

II. THE FACTS RESPONDENTS SET FORTH ARE WITHOUT AN EVIDENTIARY BASIS.

Respondents rely for their facts on the Declaration of Anthony Rosa, dkt. 10. However, that declaration is not to be credited. As discussed in another recent immigration habeas case in this district, *Huynh v. Bondi*, No. C25-2371-KKE, 2025 WL 3718991 (W.D. Wash. Dec. 23, 2025), “for declarations executed within the United States, 28 U.S.C. § 1746(2) requires a perjury statement ‘in substantially’ the following form: ‘I declare under penalty of perjury that the foregoing is true and correct.’” *Id.* at *4. As the *Huynh* court continued, “Courts have explained that ‘two statements are essential to a proper verification under § 1746: (i) an assertion that the facts are true and correct; and (ii) an averment that the first assertion is made under penalty of perjury.’” *Id.* (cleaned up).

Just as in the declaration in *Huynh*, although Officer Rosa “cites the statute, his declaration includes neither of the above ‘essential’ statements.” *Id.* Instead, Officer Rosa’s ¶ 3 is virtually identical to the averment that the *Huynh* court found inadequate. As in *Huynh*, Officer Rosa does not declare that his statements are true, only that they “are based on information he received from other ICE systems and officers. Nor does he aver that he made his declaration under penalty of perjury.” *Id.* See also *Kuot v. Bondi*, No. 2:25-CV-02313-BAT, 2025 WL 3763930, at *3 (W.D. Wash. Dec. 30, 2025) (because declaration was not under penalty of perjury, “Respondents rely upon an invalid ‘declaration’ [and thus] they have failed to rebut Petitioner’s contention his due process rights have been violated”); *Wana v. Bondi*, No. 2:25-CV-02321-RSL,

1 2025 WL 3628634, *4 (W.D. Wash. Dec. 15, 2025) (as declaration was neither asserted
2 to be true nor under penalty of perjury, it “is therefore inadmissible and cannot be
3 considered”).

4 Accordingly, the Court should disregard all factual assertions made by Officer
5 Rosa. However, as detailed below, even crediting all those statements, Mr. Somsanuk’s
6 petition succeeds on each of the grounds set forth in his petition and below.

7 **III. MR. SOMSANUK’S DETENTION IS IN VIOLATION OF *ZADVYDAS*.**

8 **A. Mr. Somsanuk has been detained past the six-month presumptively**
9 **reasonable period.**

10 Respondents dispute whether Mr. Somsanuk has been held longer than the six-
11 month presumptively reasonable period under *Zadvydas v. Davis*, 533 U.S. 678 (2001).
12 Dkt. 9 at 13. In a footnote, they acknowledge “that Courts in this district disagree as to
13 whether the presumptively reasonable period expires six months after a final order,
14 regardless of detention.” (citing *Tran v. Bondi*, No. CV-25-01897-JLR, 2025 WL
15 3140462 (W.D. Wash. Nov. 10, 2025)). Dkt. 9 at 13 n.6.

16 But this Court need not address the issue of whether the six-month period can
17 expire without any detention. Respondents point to the period of Mr. Somsanuk’s most
18 recent detention, as if that detention is the only one that counts. Dkt. 9 at 13. What
19 Respondents studiously avoid is the obvious question—how long has Mr. Somsanuk
20 been detained in total? “Courts in this Circuit have found that the six-month period of
21 detention need not be consecutive to reach the limit established in *Zadvydas*.” *Jaranow*
22 *v. Bondi*, No. 2:25-CV-02396-TL, 2026 WL 35864, at *3 (W.D. Wash. Jan. 6, 2026).
23 *See also Abubaka v. Bondi*, No. C25-1889, 2025 WL 3204369, at *3 (W.D. Wash. Nov.
24 17, 2025) (“the ‘clock’ on *Zadvydas*’s six-month period of presumptive reasonability
25 does not re-start with each successive detention”). *Jaranow* cites two in-district cases
26 beyond *Abubaka*, as well as two out-of-district decisions. There are numerous other

1 decisions from this district that have aggregated the total length of detention, rather than
2 looking only to the most recent period.

3 In fact, to counsel's knowledge, every single decision in this district to reach the
4 issue has rejected Respondents' contention that only the final period of detention
5 counted.¹ Outside of this district, too, "[c]ourts . . . broadly agree" that Respondents'
6 approach—counting only last period of the noncitizen's detention—is not correct. *See*
7 *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report*
8 *and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also*
9 *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19,
10 2018) (collecting cases).

11 Mr. Somsanuk's order of removal became final on October 27, 2003. Dkt. 9 at 6.
12 He was detained from October 20, 2003 until April 20, 2004. Dkt. 10, ¶¶ 6-9. That
13 alone constitutes six months of detention. Although Respondents do not mention it, Mr.
14 Somsanuk has been detained on other occasions by Respondents since then, but he does
15 not know the specific dates or the lengths of detention. In addition, he has been detained
16 the most recent time since December 12, meaning there will be well over an additional
17 month by the time this Court has ruled. Under any measure except the one routinely
18 rejected by the courts, the presumptively reasonable period has passed.

