in order to
21 meaningfully respond to the reasons and submit evidence in opposition, as allowed
22 under § 241.13(i)(3).” *Sarail A. v. Bondi*, No. 25-CV-2144 (ECT/JFD), 2025 WL
23 2533673, at *10 (D. Minn. Sept. 3, 2025). Here, the notice did not identify any
24 changed circumstances, and its claims about Mr. Vo’s immigration status and ICE’s
25 removal plans were patently untrue. Thus, even if “an informal interview . . .
26 occurred, Petitioner could not have responded to the reasons for revocation, because
27 they were not given.” *Id.*

28 *Third*, the government does not produce proof that Mr. Vo received an

1 informal interview. Mr. Vo attests that he did not. To show that he did receive an
2 interview, the government produces an interview form signed by an ICE employee.
3 But the form is blank. Doc. 4-2. It asserts that an interview was conducted. Then it
4 says, “A the interview, the alien made the following oral response regarding the
5 reasons for revocation:” Doc. 4-2 at 20. Nothing is written there. *Id.*

6 The lack of documentation strongly supports that no such interview occurred,
7 as “there typically is such documentation.” *Esmail v. Noem*, No. 2:25-CV-08325-
8 WLH-RAO, 2025 WL 3030590, at *3 (C.D. Cal. Sept. 12, 2025). Here,
9 “Respondents have not produced a [completed] record of that interview, as they
10 [typically do], and Petitioner credibly [declared] that [he] was never provided with
11 an informal interview.” *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL
12 2430267, at *8 (D. Or. Aug. 21, 2025). And where, as here, DO Arredondo does
13 not claim any personal or even secondhand knowledge of the interview, his
14 “declaration does not provide a sufficiently reliable basis for concluding that the
15 interview was actually conducted.” *Zhang v. Bondi*, No. 25-CV-10418 (JPO), 2026
16 WL 42778, at *4 (S.D.N.Y. Jan. 7, 2026). Other courts have found that “the
17 deviation from Respondents' usual practice” in not producing an interview form,
18 vagaries in ICE declarations, “and Petitioner's representation that he did not receive
19 an interview” can support a “find[ing] that Petitioner did not receive an interview
20 in accordance with § 241.4 and § 241.13.” *Touch v. Noem*, No. 3:25-CV-03118-
21 RBM-AHG, 2025 WL 3278019, at *5 (S.D. Cal. Nov. 25, 2025), *tentative ruling*
22 *adopted*, No. 3:25-CV-03118-RBM-AHG, 2025 WL 3296280 (S.D. Cal. Nov. 26,
23 2025).

24 *Third*, there are no changed circumstances in Mr. Vo’s case. ICE has not
25 even requested a travel document for him, let alone received any indication from
26 Vietnam that he will be accepted for removal. Doc. 4-1 at ¶ 17.

27 For all three reasons, Mr. Vo must be released. Each of these violations
28 require release with no showing of prejudice, as courts in this district have

1 repeatedly found. *See, e.g., Ghafouri v. Noem*, 25-cv-2675-RBM, Dkt. 11 at 9–12
2 (S.D. Cal. Nov. 4, 2025); 25-cv-2740-BJC, Doc. 13 at 8 (S.D. Cal. Nov. 13, 2025);
3 *Soryadvongsa v. Noem*, 25-cv-2663-AGS, Dkt. 11 at 4–5 (S.D. Cal. Nov. 8, 2025).
4 “There are two types of regulations: (1) those that protect fundamental due process
5 rights, and (2) and those that do not.” *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th
6 Cir. 2019) (cleaned up). “A violation of the first type of regulation . . . implicates
7 due process concerns even without a prejudice inquiry.” *Id.* (cleaned up).

8 Here, “[t]here can be little argument that ICE’s requirement that noncitizens
9 be afforded an informal interview—arguably the most bare-bones form of an
10 opportunity to be heard—derives from the fundamental constitutional guarantee of
11 due process.” *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y.
12 2025). Indeed, “[w]hen the INS published 8 C.F.R. § 241.4 on December 21, 2000,
13 it explained that the regulation was intended to provide aliens procedural due
14 process, stating that § 241.4 ‘has the procedural mechanisms that . . . courts have
15 sustained against due process challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d
16 626, 641 (D. Mass. 2018) (quoting *Detention of Aliens Ordered Removed*, 65 FR
17 80281-01). And “[s]ection 241.13(i) includes provisions modeled on § 241.4(I) to
18 govern determinations to take an alien back into custody,” *Continued Detention of*
19 *Aliens Subject to Final Orders of Removal*, 66 FR 56967-01, meaning that it
20 addresses the same due process concerns as 241.4(I). Thus, these regulations fall
21 squarely into the first category requiring no prejudice showing.

22 **II. Count 2: Mr. Vo’s detention violates *Zadvydas* and 8 U.S.C. § 1231.**

23 Mr. Vo must also be released under *Zadvydas v. Davis*, because the
24 government cannot prove a “significant likelihood of removal in the reasonably
25 foreseeable future.” 533 U.S. 678 (2001).
26
27
28

1 1. Apart from DO Cole’s unsupported assertions, the government
2 provides no evidence that Mr. Vo will be removed in the
3 “reasonably foreseeable future.”

