

1 Hoang Kim LY

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2 c/o CoreCivic – Eloy Detention Center
1705 East Hanna Road
3 Eloy, AZ 851314 *Pro Se*

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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
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5 **IN THE UNITED STATES DISTRICT COURT FOR**
6 **THE DISTRICT OF ARIZONA**

7 Hoang Kim LY,

8 *Petitioner,*

9 vs.

10 ERIC ROKOSKY, Warden, CoreCivic – Eloy
11 Detention Center;12
13 CHRISTOPHER MCGREGOR, Phoenix Field Office
14 Director, U.S. Immigration and Customs
15 Enforcement, Enforcement and Removal Operations;16 TODD LYONS, Director of U.S. Immigration and
17 Customs Enforcement;18
19 KRISTI NOEM, Secretary of the U.S. Department of
20 Homeland Security;21
22 PAMELA JO BONDI, Attorney General of the United
23 States;24 *Respondents.*
25
26
27
28No. **CV26-01648-PHX-MTL--MTM****Petition for Writ of Habeas Corpus
pursuant to 28 U.S.C. § 2241**

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I. TECHNICAL DATA

Petitioner, Mr. Hoang Kim Ly (hereinafter “Mr. Ly”), is challenging the validity of his detention in immigration custody. His Alien Registration Number (“A-Number”) is .

Mr. Ly is challenging the decision made by U.S. Immigration and Customs Enforcement on September 22, 2025, to revoke his prior release from immigration custody on an Order of Supervision (“OSUP”), which was issued in 2000 when he was initially released pending ongoing efforts to remove him from the United States. Mr. Ly has been in immigration custody since that date of revocation.

Mr. Ly is presently detained at the CoreCivic – Eloy Detention Center in Eloy, Arizona. Upon information and belief, Mr. Ly has not seen a judge and has therefore not had an opportunity to exhaust any available administrative remedies.

II. PARTIES

Mr. Ly immigrated to the U.S. as a refugee in 1978. He was ordered removed from the U.S. on May 7, 1999.

Respondent Eric Rokosky is the Warden of the CoreCivic – Eloy Detention Center, where Mr. Ly is being detained. He is Mr. Ly’s immediate legal custodian and therefore a proper respondent in this matter. *See, Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).

Respondent Christopher McGregor is the Phoenix Field Office Director for U.S. Immigration and Customs Enforcement (hereinafter “ICE”), Enforcement and Removal Operations (hereinafter “ERO”). He is responsible for Mr. Ly’s detention, and is therefore a legal custodian of Mr. Ly.

Respondent Todd Lyons is the Director for ICE. He is responsible for maintaining the immigration detention system and is therefore a legal custodian of Mr. Ly.

Respondents Kristi Noem and Pamela Jo Bondi are, respectively, the Secretary of the U.S. Department of Homeland Security, and the Attorney General of the U.S. As such, they are responsible for maintaining the immigration detention system. They are therefore legal custodians of Mr. Ly.

III. JURISDICTION

My Ly is in the physical custody of Respondents in the CoreCivic – Eloy Detention Center in Eloy, Arizona, within the District of Arizona.

1 This Court has subject matter jurisdiction under the habeas corpus statutes, 28 U.S.C. §§ 2241 *et*
 2 *seq.*; the Declaratory Judgement Act, 28 U.S.C. §§ 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; the
 3 Fifth Amendment to the United States Constitution; the Suspension Clause of the Constitution; and under
 4 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality
 5 Act, 8 U.S.C. § 1101 *et seq.*, the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the
 6 Rehabilitation Act, 29 U.S.C. § 794.

7 **IV. VENUE**

8 Venue lies in the United States District Court for the District of Arizona, the judicial district in
 9 which Petitioner currently is detained. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
 10 484, 493-500 (1973),

11 Venue also properly lies in the District of Arizona under 28 U.S.C. § 1391(b)(2) and (e)(1)(B)
 12 because this is a civil action in which Respondents are agencies and officers of the United States,
 13 Petitioner was detained in this district when this Petition was filed, and because a substantial part of the
 14 events or omissions giving rise to the claims occurred in this district.

15 **V. BACKGROUND:**

16 Mr. Ly was born in 1976 and fled Vietnam at age 7. He spent several years in a refugee camp in
 17 Thailand before he immigrated to the U.S. as a refugee on 1987. He was able to come to the U.S. as a
 18 refugee through [REDACTED]

19 [REDACTED]
 20 he therefore believes that he may have immigrated to the U.S. through the Orderly Departure Program
 21 ("ODP"). He subsequently adjusted his immigration status to become a Lawful Permanent Resident of
 22 the U.S.