19 **B. Mr. Somsanuk has met his burden under *Zadvydas*.**

20 A petitioner's initial burden under *Zadvydas* is a relatively low one, to show only
21 "good reason to believe that there is no significant likelihood of removal in the
22 reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. After that, the burden
23 shifts to respondents to rebut that assertion.

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26 ¹ Counsel is familiar with all the cases in which the Federal Public Defender is involved
(which he believes constitute the clear majority of *Zadvydas*-based cases) but not all of
the other recent immigration habeas cases filed in this district.

1 Respondents claim that Mr. Somsanuk has not met his burden. Dkt. 9 at 14. Yet
2 it is undisputed that in 2003 Laos refused to admit him because it did not believe he was
3 a citizen. Dkt. 10 ¶ 7. For 23 years, Respondents have believed they had no ability to
4 remove him, as shown by their keeping him released on an OSUP. The facts pertaining
5 to Mr. Somsanuk's citizenship have not changed and Respondents have not been able to
6 remove him to Laos. Furthermore, Respondents do not dispute Mr. Somsanuk's
7 averment that "there is no indication that he is a citizen of [Laos]." Dkt. 1 at 6. These
8 facts alone are sufficient to meet his burden.

9 For example, this Court in *Daneshfar v. Facility Adm'r*, No. C25-1708-DGE-
10 MLP, 2025 WL 4037745 (W.D. Wash. Dec. 16, 2025), *report and recommendation*
11 *adopted*, No. 2:25-CV-01708-DGE-MLP, 2026 WL 71405 (W.D. Wash. Jan. 9, 2026),
12 found that petitioner had met his burden by the fact that Respondents conceded they
13 could not remove him to Iran and no third country had yet agreed to accept him. That
14 was sufficient to "establish[] 'good reason' to believe that removal is not significantly
15 likely 'in the reasonably foreseeable future.'" *Id.* at *1. While Respondents here do not
16 concede they cannot remove Mr. Somsanuk to Laos, the past history means that, absent
17 changed circumstances, they in fact cannot.

18 This Court also found petitioner's burden met in *Tairov v. Bondi*, No. C25-1558-
19 RSM-MLP, 2025 WL 3538073 (W.D. Wash. Dec. 3, 2025), *report and*
20 *recommendation adopted*, No. C25-1558-RSM-MLP, 2025 WL 3541732 (W.D. Wash.
21 Dec. 10, 2025). That conclusion was based on facts about the inability to remove
22 petitioner in the past, combined with only one current fact, ICE's classification of
23 Russia as an uncooperative country for removal. While that last fact is not present in
24 Mr. Somsanuk's case, the decision confirms that past history regarding removal can be
25 an important component of a petitioner's *Zadvydas* showing. And here, Mr. Somsanuk
26 not only has Laos's past statements that it didn't believe he was a citizen, combined

1 with Respondents' inability to remove him, but also the current un rebutted fact that
2 "there is no indication that he is a citizen of" Laos.

3 In *Jaranow*, too, the court looked to past history in finding petitioner's burden
4 met. First, it had been four years since the final order of removal (it's been 23 in Mr.
5 Somsanuk's case). 2026 WL 35864, at *4. Second, "[t]hough the removal period has
6 long expired, Respondents have yet to effect Petitioner's removal or even obtain travel
7 documents from Somalia." *Id.* The same is true here, as to Laos. Third, "Respondents
8 previously 'effectively acknowledged that there was no reasonable foreseeable removal
9 to Somalia, because they released him on conditions' in 2023." *Id.* Again, the same is
10 true here, as evidenced by Respondents' multiple grants of releases on supervision to
11 Mr. Somsanuk. "Finally, Petitioner asserts that there is no record of his birth in
12 Somalia, which raises a question of whether Somalia will accept him." *Id.* (record
13 citation omitted). Here, Mr. Somsanuk's unchallenged averment that "there is no
14 indication that he is a citizen of" Laos is comparable. In short, the *Jaranow* decision
15 found "good reason" on no more than Mr. Somsanuk has presented here. *See also*
16 *Suong v. Bondi*, No. 2:25-CV-02309-LK, 2025 WL 3718644 (W.D. Wash. Dec. 23,
17 2025) (petitioner, born in Thai refugee camp to parents fleeing Cambodia, met his
18 burden where he has no paperwork from those countries, he was previously released
19 because government could not obtain travel documents, and he had no connection
20 meaningful connection to those countries) (all of which are true for Mr. Somsanuk).

21 Many, perhaps most, of the immigration habeas cases to arise recently in this
22 district have involved Vietnam. There, too, the courts have found petitioner's burden
23 met based on past history. To summarize most briefly, the past history in those cases
24 was that Vietnam had originally refused to take any pre-1995 refugees, but then agreed
25 to take some, but apparently not very many. (For a detailed review of that history, *see*
26 *Nguyen v. Scott*, 796 F. Supp. 3d 703, 714 (W.D. Wash. 2025)). In *Bui v. Scott*, No.