4 First off, the government provides no actual evidence showing that removal
5 will happen in the “reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. The
6 government provides zero hard facts about how often it typically takes to get a
7 travel document—no statistics, no examples, no anecdotes, no nothing. And when
8 it comes to Mr. Vo, DO Arredondo does not even guess at how long his repatriation
9 will take or assert that it will occur anytime soon. The government has therefore
10 produced quite literally no evidence even suggesting that removal will occur in the
11 reasonably foreseeable future.

12 That deficiency is fatal. “[D]etention may not be justified on the basis that
13 removal to a particular country is likely *at some point* in the future; *Zadvydas*
14 permits continued detention only insofar as removal is likely in the *reasonably*
15 *foreseeable* future.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984,
16 at *6 (W.D.N.Y. Jan. 2, 2019). “The government’s active efforts to obtain travel
17 documents from the Embassy are not enough to demonstrate a likelihood of
18 removal in the reasonably foreseeable future where the record before the Court
19 contains no information to suggest a timeline on which such documents will
20 actually be issued.” *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319,
21 at *4 (W.D.N.Y. July 14, 2020). For this reason alone, *Zadvydas* demands release.

22 2. The government’s statistics do not show that Mr. Vo’s removal
23 is significantly likely.

24 Additionally, the government had not shown Mr. Vo’s removal to Vietnam
25 is “significant[ly] like[ly],” *Zadvydas*, 533 U.S. at 701, for several reasons.

26 *First*, DO Arredondo’s statistical evidence is not probative. He notes that 324
27 pre-1995 Vietnamese immigrants were removed in Fiscal Year 2025. Doc. 4-1 at
28 ¶ 19. But that statistic provides no information about what *proportion* of
Vietnamese citizens are successfully removed when ICE seeks travel documents.

1 That makes all the difference “If DHS submitted 350 requests and Vietnam issued
2 travel documents for 328 individuals,” that would be a success rate of over 95%
3 with a failure rate of only 5%. *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151 (D. Mass.
4 2025). “On the other hand, if DHS submitted 3,500 requests and only 328
5 individuals received travel documents,” that would be a success rate of around 10%,
6 with a failure rate of 90%. *Nguyen*, 2025 WL 1725791, at *4. Here, the government
7 has not disclosed “the total number of requests that were made to Vietnam.” *Id.*
8 This Court therefore cannot use the government’s statistic to evaluate any
9 individual person’s chances of removal. *Id.*; *accord Hoac v. Becerra*, No. 2:25-CV-
10 01740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025).

11 Just as importantly, though DO Arredondo offers a generalization about
12 Vietnamese removals, courts have “demanded an individualized analysis” of why
13 *this* person—Mr. Vo—will likely be removed. *Nguyen v. Scott*, No. 2:25-CV-
14 01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025) (citing *Nguyen*,
15 2025 WL 1725791, at *4). This Court cannot know if Mr. Vo qualifies at all under
16 the MOU, because (1) the MOU applies only to persons meeting certain criteria,
17 but (2) the government has never disclosed in full what those criteria are. *Id.* at *6.
18 And even for those who qualify, the MOU provides only that Vietnam has
19 “discretion whether to issue a travel document,” which it exercises “on a case-by-
20 case basis.” *Hoac*, 2025 WL 1993771, at *5. By itself, then, “the MOU has
21 repeatedly been deemed insufficient to show a significant likelihood of removal
22 in the reasonably foreseeable future.” *Nguyen*, 2025 WL 2419288, at *17. Because
23 “[t]he government has not provided any evidence of Vietnam’s eligibility criteria
24 or why it believes Petitioner now meets it,” the government’s evidence is
25 insufficient. *Id.* at *18.

26 *Second*, though ICE is in the process of requesting a travel document for Mr.
27 Vo, Doc. 4-1 at ¶ 17, good faith efforts to secure a travel document do not
28 themselves satisfy *Zadvydas*. The petitioner in *Zadvydas* appealed a “Fifth Circuit

1 h[olding] [that] [the petitioner’s] continued detention [was] lawful as long as good
2 faith efforts to effectuate deportation continue and [the petitioner] failed to show
3 that deportation will prove impossible.” 533 U.S. at 702 (cleaned up). The Supreme
4 Court reversed, finding that the Fifth Circuit’s good-faith-efforts standard
5 “demand[ed] more than our reading of the statute can bear.” *Id.*

6 Thus, “under *Zadvydas*, the reasonableness of Petitioner’s detention does not
7 turn on the degree of the government’s good faith efforts. Indeed, the *Zadvydas*
8 court explicitly rejected such a standard. Rather, the reasonableness of Petitioner’s
9 detention turns on whether and to what extent the government’s efforts are likely to
10 bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5
11 (W.D.N.Y. Jan. 2, 2019). Here, then, “[w]hile the respondent asserts that [Mr. Vo’s]
12 travel document request[] with [the Vietnamese] Consulate[] remain[s]
13 pending . . ., this is insufficient. It is merely an assertion of good-faith efforts to
14 secure removal; it does not make removal likely in the reasonably foreseeable
15 future.” *Gilali v. Warden of McHenry Cnty. Jail*, No. 19-CV-837, 2019 WL
16 5191251, at *5 (E.D. Wis. Oct. 15, 2019).

