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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 PHET SAENGPRASEUTH,

13 Petitioner,

14 v.

15 KRISTI NOEM, Secretary of the
16 Department of Homeland Security,
17 PAMELA JO BONDI, Attorney General,
18 TODD M. LYONS, Acting Director,
19 Immigration and Customs Enforcement,
20 JESUS ROCHA, Acting Field Office
21 Director, San Diego Field Office,
22 JEREMY CASEY, Warden of Imperial
23 Regional Detention Facility,

24 Respondents.

Civil Case No.: **'26CV1356 RSH MMP**

**Petition
for a
Writ of Habeas Corpus**

25
26
27 ¹ Federal Defenders of San Diego, Inc., is filing with provisional appointment under
28 Chief Judge Order No. 134. financial eligibility for representation is filed under
separate cover.

INTRODUCTION

Phet Saengpraseuth presents the latest case where ICE, without following its own regulations or *Zadvydas v. Davis*, 533 U.S. 678 (2001), detained a Laotian who came here in the Vietnam War’s aftermath. Courts in this district and others have not hesitated to grant habeas relief on nearly identical fact patterns. *See, e.g., Souvannaseng v. Noem*, No. 3:25-CV-3473-CAB-DEB, 2025 WL 3641180, at *2 (S.D. Cal. Dec. 16, 2025) (granting habeas relief to a Laotian who was ordered removed because of conviction); *Dipraseuth v. Noem*, No. 25-CV-3471 JLS (BJW), 2025 WL 3677674, at *3 (S.D. Cal. Dec. 18, 2025) (same); *Phommavongsa v. Chestnut*, No. 1:25-CV-01852-JLT-CDB (HC), 2026 WL 114468, at *4 (E.D. Cal. Jan. 15, 2026) (holding that “it does not appear likely that Petitioner’s removal to Laos is imminent”), *report and recommendation adopted as modified*, No. 1:25-CV-01852 JLT CDB (HC), 2026 WL 258412 (E.D. Cal. Jan. 30, 2026). This Court should join them.

Mr. Saengpraseuth and his family have been in the United States since 1981. But Mr. Saengpraseuth was ordered removed in 2009 because of a conviction that, under current law, would not make him removable. Even back then, ICE released him after six months. That made sense: Laos—to the extent that it recognizes Mr. Saengpraseuth as one of its own—has a long history of refusing to repatriate nationals.

Yet when a border patrol agent pulled him over in 2026—in an apparent pretextual stop—he did not give Mr. Saengpraseuth any “changed circumstances,” as regulations require, to justify his redetention. Nor is there any indication of where Respondents can send Mr. Saengpraseuth in the reasonably foreseeable future. Because when Mr. Saengpraseuth asked, an officer merely offered “any third-world country that will take you.” Ex. A ¶ 13. And even if ICE were able to remove him, they could do so with no notice, six hours’ notice, or 24 hours’ notice, depending on the circumstances. That would violate Ninth Circuit precedent.

1 Mr. Saengpraseuth must be released. ICE gave him no adequate notice or
 2 opportunity to contest redetention, violating their own regulations. And “there is no
 3 significant likelihood of removal in the reasonably foreseeable future,” meaning
 4 that Mr. Saengpraseuth’s detention is not statutorily authorized. *Zadvydas*, 533 U.S.
 5 at 701. And if ICE can remove him to a third country, ICE threatens to do so in
 6 violation of the Fifth Amendment’s Due Process Clause. This Court should grant
 7 this petition on all three grounds.

8 STATEMENT OF FACTS

9 Mr. Saengpraseuth was born functionally stateless in the aftermath of the
 10 Vietnam War. His parents were Laotian, but he does not remember if he was born
 11 in Laos or one of the nearby refugee camps. Ex. A ¶ 1. After a church sponsored
 12 his family, they came to America in 1981. *Id.* ¶ 2. Mr. Saengpraseuth was about six
 13 or seven years old. *Id.* The family settled in West Virginia. *Id.* Mr. Saengpraseuth
 14 got a green card and, for a while, all was well. *See id.* ¶ 3.