23 "The Orderly Departure Program (ODP) was established under a 1979 Memorandum of
 24 Understanding between the United Nations High Commissioner for Refugees and the government of
 25 Vietnam to provide a safe and legal means for people to leave Vietnam rather than clandestinely by
 26 boat." U.S. General Accounting Office, B-238006, Refugee Program: The Orderly Departure Program
 27 from Vietnam at 2 (Apr. 11, 1990) [hereinafter *GAO ODP Report*]. "Vietnamese can travel to the United
 28 States under the ODP as immigrants, following normal U.S. visa issuance procedures, or as refugees." *Id.*

1 Many of the Vietnamese people who came to the United States under the ODP were admitted as
2 refugees. *See GAO ODP Report* at 5. Refugee status allows for adjustment to Lawful Permanent
3 Resident Status after one year of physical presence in the United States. *See* 8 U.S.C. § 1159(b).

4 On September 28, 1995, Mr. Ly was convicted in the Superior Court of California, County of
5 Orange, of one count of attempted murder, in violation of Cal. Penal Code § 664-187. He was sentenced
6 to a total of 5 years in state prison.

7 Mr. Ly was released from state prison in California in 1999, from where he was immediately
8 taken into immigration custody by the Immigration and Naturalization Service and issued a notice to
9 appear that, upon information and belief, charged him as being removable from the U.S. by virtue of his
10 conviction for attempted murder. *See* 8 U.S.C. § 1101(a)(43)(A) (murder is an aggravated felony); 8
11 U.S.C. § 1227(a)(2)(A)(iii) (aliens convicted of an aggravated felony are deportable).

12 On May 7, 1999, an immigration judge at the immigration court in Imperial, California, ordered
13 his removal to Vietnam. He did not appeal the removal order, and upon information and belief, the
14 removal order became final on May 7, 1999.

15 A 90-day period of mandatory detention began when the removal order became administratively
16 final. *See* 8 U.S.C. § 1231(a)(1)(A), (a)(1)(B)(i), (a)(2).

17 Upon information and belief, INS released Mr. Ly from immigration custody in 2000 on an
18 Order of Supervision. It was unable to effectuate his removal while he was in custody because, upon
19 information and belief, Vietnam did not accept any Vietnamese deportees from the U.S. at the time.

20 In 2008, the Vietnamese government entered into a Memorandum of Understanding (hereinafter
21 “2008 MOU”) with the U.S. government to accept Vietnamese deportees for the first time. *See, Trinh v.*
22 *Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). However, the 2008 MOU exempted pre-1995
23 Vietnamese immigrants, providing, “Vietnamese citizens are not subject to return to Vietnam under this
24 agreement if they arrived in the United States before July 12, 1995.” *Id.* Given that Mr. Ly arrived in the
25 U.S. in 1987, he could not have been returned to Vietnam pursuant the 2008 MOU.

26 In 2008, Vietnam passed its Law on Vietnamese Nationality (Law No. 08/2008/QH12), which
27 took effect on July 1, 2009, and required all Vietnamese citizens living abroad who did not have a valid
28 Vietnamese passport on the effective date to register with a Vietnamese embassy or consulate by July 1,

1 2014, or they would lose their Vietnamese citizenship. Upon information and belief, Mr. Ly did not
2 register as required by July 1, 2014, and therefore would have lost his Vietnamese citizenship pursuant to
3 the 2008 Law on Vietnamese Nationality.

4 Since his release on his Order of Supervision in 2000, Mr. Ly has been charged in 2 criminal
5 cases. However, neither case resulted in him being warned of, noticed of, or found in violation of his
6 Order of Supervision. On June 10, 2011, Mr. Ly was convicted in the U.S. District Court for the District
7 of Colorado of one count of use of a communications facility in the commission of conspiracy to possess
8 ecstasy with intent to distribute, in violation of 21 U.S.C. § 843(b) and (d)(1). *See U.S.A. v. Lo et al.*, No.
9 07-cr-00429-REB-17. He was sentenced to a total of 3 years of probation and a \$100 assessment fee. On
10 October 25, 2024, Mr. Ly was charged in the Superior Court of California, County of Orange, with one
11 count of misdemeanor assault in violation of Cal. Penal Code § 240, and one count of misdemeanor
12 battery violation of Cal. Penal Code § 242, for which he has entered pleas of “not guilty.” *See Exhibit A.*
13 These two charges remain pending, but because Mr. Ly was not able to appear his hearings in that case
14 on December 1, 2025, and February 23, 2026, that court will issue a bench warrant for him on March 9,
15 2026, if he does not appear before that court in person that day. *Id.*