1 2:25-CV-02268-TMC, 2025 WL 3706796, at *3 (W.D. Wash. Dec. 22, 2025), the court
2 found petitioner's burden met based on "(1) the historically low number of removals to
3 Vietnam for immigrants who arrived in the U.S. pre-1995; (2) the government's failure
4 to deport him for 25 years, after it first requested travel documents in 2001; and (3) that
5 the government likely detained him without securing a travel document from Vietnam,
6 or even formally requesting one under the 2020 Memorandum of Understanding
7 ('MOU') with Vietnam[.]" (record citations omitted). Here, Mr. Somsanuk has shown
8 that Laos takes *zero* persons in his situation (those Laos believes are not citizens), not
9 just "low numbers." The other two factors are also met here, a failure to deport and
10 detention without securing or even requesting travel documents.

11 This case is even stronger one than many of Vietnam cases. There, the past
12 history meant that it was unclear exactly what criteria Vietnam used for accepting pre-
13 1995 refugees and whether that criteria would lead to removal of the petitioner at issue.
14 Of course, there could have been a change from that past history, just as now there
15 could be a change in Laos's position, but to see if there was a change, the courts have
16 made that part of Respondents' burden, not petitioner's. *See, e.g., Bui*, 2025 WL
17 3706796, at *4. *Cf. Bennett v. Mueller*, 322 F.3d 573, 585 (9th Cir. 2003) ("The
18 ordinary rule, based on considerations of fairness, does not place the burden upon a
19 litigant of establishing facts peculiarly within the knowledge of his adversary.")
20 (quoting *United States v. New York, N.H. & H.R. Co.*, 355 U.S. 253, 256 n. 5 (1957)).
21 Here, the past history shows not a lack of clarity, but rather a certainty that Mr.
22 Somsanuk will not be accepted by Laos, absent a change in its position. That is more
23 than sufficient to meet his burden.

24 Notably, when seeking to justify Mr. Somsanuk's re-detention (*see* Part IV,
25 *infra*), Respondents point in part to their "determination that Petitioner could be
26 removed expeditiously." Dkt. 9 at 11. Yet they provide no facts supporting how they

1 reached their supposed determination except one, namely that “DHS has initiated the
2 process of requesting that the government of Laos issue the Petitioner a Laotian travel
3 document.” Dkt. 10 ¶ 12. Of course, a mere request (or, even worse, the initiation of the
4 process of making a request) hardly shows that removal is likely. *Phuc Huu Nguyen v.*
5 *Bondi*, No. 2:25-CV-02723-RAJ, 2026 WL 183819, at *3 (W.D. Wash. Jan. 23, 2026).
6 The inferences to be drawn from the weakness of Respondents’ showing can contribute
7 to a finding that a petitioner has met his burden. *See, e.g., Abubaka v. Bondi*, No. C25-
8 1889RSL, 2025 WL 3204369, at *4 (W.D. Wash. Nov. 17, 2025) (court can look to
9 facts outside petitioner’s submission in determining whether he has met his *Zadvydas*
10 burden).

11 In fact, Mr. Somsanuk has met his burden for a second, totally different reason,
12 related not to whether Laos would accept him, but to when he would be removed (if
13 Laos did accept him). In any *Zadvydas* analysis, there are two questions: is removal
14 likely at all, and if it might occur, is it likely in the reasonably foreseeable future. Mr.
15 Somsanuk has focused on the former question until now. But the record also shows
16 good reason to believe that any removal would not take place in the reasonably
17 foreseeable future. The record from other litigation demonstrates that the removal
18 process is generally lengthy, going through multiple layers of the United States
19 government, followed by a request to the country at issue, then consideration by that
20 country, and then finally to actual removal. In *Kuot v. Bondi*, No. 2:25-CV-02313-BAT,
21 2025 WL 3763930, at *2 (W.D. Wash. Dec. 30, 2025), the court found that “Petitioner
22 has met his burden because it is undisputed the government has failed to indicate a date
23 or timeframe for his removal, has not even completed a travel document request to
24 submit to Vietnam and has not set forth facts showing when it expects to finalize or
25 send the travel document request to Vietnam.” Here, too, it is undisputed that the
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1 government has provided no timeframe for his removal or completed a travel document
2 request, putting this case on all fours with *Kuot*.

3 **C. Respondents do not even attempt to rebut Mr. Somsanuk's showing.**

4 After a petitioner meets his initial burden, respondents "must respond with
5 evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701 But Respondents
6 make no effort to rebut Mr. Somsanuk's showing, such as demonstrating that Laos no
7 longer limits its acceptance to citizens, or that Respondents' now possess evidence that
8 Mr. Somsanuk is a Lao citizen. Given their failure to rebut Mr. Somsanuk's showing,
9 his *Zadvydas* claim necessarily succeeds.

10 And had Respondents tried to rebut his showing, apparently all they have to
11 suggest removal in the reasonably foreseeable future is that "DHS has initiated the
12 process of requesting that the government of Laos issue the Petitioner a Laotian travel
13 document." Dkt. 10 ¶ 12. That showing is of course insufficient.