16 I. Mr. Saengpraseuth was ordered removed more than fifteen years ago 17 and could not be deported.

18 But Mr. Saengpraseuth was ordered removed in 2009. *Id.* ¶ 4. Following an
 19 argument with his sister-in-law, he received a conviction for California assault, *id.*
 20 ¶ 3, which—back then—made him removable. *Contra United States v. Gomez*, 165
 21 F.4th 1199, 1203 (9th Cir. 2026) (en banc) (holding that California assault is not a
 22 “crime of violence”); *see also Sessions v. Dimaya*, 584 U.S. 148, 153 (2018)
 23 (explaining that an immigrant becomes deportable if they commit a “crime of
 24 violence”). After six months in immigration custody, ICE determined that Laos
 25 would not accept Mr. Saengpraseuth because they had no record of his birth. *Id.* ¶
 26 4. ICE thus released him. *Id.* ¶ 4.

1 In 2012, Mr. Saengpraseuth suffered a stroke. *Id.* ¶ 7. He moved in with his
2 aunt in San Bernardino County to recover. *Id.* He has mostly recovered but he has
3 lingering side effects and is heavily medicated. *Id.* He still lives with his aunt. *Id.*

4 On January 5, 2026, he was driving near Coachella, California. *Id.* ¶ 8. A
5 border patrol agent pulled up next to him, then dropped back, and then ordered him
6 to pull over. *Id.* Mr. Saengpraseuth felt it wasn't safe on the freeway, so he pulled
7 over to a gas station. *Id.*

8 The agents told him pulled out their guns and told him to get out of the car.
9 *Id.* ¶ 9. They asked if I have any documentation to show that he could live in
10 America. He showed them his driver's license. *Id.*

11 The agents learned of the 2009 removal order. *Id.* ¶ 10. But they made no
12 mention of his order of supervision. *Id.* Nor did they say that ICE had put a warrant
13 out for his detention. *Id.* They handcuffed Mr. Saengpraseuth and, eventually,
14 brought him to the Imperial Regional Adult Detention Facility. *Id.* ¶ 11.

15 They never told Mr. Saengpraseuth why they detained him. When he asked,
16 they said they had no information. When he asked where ICE would send him, they
17 told him Laos or "any third-world country that will take [him]." *Id.* ¶ 12.

18 Mr. Saengpraseuth has suffered dizziness spells in detention, forcing him to
19 spend time with the medical unit. *Id.* ¶ 13. Before he was detained, he was
20 scheduled to see a neurologist. *Id.*

21
22 **II. The government is carrying out deportations to third countries without**
23 **providing sufficient notice and opportunity to be heard.**

24 ICE's inability to remove Mr. Saengpraseuth, and the lack of changed
25 circumstances in his case, makes it highly unlikely that ICE can remove
26 Mr. Saengpraseuth to a third country in the reasonably foreseeable future. But
27 should something unexpectedly change, and ICE does succeed in removing
28

1 Mr. Saengpraseuth to a third country, he is in danger of removal without due
2 process.

3 The Trump administration reportedly has negotiated with at least 58
4 countries to accept deportees from other nations. Edward Wong et al, *Inside the*
5 *Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25,
6 2025. On June 25, 2025, the New York Times reported that seven countries—Costa
7 Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had agreed
8 to accept deportees who are not their own citizens. *Id.* Since then, ICE has carried
9 out highly publicized third country deportations to South Sudan and Eswatini.

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

27 On June 23 and July 3, 2025, the Supreme Court issued a stay of a national
28 class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of*

1 *Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass.
 2 Apr. 18, 2025), which required ICE to follow statutory and constitutional
 3 requirements before removing an individual to a third country. *U.S. Dep't of*
 4 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025
 5 WL 1832186 (U.S. July 3, 2025).² On July 9, 2025, ICE rescinded previous
 6 guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims for
 7 protection under the Convention Against Torture (CAT) before initiating removal
 8 to a third country” like the ones just described. Ex. C.