17 **III. Count 3 is justiciable.**

18 The government does not try to defend ICE’s third-country removal policy
19 on the merits. Instead, the government says that a third-country removal challenge
20 is nonjusticiable under Article III because ICE professes no current plans to remove
21 Mr. Vo to a third country.

22 But “[t]here, so to speak, lies the rub.” *D.V.D. v. U.S. Dep’t of Homeland*
23 *Sec.*, 778 F. Supp. 3d 355, 389 n.44 (D. Mass. 2025). “[A]ccording to
24 [Respondents], an individual must await notice of removal before his claim is
25 ripe[.]” *Id.* But under ICE’s policy, “there is no notice” for certain removals and
26 inadequate notice for others. *Id.* And if Mr. Vo “is removed” before he can raise
27 this challenge, Respondents will then argue that “there is no jurisdiction” to bring
28 him back to the United States. *Id.*

1 This Court need not adopt that Kafkaesque view. The government has not
2 denied that “the default procedural structure without an injunction” is “set forth in
3 DHS's March 30 and July 9, 2025 policy memoranda,” which provide for third-
4 country removal with little or no notice. *Y.T.D. v. Andrews*, No. 1:25-CV-01100
5 JLT SKO, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025). And Mr. Vo has
6 “point[ed] to numerous examples of cases involving individuals who DHS has
7 attempted to remove to third countries with little or no notice or opportunity to be
8 heard.” *Id.*; see Doc. 1 at 15-17. “On balance,” then, “there is a sufficiently
9 imminent risk that [Mr. Vo] will be subjected to improper process in relation to any
10 third country removal to warrant imposition of an injunction requiring additional
11 process.” *Y.T.D.*, 2025 WL 2675760, at *11.

12 **IV. Section 1252(g) does not deprive this Court of jurisdiction on any issue**
13 **in this petition.**

14 Finally, contrary to the government’s arguments, Doc. 5 at 4–5, § 1252(g)
15 does not bar review of “all claims arising from deportation proceedings.” *Reno v.*
16 *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts
17 “have jurisdiction to decide a purely legal question that does not challenge the
18 Attorney General's discretionary authority.” *Ibarra-Perez v. United States*, ___ F.4th
19 ___, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

20 In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not
21 prohibit immigrants from asserting a “right to meaningful notice and an opportunity
22 to present a fear-based claim before [they] [are] removed,” *id.* at *7¹—the same
23 claim that Mr. Vo raises here with respect to third-country removals. The Court
24 reasoned that “§ 1252(g) does not prohibit challenges to unlawful practices merely

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

1 because they are in some fashion connected to removal orders.” *Id.* Instead, 1252(g)
2 is “limited . . . to actions challenging the Attorney General's discretionary decisions
3 to initiate proceedings, adjudicate cases, and execute removal orders.” *Arce v.*
4 *United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments
5 that the government “entirely lacked the authority, and therefore the discretion,” to
6 carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to “discretionary
7 decisions that [the Secretary] actually has the power to make, as compared to the
8 violation of his mandatory duties.” *Ibarra-Perez*, 2025 WL 2461663, at *9.

9 The same logic applies to all of Mr. Vo’s claims, because he challenges only
10 violations of ICE’s mandatory duties under statutes, regulations, and the
11 Constitution. Accordingly, “[t]hough 8 U.S.C § 1252(g), precludes this Court from
12 exercising jurisdiction over the executive's decision to ‘commence proceedings,
13 adjudicate cases, or execute removal orders against any alien,’ this Court has habeas
14 jurisdiction over the issues raised here, namely the lawfulness of [Mr. Vo’s]
15 continued detention and the process required in relation to third country removal.”
16 *Y.T.D.*, 2025 WL 2675760, at *5. Many courts agree. *See, e.g., Kong*, 62 F.4th at
17 617 (“§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness
18 of his detention,” including ICE’s “fail[ure] to abide by its own regulations”);
19 *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (“[S]ection 1252(g) does not
20 bar courts from reviewing an alien detention order[.]”); *Parra v. Perryman*, 172
21 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a “claim concern[ing]
22 detention”); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3
23 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was “failing
24 to carry out non-discretionary statutory duties and provide due process”); *D.V.D. v.*
25 *U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025)
26 (1252(g) did not bar review of “the purely legal question of whether the
27 Constitution and relevant statutes require notice and an opportunity to be heard
28 prior to removal of an alien to a third country”).

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Respectfully submitted,

Dated: January 21, 2026

s/ Katie Hurrelbrink

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