14 **IV. MR. SOMSANUK'S RE-DETENTION VIOLATED HIS DUE PROCESS**
15 **RIGHTS.**

16 Independent of Mr. Somsanuk's *Zadvydas* claim is his claim that he was re-
17 detained without due process. Courts in this district have consistently used the *Mathews*
18 factors in determining whether detainees had a right to a pre-deprivation hearing prior
19 to their re-detention. Respondents do as well (dkt. 9 at 9-12). Although Respondents
20 argue that the *Mathews* factors support their position that no pre-deprivation hearing is
21 required, multiple courts in this district have found that due process requires a pre-
22 deprivation hearing for a non-citizen released on supervision. Counsel is unaware of
23 any reaching the contrary conclusion.² For just a sampling, *see, e.g., Todd v. Bondi*, No.
24 25-CV-02519-JHC, 2026 WL 145725, at *3-*5 (W.D. Wash. Jan. 20, 2026); *Rodriguez*
25 *v. Bondi*, No. C25-2167RSM, 2025 WL 3466925, at *1-*2 (W.D. Wash. Dec. 3, 2025);

26 ² See n.1.

1 *Huy Van Tran v. Bondi*, No. 2:25-CV-02335-DGE-TLF, 2025 WL 3725677, at *4-*7
 2 (W.D. Wash. Dec. 24, 2025); *Tzafir v. Bondi*, No. 25-CV-2070-JHC-GJL, 2025 WL
 3 3724708, at *2-*4 (W.D. Wash. Dec. 24, 2025); *Khim v. Bondi*, No. 2:25-CV-02383-
 4 RSL, 2025 WL 3653724, at *4 (W.D. Wash. Dec. 17, 2025).

5 **A. Mr. Somsanuk had a heightened liberty interest, given his release on**
 6 **supervision.**

7 Contrary to Respondents' position (dkt. 9 at 9-10), the courts in this district have
 8 consistently found a heightened, not a "reduced," (dkt. 9 at 9) interest in liberty for non-
 9 citizens released on supervision. *See, e.g., Todd*, 2026 WL 145725, at *4 (petitioner's
 10 interest in liberty "is only strengthened" by his release for fifteen years); *Huy Van Tran*,
 11 2025 WL 3725677, at *5, ("The fact that Respondents allowed Petitioner to remain in
 12 the community for almost three years after issuing an Order of Supervision . . . only
 13 strengthens this interest."); *Tzafir*, 2025 WL 3724708, at *3 (release for fifteen years
 14 "only strengthened [petitioner's] liberty interest"). As stated in *Todd*, 2026 WL 145725,
 15 at *4, "In revoking Petitioner's release, the Government has undeniably inflicted a
 16 'grievous loss' of Petitioner's liberty, thereby depriving him of a core private interest
 17 protected by the Due Process Clause." *Id.* at *4.

18 Courts in this district have repeatedly held, "[b]ased on this review of the
 19 *Mathews* factors," that "Petitioner has a protected liberty interest in his continuing
 20 release from custody[.]" *Rodriguez*, 2025 WL 3466925, at *2. The government does not
 21 address *Rodriguez* or the many other cases coming to the same conclusion, such as all
 22 the cases cited on the previous page.

23 While Respondents argue that "Petitioner cannot now claim that the
 24 Respondents promised him ongoing, limitless freedom from detention," (dkt. 9 at 10),
 25 that is not what Mr. Somsanuk contends at all. As stated in *Yildirim v. Hermosillo*, No.
 26 C25-2696-KKE, 2026 WL 111358, at *3 (W.D. Wash. Jan. 15, 2026), where

1 Respondents made the same assertion, “the Court does not read Petitioner’s briefing to
2 make such a claim. Petitioner does contend, however, that the Constitution protects her
3 interest in liberty by requiring due process if it is to be deprived, and the Court agrees
4 with that proposition.” (record citation omitted).

5 This factor weighs in Mr. Somsanuk’s favor.

6 **B. The risk of an erroneous deprivation was high.**

7 Respondents base nearly their entire discussion of the second *Mathews* factor on
8 the supposed sufficiency of, and their supposed compliance with, their regulations. Dkt.
9 9 at 10-11.

10 There are two fatal problems with Respondents’ position. As they acknowledge,
11 their regulations require not only that a detainee be informed of the reasons for his re-
12 detention, but also that he be heard, i.e. that he “would promptly be afforded an
13 interview.” Dkt. 9 at 11. Respondents do demonstrate that Mr. Somsanuk was told he
14 would be afforded an interview. Dkt. 11-8 at 2. But nowhere in Respondents’
15 submission (even if Officer Rosa’s declaration had been under penalty of perjury) is
16 there any indication that Mr. Somsanuk in fact was ever afforded that interview, i.e. that
17 Respondents’ regulations were complied with.

18 But more importantly, Respondents’ equation of their procedures with due
19 process, dkt. 9 at 10-11, has been rejected multiple times in this district, such as those
20 cited on p. 9. *See, e.g., Khim*, 2025 WL 3653724, at *4 (“Those meager procedures do
21 not, however, provide the process due under the Fifth Amendment”).

22 The specific bases for re-detention that Respondents point to show why, in this
23 case, the risk of erroneous deprivation was high. Respondents claim that they re-
24 detained him based on two “determinations”: that he could be removed to Laos
25 “expeditiously” and his violations of conditions. Dkt. 9 at 11.
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1 As to the first, Respondents have provided no evidence that *any* determination
2 was made or by whom it was made, or, most importantly, on what facts that
3 determination was made. It appears the only fact supporting this determination is that
4 “DHS has initiated the process of requesting that the government of Laos issue the
5 Petitioner a Laotian travel document.” Dkt. 10 ¶ 12. That is obviously insufficient as a
6 basis for determining that Mr. Somsanuk will be removed to Laos at all, let alone
7 “expeditiously.” *Contra*, dkt. 9 at 11. Any neutral decisionmaker would have
8 recognized that insufficiency. At a minimum there is a significant risk that the
9 determination made by some ICE employee, with apparently no record of what factors
10 (if any) led to his decision, was different than what a neutral decisionmaker’s
11 conclusion would have been after notice and an opportunity to be heard.