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

18 Upon serving notice, ICE “will not affirmatively ask whether the alien is
 19 afraid of being removed to the country of removal.” *Id.* (emphasis original). If the
 20 noncitizen “does not affirmatively state a fear of persecution or torture if removed
 21

22
 23 ² Though the Supreme Court’s order was unreasoned, the dissent noted that the
 24 government had sought a stay based on procedural arguments applicable only to
 25 class actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025)
 26 (Sotomayor, J., dissenting). Thus, “even if the Government [was] correct that
 27 classwide relief was impermissible” in *D.V.D.*, Respondents still “remain[]
 28 obligated to comply with orders enjoining [their] conduct with respect to individual
 plaintiffs” like Mr. Saengpraseuth. *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).

1 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]
2 may proceed with removal to the country identified on the notice.” *Id.* at 2. If the
3 noncitizen “does affirmatively state a fear if removed to the country of removal”
4 then ICE will refer the case to U.S. Citizenship and Immigration Services
5 (“USCIS”) for a screening for eligibility for withholding of removal and protection
6 under the Convention Against Torture (“CAT”). *Id.* at 2. “USCIS will generally
7 screen within 24 hours.” *Id.* If USCIS determines that the noncitizen does not meet
8 the standard, the individual will be removed. *Id.* If USCIS determines that the
9 noncitizen has met the standard, then the policy directs ICE to either move to reopen
10 removal proceedings “for the sole purpose of determining eligibility for
11 [withholding of removal protection] and CAT” or designate another country for
12 removal. *Id.*

13 CLAIMS FOR RELIEF

14 This Court should grant this petition and order Mr. Saengpraseuth’s
15 immediate release. ICE’s own regulations require changed circumstances before
16 redetention, as well as notice and a chance to contest a redetention decision. And
17 *Zadvydas* holds that immigration statutes do not authorize the government to detain
18 indefinitely immigrants like Mr. Saengpraseuth, for whom there is “no significant
19 likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701.
20 Finally, due process requires ICE to provide notice and an opportunity to be heard
21 before any removal to a third country.
22

23 I. Count 1: ICE failed to comply with its own regulations before 24 redetaining Mr. Saengpraseuth, violating his rights under the Fifth 25 Amendment and the Administrative Procedures Act.

26 The Department of Homeland Security has enacted a series of regulations to
27 protect the due process rights of someone who, like Mr. Saengpraseuth, is re-
28 detained following a period of release. 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).

ICE must 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).³

³ 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. 3d 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,

1 Here, ICE violated § 241.13 in at least three respects.⁴

2 First, ICE did not comply with § 241.13(i)'s informal interview requirement.
 3 No matter the reason for re-detention, the re-detained person is entitled to "an initial
 4 informal interview promptly," during which they "will be notified of the reasons
 5 for revocation." *Id.* §§ 241.4(l)(1), 241.13(i)(3). The interviewer must "afford[] the
 6 [person] an opportunity to respond to the reasons for revocation," allowing them to
 7 "submit any evidence or information" relevant to re-detention and evaluating "any
 8 contested facts." *Id.* But Mr. Saengpraseuth has yet to receive the interview required
 9 by regulation. Ex. A ¶¶ 11–12. Any interview conducted now would not be prompt.
 10 *See, e.g., M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at
 11 *11 (D. Or. Aug. 21, 2025) (27-day delay not prompt); *Yang v. Kaiser*, No. 2:25-
 12 cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025)
 13 (two-month delay not prompt); *Soryadvongsa v. Noem*, 24-cv-2663-AGS-DDL,
 14 2025 WL 3126821, at *1 (S.D. Cal. Nov. 8, 2025) (29-day delay not prompt). That
 15 alone suffices to grant the petition.

16 Second, Mr. Saengpraseuth still has not received notice "of the reasons for
 17 revocation of his [] release." 8 C.F.R. § 241.13(i)(3). That too suffices to grant the
 18 petition. *See Anh Nguyen v. Noem*, 25-CV-2792-LL, Dkt. 10 at 4 (S.D. Cal. Nov.
 19 6, 2025) (holding that a "bare-bones explanation does not contain reasons for the
 20 revocation of Petitioner's release, thus it does not satisfy the 'the due-process
 21 notification requirement of § 241.13(i)(3) (quoting (quoting *Tran v. Noem*, No. 25-
 22 cv-2391-BTM-BLM, 2025 WL 3005347, at *2 (S.D. Cal. Oct. 27, 2025)).'"

23 Third, ICE did not revoke Mr. Saengpraseuth's release for a permissible
 24

25
 26 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2;
 27 *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

28 ⁴ Some of these violations also constitute § 241.4(l) violations, but because § 241.13(i) is more comprehensive, Mr. Saengpraseuth focuses his arguments on that regulation.

1 reason. He was not returned to custody because of a conditions violation. And there
2 are no changed circumstances that justify redetaining him. Mr. Saengpraseuth was
3 previously detained and released because ICE could not removed him to Laos.
4 Ex. A ¶ 4. Absent any evidence for “why obtaining a travel document is more likely
5 this time around[,] Respondents’ intent to eventually complete a travel document
6 request for Petitioner does not constitute a changed circumstance.” *Hoac v.*
7 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July
8 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D.
9 Kan. June 17, 2025)).

10 “[B]ecause officials did not properly revoke [P]etitioner’s release pursuant
11 to the applicable regulations, that revocation has no effect, and [Mr. Saengpraseuth]
12 is entitled to his release (subject to the same Order of Supervision that governed his
13 most recent release).” *Liu*, 2025 WL 1696526, at *3.

14 15 **II. Count 2: Mr. Saengpraseuth’s detention violates *Zadvydas* and § 1231.**

16 **A. Legal background**

17 Mr. Saengpraseuth’s indefinite detention also violates, 8 U.S.C.
18 § 1231(a)(6), the statute authorizing detention. In *Zadvydas*, the Supreme Court
19 considered a problem affecting people like Mr. Saengpraseuth. Federal law requires
20 ICE to detain an immigrant during the “removal period,” which typically spans the
21 first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2).
22 After that 90-day removal period expires, detention becomes discretionary—ICE
23 may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6).

24 Ordinarily, this scheme would not lead to excessive detention, as removal
25 happens within days or weeks. But some detainees cannot be removed quickly.
26 Perhaps their removal “simply require[s] more time for processing,” or they are
27 “ordered removed to countries with whom the United States does not have a
28 repatriation agreement,” or their countries “refuse to take them,” or they are

1 “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v.*
2 *Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances,
3 detained immigrants can find themselves trapped in detention for months, years,
4 decades, or even the rest of their lives.

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

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

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

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

22 **B. The six-month grace period expired in 2009.**

23 As an initial matter, the six-month grace period has long since ended. The
24 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,
25 *three months* after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*,
26 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Saengpraseuth was ordered
27 removed on March 10, 2009. Ex. D. Accordingly, his 90-day removal period began
28

1 then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six months
2 later, in September 2009. The threshold requirement is therefore met.
3 Mr. Saengpraseuth can proceed with his *Zadvydas* claim.

4
5 **C. There is good reason to believe that there is no significant**
6 **likelihood of Mr. Saengpraseuth removal in the reasonably**
7 **foreseeable future.**

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

13 "Good reason to believe." The "good reason to believe" standard is a
14 relatively forgiving one. "A petitioner need not establish that there exists no
15 possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
16 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "[g]ood reason to
17 believe" . . . place a burden upon the detainee to demonstrate no reasonably
18 foreseeable, significant likelihood of removal or show that his detention is
19 indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW,
20 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F.
21 Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
22 Petitioners need only give a "good reason"—not prove anything to a certainty.