12 As to the claim that Mr. Somsanuk was re-detained due to violations of his
13 conditions, that is equally untenable. The record shows that Mr. Somsanuk was
14 maintained on his supervision after his October 19, 2023 probation violation. Dkt. 10
15 ¶¶ 10-11. Thus, for two years and nearly two months, Respondents apparently
16 concluded that his prior violations did not warrant re-detaining him during all of that
17 time. In fact, he had multiple violations subsequent to his original OSUP. Respondents
18 provide no reason why those violations warrant re-detaining him now when they did not
19 warrant re-detaining him earlier. *See Tzafir*, 2025 WL 3724708, at *3 (“The
20 Government’s failure to articulate a change in circumstances” during the period
21 petitioner was on OSUP “shows that there is a significant risk of an erroneous
22 deprivation of her liberty interest through the procedures used”);

23 As the court pointed out in *Guillermo M.R. v. Kaiser*, 791 F.Supp.3d 1021 (N.D.
24 Cal. 2025), the regulations provide no opportunity to have a neutral party evaluate
25 ICE’s unilateral determination of contested facts. And that it is this lack of “any neutral
26 review” which “creates a heightened risk of deprivation for Petitioner.” *Id.* at 1034.

C. Respondents interest in re-detaining without a hearing is low.

Regarding *Mathews*' third factor, Respondents state that they have "a strong interest in returning aliens to custody who violate conditions of release." Dkt. 9 at 11. That claimed interest is belied by the fact that Respondents took no action to revoke Mr. Somsanuk for years after his violations. Even more critically, the courts in this district and elsewhere have consistently rejected Respondents' position on this issue, not because that premise is incorrect, but because that is not the interest at issue here.

As stated by the court in *P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988, at *4 (W.D. Wash. Nov. 26, 2025), "[i]n the final *Mathews* factor, the Court considers the Government's interest in arresting and detaining Petitioner *without a hearing*." 2025 WL 3294988, at *3 (emphasis added). *Accord Perera v. Jennings*, No. CV21-4136-BLF, 2021 WL 2400981, at *5 (N.D. Cal. June 11, 2021) ("the interest at stake is not whether the government may detain [a noncitizen after releasing him], but whether they may do so without providing him an individualized bond hearing."). And "in immigration court, custody hearings are routine and impose a minimal cost." *Todd v. Bondi*, No. 25-CV-02519-JHC, 2026 WL 145725, at *5 (W.D. Wash. Jan. 20, 2026) (cleaned up). As a result, "the government's interest in detaining a petitioner without a hearing is low." *Id.* (cleaned up).

In sum, all three *Mathews* factors favor Mr. Somsanuk. His due process rights were violated by re-detaining him without a hearing. This is an independent ground for ordering his release.

V. MR. SOMSANUK'S RE-DETENTION VIOLATED HIS RIGHTS UNDER THE REGULATIONS.

As previously noted, there is no showing that Respondents complied with their regulations by giving Mr. Somsanuk an informal interview. That is one ground for concluding that Respondents violated their regulations, again requiring Mr. Somsanuk's release.

1 Secondly, in *Tran*, the court found that petitioner's "re-detention does not
2 comply with the requirements set forth by 8 C.F.R. § 241.13(i) and 8 C.F.R. §
3 241.13(f)." 2025 WL 3140462, at *3. That was because the sole justification for re-
4 detention was that "there is now a significant likelihood that Mr. Tran will be removed
5 in the reasonably foreseeable future." *Id.* But the court found that Respondents could
6 not justify that conclusion. Further, "Respondents fail to establish that they considered
7 the criteria set forth in § 241.13(f) and that Mr. Tran's re-detention was not arbitrary."
8 *Id.* And although the supposed justification was the likelihood of removal, Respondents
9 did not request travel documents until two months after taking him into custody. *Id.*
10 Based on all this, the court found that petitioner's "continued detention is contrary to
11 the INA and constitutes a violation of the APA." *Id.*

12 This case yields the same result. As discussed in Part III.C, *supra*, Respondents
13 have failed to demonstrate that removal is likely in the reasonably foreseeable future or,
14 as discussed in Part IV.B, that they considered the appropriate criteria. And while two
15 months have not quite passed since Mr. Somsanuk's re-detention, Respondents have
16 only "initiated the process of requesting" travel documents, dkt. 10 ¶ 12, such that it is
17 effectively impossible to request travel documents by that time.

18 The one difference from *Tran* is that Respondents do have another supposed
19 ground for re-detention: violation of conditions. But since Respondents continued Mr.
20 Somsanuk on OSUP for over two years since the last incident, and apparently decided
21 at that time that re-detention was not warranted, they cannot establish that the decision
22 to re-detain now is not arbitrary.