23 "No significant likelihood of removal." This component focuses on
24 whether Mr. Saengpraseuth will likely be removed: Continued detention is
25 permissible only if it is "significant[ly] like[ly]" that ICE will be able to remove
26 him. *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of
27 untapped possibilities, but also [the] probability of *success* in such possibilities."
28 *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

1 petitioner can still meet its burden if there is good reason to believe that successful
2 removal is not significantly likely. *Kacanik v. Elwood*, No. CIV.A. 02-8019, 2002
3 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

4 **“In the reasonably foreseeable future.”** This component of the test focuses
5 on *when* Mr. Saengpraseuth will likely be removed: Continued detention is
6 permissible only if removal is likely to happen “in the reasonably foreseeable
7 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
8 removal efforts. If the Court has “no idea of when it might reasonably expect
9 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
10 is likely to occur—or even that it might occur—in the reasonably foreseeable
11 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
12 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859
13 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102
14 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Saengpraseuth
15 “would *eventually* receive” a travel document, he can still meet his burden by giving
16 good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL
17 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

18 Mr. Saengpraseuth readily satisfies the above standards for three reasons.
19 *First*, ICE has not been able to remove him for nearly 17 years. That track record
20 strongly suggests that ICE will not be able to remove him now.

21 *Second*, there is an obvious explanation for ICE’s inability to remove him:
22 Laos has a history of being “uncooperative” with American removal efforts. Ex. B
23 at 7. As mentioned above, that is why courts in this district and others repeatedly
24 have granted habeas relief in cases all-but identical to this one. *Souvannaseng*, 2025
25 WL 3641180, at *2 (granting habeas relief to a Laotian who was ordered removed
26 because of conviction); *Dipraseuth*, 2025 WL 3677674, at *3 (same);
27 *Phommavongsa*, 2026 WL 114468, at *4 (holding that “it does not appear likely
28 that Petitioner’s removal to Laos is imminent”), *report and recommendation*

1 *adopted as modified*, No. 1:25-CV-01852 JLT CDB (HC), 2026 WL 258412 (E.D.
2 Cal. Jan. 30, 2026). This Court should join them.

3 Finally, “alternative-country removal is rare.” *Johnson v. Guzman-Chavez*,
4 594 U.S. 523, 537 (2021). Between 2020 and 2023, data apparently show that “ICE
5 removed . . . only *five* non-citizens granted withholding or CAT relief to alternative
6 countries.” *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025)
7 (emphasis original). In fiscal year 2017, there were at most 21 people of the
8 thousands with withholding of removal deported to *any* country; that number
9 includes dual citizens who only received withholding from one of their two other
10 countries of origin. See American Immigration Council & National Immigrant
11 Justice Center, *The Difference Between Asylum and Withholding of Removal*, 7
12 (Oct. 2020)⁵ (cited in *Guzman-Chavez*, 594 U.S. at 537). That means that “less than
13 two percent of those granted withholding of removal were deported to a third
14 country.” *Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL
15 3142089, at *3 (W.D. Tex. Oct. 22, 2025) (citing American Immigration Council
16 & National Immigrant Justice Center, *supra*).

17 “[T]hat is not simply a matter of United States policy—foreign governments
18 ‘routinely deny’ requests to receive people who lack a connection to the would-be
19 receiving country.” *Id.* “The reason so few people are deported to third countries is
20 because,” while “customary international law holds that a country has a duty to
21 accept the return of its nationals,” usually, “countries have no incentive to accept
22 non-citizens.” American Immigration Council & National Immigrant Justice
23 Center, *supra*, at 7.

24 Because third-country removal is exceedingly rare, and ICE has not been
25 able to remove Mr. Saengpraseuth to a third country for the last 17 years, he has
26

27 ⁵Available at [https://www.americanimmigrationcouncil.org/wp-](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)
28 [content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_r](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)
[emoval.pdf](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)

1 met his initial burden. Thus, unless the government can prove a “significant
2 likelihood of removal in the reasonably foreseeable future,” Mr. Saengpraseuth
3 must be released. *Zadvydas*, 533 U.S. at 701.