23 Accordingly, violation of Respondents' regulations provides a third ground for
24 ordering his release.
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1 **VI. THE COURT SHOULD ENJOIN FURTHER RE-DETENTIONS ABSENT**
2 **NOTICE AND A HEARING.**

3 In his petition, Mr. Somsanuk asked this Court to:

4 Order that Respondents may not re-detain Petitioner without first holding
5 a hearing before a neutral decisionmaker at which the government bears
6 the burden of establishing flight risk or danger to the community by clear
7 and convincing evidence based on changed circumstances since Petitioner
8 was previously released

9 Dkt. 1 at 25. *See also id.* at 20-21 (discussing the factors relevant to issuing an
10 injunction in this context).

11 Respondents have argued that, substantively, such a pre-deprivation hearing is
12 not required. However, they have not argued that, if this Court should find to the
13 contrary, it should still not issue an injunction. They have therefore waived or forfeited
14 this issue. *See, e.g., Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1023 (9th Cir. 2023)
15 (internal quotation marks omitted) (a party must “specifically and distinctly raise an
16 argument and support it with citations to the record” to avoid forfeiture) (internal
17 quotation marks omitted); *Tibble v. Edison Int’l*, 843 F.3d 1187, 1193 (9th Cir. 2016)
18 (citation omitted) (“[A]n issue will generally be deemed waived . . . if the argument was
19 not raised sufficiently for the trial court to rule on it.”) (citation omitted).

20 Nevertheless, Mr. Somsanuk will briefly address one of the factors, the
21 likelihood that Respondents would again seek to re-detain him unlawfully. Beyond the
22 policies cited in his petition, dkt. 1 at 21 (to round up as many noncitizens as possible),
23 17 (to deny notice and opportunity to be heard in certain circumstances), there is the
24 fact that the decisions reached in this district and others have demonstrated that
25 Respondents’ practice is not to hold pre-deprivation hearings. They do so out of their
26 position that the Constitution does not require them to, a position reflected in their
footnoted acknowledgement of cases in this district with which they disagree. Dkt. 9 at
9 n.4. It is their right to do so, absent an injunction, at least until there is binding

1 precedent consistent with the district court decisions cited in Part IV.A. But their
2 continued insistence that what they are doing is lawful is strong evidence that, if they
3 ever were to seek to re-detain Mr. Somsanuk, they would do so without a hearing. It is
4 thus apparent that an injunction is the only thing that will stop them from acting
5 illegally as to him going forward.

6 That is just what the court concluded in *Phuc Huu Nguyen*. There, the court
7 concluded:

8 that imposing conditions on any future re-detention of Mr. Nguyen is
9 necessary to fully effectuate the intent of this order. Mr. Nguyen has
10 demonstrated a real risk of his re-detention both because he appears to fall
11 into a target group for immigration arrests (noncitizens with past criminal
12 convictions) and because he is from a country that is the subject of the
13 government's increased removal efforts. Indeed, the fact that Respondents
14 have already unlawfully re-detained Mr. Nguyen once without due
15 process or likelihood of removal in the reasonably foreseeable future
16 raises serious concerns that, absent sufficient safeguards, the same thing
17 may happen again. Respondents make no assurances that Mr. Nguyen
18 will not be re-detained. Finally, Mr. Nguyen seeks a pre-deprivation
19 hearing; he can enforce that right only by bringing a challenge now, prior
20 to being re-arrested.

21 2026 WL 183819, at *6 (cleaned up).

22 Other decisions in this district that have granted relief comparable to that sought
23 here include *Castaneda Aponte v. Washington Immigration And Customs Enforcement*,
24 No. C25-2144JLR, 2025 WL 4051991, at *2 (W.D. Wash. Dec. 29, 2025), *report and*
25 *recommendation adopted*, 2026 WL 105038 (W.D. Wash. Jan. 14, 2026); *Vo v. Bondi*,
26 No. 2:25-CV-02244-DGE-GJL, 2025 WL 3653722, at *6 (W.D. Wash. Dec. 17, 2025);
Wana v. Bondi, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *6 (W.D. Wash. Dec.
15, 2025); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL
2841574, at *9 (W.D. Wash. Oct. 7, 2025); and *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d
1316, 1324 (W.D. Wash. 2025).

VII. THE COURT SHOULD ENJOIN THIRD COUNTRY REMOVAL WITHOUT NOTICE AND A HEARING AND SIMILARLY ENJOIN PUNITIVE THIRD-COUNTRY REMOVAL.

Mr. Somsanuk seeks an order preventing Respondents from removing him to a third country where he would be subject to imprisonment or other harms (the “punitive removal” claim), and also from removing him to a third country without notice and meaningful opportunity to respond in reopened removal proceedings, in compliance with the statute and due process (the “due process” claim). Dkt. 1 at 26. *See also* dkt. 1 at 24-25 (discussing how the criteria for an injunction are met).

Respondents contend that this issue is not ripe. Dkt. 9 at 14-15. They are wrong, as numerous cases in this district have held (some as to both claims, some as to only one). *See, e.g., Khim v. Bondi*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at *4-*5 (W.D. Wash. Dec. 17, 2025) (both granted); *Wana v. Bondi*, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *5-*6 (W.D. Wash. Dec. 15, 2025) (both granted); *Hieu Tri Nguyen v. Bondi*, No. 2:25-CV-02024-TL, 2025 WL 3534168, at *6-10 (W.D. Wash. Dec. 10, 2025) (both granted); *Baltodano v. Bondi*, No. C25-1958RSL, 2025 WL 3484769, at *7-*10 (W.D. Wash. Dec. 4, 2025) (both granted); *Hambarsonpour v. Bondi*, No. C25-1802-RSM, 2025 WL 3251155, at *4-*5 (W.D. Wash. Nov. 21, 2025) (both granted); *Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, at *6-*8 (both granted) (W.D. Wash. Nov. 17, 2025); *Lapshin v. Bondi*, No. C25-2245-KKE, 2026 WL 71407, at *4-*5 (W.D. Wash. Jan. 9, 2026) (due process claim granted); *Kuot v. Bondi*, No. 2:25-CV-02313-BAT, 2025 WL 3763930, at *5 (W.D. Wash. Dec. 30, 2025) (due process claim granted); *Elshourbagy v. Bondi*, No. 2:25-CV-02432-TL, 2025 WL 3718993, at *5-*10 (W.D. Wash. Dec. 23, 2025) (due process claim granted; punitive claim ripe but denied)); *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *4-*7 (W.D. Wash. Dec. 19, 2025) (due process claim granted).

As to the due process claim, the issue is ripe because “Respondents have taken the position ‘DHS has the authority to effect third country removal without the involvement of an immigration judge, without reopening removal proceedings and without giving a noncitizen an opportunity to present a CAT claim within 24 hours after the third country agrees to accept [him] and a Notice of Removal is served.’” *Kuot*, 2025 WL 3763930, at *5 (some internal quotation marks removed). Given that Respondents can likely never remove Mr. Somsanuk to Laos, and given the quotas that Respondents are imposing on themselves to remove a high volume of non-citizens (dkt. 1 at 21), there is every likelihood that they will seek to remove him to a third country.³ See *Hieu Tri Nguyen*, 2025 WL 3534168, at *9, referring to the policies cited above and those in dkt. 1 at 17-18, “This policy alone could make Petitioner’s removal to a third country an imminent threat given the low likelihood of his removal to Vietnam.” And, finally, given Respondents’ policies, as described in *Kuot* and *Hieu Tri Nguyen*, there is every likelihood that if they seek third country removal for Mr. Somsanuk, they will deny him his statutory and constitutional due process rights.

The punitive claim is also ripe. See *Hieu Tri Nguyen*, 2025 WL 3534168, at *9 (“But courts in this district and across the country have recognized that Petitioner is correct: the government is intentionally removing individuals to countries where they will be imprisoned.”) (citing *Nguyen v. Scott*, 796 F. Supp. 3d at 734) (collecting cases).

Beyond their ripeness argument, Respondents do not address any of the substantive questions: 1) whether their removal policy is unconstitutionally punitive, 2)

³ Respondents’ statement that “ICE currently has no intention of removing Petitioner to a third country,” dkt. 9 at 2, does not affect this. See, e.g., *Hieu Tri Nguyen*, 2025 WL 3534168, at *7 (“that Officer Strzelczyk chose to qualify his statement with the phrase ‘at this time’ is significant: it clearly indicates that the decision could be changed at any moment. And should Respondents change their position, ‘irreparable harm could easily occur before Petitioner’s counsel could seek relief or obtain a ruling from the Court.’”) (quoting *Nguyen v. Scott*, 796 F. Supp. 3d at 730).

whether notice and an opportunity to respond is required either constitutionally or statutorily, or 3) whether injunctive relief is appropriate. They have therefore waived or forfeited the issue. *See* p. 14, *supra*. *See also*, *Yukse v. Bondi*, No. 2:25-CV-02555-DGE-GJL, 2026 WL 60364, at *5 (W.D. Wash. Jan. 8, 2026) (“Aside from arguing [that petitioner’s claim is barred by other litigation], Respondents do not substantively challenge Petitioner’s third country removal due process claim. Therefore, the Court concludes Petitioner is entitled” injunctive relief) (record citation omitted).

Because Mr. Somsanuk briefed the substantive issues fully in his petition, dkt. 1 at 12-19, 22-25, he will rest on his pleadings.

VIII. RESPONDENTS’ ASSERTION THAT MR. SOMSANUK’S CLAIMS CAN BE BROUGHT ONLY THROUGH HABEAS IS WRONG.

Respondents argue this Court has no subject matter jurisdiction to hear Mr. Somsanuk’s claim that his detention violates the Administrative Procedure Act (APA). Dkt. 9 at 7-9. They essentially argue that Petitioners’ claims can only be brought through habeas. But courts have held that “APA and habeas review may coexist.” *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 185 (D.D.C. 2015); *J.G.G. v. Trump*, 772 F. Supp. 3d 18, 31 (D.D.C. 2025) (noting the APA has “long been available to plaintiffs . . . even in immigration challenges where habeas is also available”); *see also Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 510 n.10 (D. Md. 2025) (indicating that habeas claims need not be brought to the exclusion of all other claims in certain contexts); *Valez-Chavez v. McHenry*, 549 F. Supp. 3d 300, 305 (S.D.N.Y. 2021) (recognizing the same); *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 140 (D.D.C. 2018) (permitting plaintiffs to proceed with their APA claim alleging DHS’s violations of the INA); *cf. Castaneda v. Garland*, 562 F.Supp.3d 545, 559–61 (C.D. Cal. 2021) (finding subject-matter jurisdiction and permitting a detained noncitizen to proceed with APA claims).