4
5 **III. Count 3: ICE may not remove Mr. Saengpraseuth to a third country**
6 **without adequate notice and an opportunity to be heard.**

7 There is therefore no current likelihood that Mr. Saengpraseuth will be
8 removed to a third country. But ICE presumably detained Mr. Saengpraseuth to try
9 to do just that, and in this rapidly evolving removal landscape, something
10 unforeseen could suddenly change to make that feasible. ICE’s “credible threat of
11 enforcement” of this third-country removal plan is sufficient to make this claim
12 justiciable, even ICE does not have any current feasible plan to remove Mr.
13 Saengpraseuth to a third country. *See Susan B. Anthony List v. Driehaus*, 573 U.S.
14 149, 156–57, 161 (2014) (finding standing, even though the politician seeking
15 enforcement of an unconstitutional law was no longer running for office). And if
16 ICE did suddenly prove able to remove Mr. Saengpraseuth to a third country, it
17 would do so under a policy that violates the Fifth Amendment, the Convention
18 Against Torture, and implementing regulations.

19 **A. Legal background**

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

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

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

16 The government must also “ask the noncitizen whether he or she fears
17 persecution or harm upon removal to the designated country and memorialize in
18 writing the noncitizen’s response. This requirement ensures DHS will obtain the
19 necessary information from the noncitizen to comply with section 1231(b)(3) and
20 avoids [a dispute about what was said].” *Aden*, 409 F. Supp. 3d at 1019. “Failing to
21 notify individuals who are subject to deportation that they have the right to apply
22 for asylum in the United States and for withholding of deportation to the country to
23 which they will be deported violates both INS regulations and the constitutional
24 right to due process.” *Andriasian*, 180 F.3d at 1041.

25 If the noncitizen claims fear, measures must be taken to ensure that the
26 noncitizen can seek asylum, withholding, and relief under CAT before an
27 immigration judge in reopened removal proceedings. The amount and type of
28 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and

1 circumstances, he would have a reasonable opportunity to raise and pursue his
2 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
3 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
4 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the
5 government to move to reopen the noncitizen’s immigration proceedings if the
6 individual demonstrates “reasonable fear” and to provide “a meaningful
7 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening
8 of their immigration proceedings” if the noncitizen is found to not have
9 demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice
10 and time for a respondent to file a motion to reopen and seek relief).

11 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,
12 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016), and
13 for good reason: To have a meaningful opportunity to apply for fear-based
14 protection from removal, immigrants must have time to prepare and present
15 relevant arguments and evidence. Merely telling a person where they may be sent,
16 without giving them a chance to look into country conditions, does not give them a
17 meaningful chance to determine whether and why they have a credible fear. !

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

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

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

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

18 Resolution of a prolonged-detention habeas petition may require an
19 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).
20 Mr. Saengpraseuth hereby requests such a hearing on any material, disputed facts.
21

22 **V. Prayer for relief**

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

- 24 1. Order Respondents to immediately release Petitioner from custody;
- 25 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
26 § 1231(a)(6) unless and until Respondents obtain a travel document for
27 his removal;

1 3. Enjoin Respondents from removing Petitioner unless they provide the
2 following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV
3 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):

4 (1) written notice to both Petitioner and Petitioner's counsel in a
5 language Petitioner can understand;

6 (2) a meaningful opportunity, and a minimum of ten days, to raise a
7 fear-based claim for CAT protection prior to removal;

8 (3) if Petitioner is found to have demonstrated "reasonable fear" of
9 removal to the country, Respondents must move to reopen
10 Petitioner's immigration proceedings;

11 (4) if Petitioner is not found to have demonstrated a "reasonable fear"
12 of removal to the country, a meaningful opportunity, and a
13 minimum of fifteen days, for the Petitioner to seek reopening of his
14 immigration proceedings.

15 4. Order all other relief that the Court deems just and proper.

16 Respectfully submitted,

17
18 Dated: March 3, 2026

s/ Daniel J. Yadron, Jr.

Daniel J. Yadron, Jr.

Federal Defenders of San Diego, Inc.

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