In *Valez-Chavez*, the court adopted the reasoning of *R.I.L.-R* regarding the coexistence of APA and habeas review because “[n]othing in the text of the writ of habeas corpus, or the legislative history relied on by the government, demonstrates the customization or exclusivity needed to prove, by clear and convincing evidence, that Congress created the writ as a special and adequate review procedure within the meaning of § 704.” *Valez-Chavez*, 549 F. Supp. at 306; *see also Citizens for Resp. & Ethics in Washington v. United States Dep’t of Just.*, 846 F.3d 1235, 1244 (D.C. Cir. 2017) (requiring clear and convincing evidence of legislative intent to create a special, alternative remedy to bar APA review). Thus, there is no exclusivity of habeas claims that bars the availability of APA review.

IX. IN RELEASING MR. SOMSANUK, THIS COURT SHOULD IMPOSE THE CONDITIONS ON RESPONDENTS THAT WERE IMPOSED IN *DO V. SCOTT*.

In Mr. Somsanuk’s prayer for relief, he not only requested immediate relief, but also requirements similar to those imposed in *Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5, 2025). Specifically, he requested the Court order:

that the government may not otherwise [referring to the injunction discussed in Part VI, regarding notice and a hearing before any re-detention] re-detain Petitioner unless the government:

- (1) obtains a valid travel document to Laos for him,
- (2) provides the valid travel document to him and his counsel,
- (3) offers Petitioner the opportunity to leave on his own within two months, and
- (4) Petitioner does not leave. Under such circumstances, the government may be permitted to re-detain Petitioner provided it has already made concrete arrangements for him to be put on a flight to Laos in the reasonably foreseeable future.

1 Dkt. 1 at 25-26. *See also Tang v. Bondi*, 2025 WL 3551381 (W.D. Wash. Dec. 11,
2 2025) (imposing similar conditions).⁴

3 Respondents have not addressed this part of Mr. Somsanuk's petition and have
4 therefore waived or forfeited the issue *See* p. 14, *supra*. Nevertheless, Mr. Somsanuk
5 will briefly explain why such an order is warranted.

6 Counsel is aware of one recent case where a detainee was ordered released, then
7 shortly afterwards was re-detained and held for a lengthy period before being removed,
8 as well as two cases where a detainee was ordered released, shortly afterwards re-
9 detained, and is currently being held, apparently for a lengthy time, before supposedly
10 being removed.

11 In *Bernik v. Bondi*, No. C25-957-RSM-SKV, 2025 WL 2638625 (W.D. Wash.
12 Aug. 15, 2025), *report and recommendation adopted*, No. C25-957-RSM, 2025 WL
13 2637678 (W.D. Wash. Sept. 12, 2025), Mr. Bernik was released on September 12,
14 2025, re-detained on October 21, and not removed until November 17 (just under four
15 weeks). In *Suong v. Bondi*, No. 2:25-CV-02309-LK, 2025 WL 3718644 (W.D. Wash.
16 Dec. 23, 2025), Mr. Suong was released on December 23, 2025, re-detained on
17 approximately January 9, 2025 and told he would be on a plane on January 14, As of
18 this filing, he has still not been removed and, despite numerous requests, ICE has
19 provided Respondents' counsel with no word on when he might be. In *Jaranow v.*
20 *Bondi*, No. 2:25-CV-02396-TL, 2026 WL 35864 (W.D. Wash. Jan. 6, 2026), Mr.
21 Jaranow was released on January 6, re-detained on January 13, and has been told that
22 his estimated date of removal is approximately February 11 (more than four weeks after
23
24

25 ⁴ Mr. Somsanuk's proposal omits one provision from the orders in *Do* and *Tang*,
26 namely the provision allowing re-detention if petitioner "violates a condition of her
Order of Supervision." That provision would be inconsistent with Mr. Somsanuk's
proposed injunction requiring a hearing before any re-detention.

1 re-detention). There may well be many other instances in this district alone that counsel
2 is not aware of.

3 If Mr. Somsanuk is compliant with the conditions imposed upon his release, and
4 should Respondents subsequently manage to arrange to remove him at some time in the
5 future, there is no reason why he should languish in detention for weeks or months,
6 when he could instead present himself for removal at the appropriate time. Accordingly,
7 the Court should order as requested.

8 Furthermore, the conditions for an injunction are met. The above facts make it
9 significantly likely that, absent the injunction, Mr. Somsanuk would unnecessarily incur
10 a significant loss of liberty. That unnecessary loss of liberty would be an irreparable
11 injury that is a hardship to him, while the injunction would pose no hardship for
12 Respondents, meaning the public interest is served by granting the injunction.

13 **X. CONCLUSION**

14 The Court should grant all forms of relief requested by Mr. Somsanuk.

15
16 DATED this 26th day of January 2026.

17 Respectfully submitted,

18 *s/ Alan Zarky*
19 Staff Attorney
20 Attorney for Kipoung Somsanuk
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