16 In 2020, Vietnam executed another Memorandum of Understanding (hereinafter “2020 MOU”)
17 with the U.S. government regarding the acceptance of Vietnamese deportees. In order for a travel
18 document to be issued, “the individual must have completed any term of imprisonment before removal or
19 a U.S. competent authority must have ordered a reduction in the sentence or the individual’s release from
20 prison[.]” *See Exhibit B.* With every travel document request, the U.S. must also provide the Vietnamese
21 government with a copy or summary of decision of discharge from prison or reduction of sentence,” and
22 documents in English must be accompanied by a certified Vietnamese translation. *Id.* The individual
23 must also have Vietnamese citizenship. *Id.* While the 2020 MOU lifted the restriction on the acceptance
24 of Vietnamese who arrived in the U.S. before July 12, 1995, the most recent annual report from ICE
25 shows no meaningful difference in removals to Vietnam between FY 2019 (80 removals) – the year
26 before the 2020 MOU was executed, and FY 2020 (93 removals) – most of which took place following
27
28

1 the execution of the 2020 MOU.¹ Removals even decreased after FY 2020, with just 33 removals in FY
2 2021, 15 removals in FY 2022, 39 removals in FY 2023, and 58 removals in FY 2024. *Id.* Between
3 October 1997 and September 2025, a total of 11,147 Vietnamese nationals were ordered removed by
4 U.S. immigration courts.² *See also*, Exhibit C. Additionally, the 2020 MOU states that it will only accept
5 Vietnamese citizens, and Mr. Ly believes his Vietnamese citizenship has been revoked pursuant to the
6 2008 Law on Vietnamese Nationality. *See* Exhibit B. Lastly, while much of the 2020 MOU is redacted,
7 under Section 4 on Eligibility for Acceptance of Return, criteria 4 is badly redacted, and an exposed
8 section on the upper right of the redaction appears to show “(ODP),” which might have been the program
9 through which Mr. Ly immigrated to the U.S. *Id.*

10 Upon information and belief, ever since Mr. Ly’s release from immigration custody on or around
11 2000, he has always complied with the requirement in his Order of Supervision that he check-in annual
12 in person with ICE. Upon information and belief, he has also always complied with his Order of
13 Supervision by providing ICE with personal information, his photos, and his fingerprints to allow them
14 to request travel documents from Vietnam.

15 On September 22, 2025, Mr. Ly complied with his Order of Supervision by reporting as
16 scheduled to his check-in at the ICE Enforcement and Removal Operations (hereinafter “ERO”) Sub-
17 Office in Santa Ana, California. At that check-in, ICE took him back into custody and transferred him to
18 the CoreCivic–Eloy Detention Center in Eloy, Arizona, where he has remained in custody to this day.
19 Respondents failed to provide Mr. Ly with any semblance of due process, providing him with no notice
20 of the specific reasons for his re-detention. Moreover, ICE did not identify any changed circumstances
21 that warranted the revocation of his Order of Supervision, nor did they give Mr. Ly an opportunity to
22 contest his re-detention.

23 This petition challenges Petitioner’s ongoing unlawful detention by Respondents. Respondents’
24 actions violate the Due Process Clause of the Fifth Amendment, in addition Mr. Ly’s unnecessary re-
25 detention violates his statutory and regulatory rights, and *Zadvydas v. Davis*, 533 U.S. 678 (2001).

26 **VI. CLAIMS AND ARGUMENTS:**

27 ¹ Available at, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>, p. 102.

28 ² Available at, <https://tracreports.org/phptools/immigration/closure/>.

Courts have agreed in similar circumstances as to each of Mr. Ly's three claims. Specifically:

(A) **Regulatory and due process violations:** Mr. Ly must be released because ICE's failure to follow its own regulations about notice and an opportunity to be heard violate due process. See, e.g., *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhjirouz 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-cv2433-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-cv02597-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) (all either granting temporary restraining orders releasing noncitizens, or granting habeas petitions outright, due to ICE regulatory violations during recent re-detentions of released noncitizens previously ordered removed).

(B) **Zadvydas violations:** Mr. Ly must also be released under *Zadvydas* because the government has proven unable to remove him for the last twenty-four years and have not provided evidence to show a change in circumstances. Thus, Respondents cannot show that there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. See, e.g., *Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas petitions releasing noncitizens due to *Zadvydas* violations).

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

Moreover, the habeas statute requires that this Court adjudicate this case quickly. Upon receipt of the petition, the Court must either grant the petition for writ of habeas corpus or issue an order to show

1 cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.
2 If an OSC is issued, the Respondents must file a return “within three days unless for good cause
3 additional time, not exceeding twenty days, is allowed.” *Id.*

4 Courts have long recognized the significance of the habeas statute in protecting individuals from
5 unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to
6 the constitutional law...affording as it does a *swift* and imperative remedy in all cases of illegal restraint
7 or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

8 Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts to give
9 petitions for habeas corpus special, preferential consideration to insure expeditious hearing and
10 determination.” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted).

11 **A. CLAIM ONE: Regulatory and Due Process Violations: ICE failed to comply with its own**
12 **regulations before re-detaining Mr. Ly, violating his rights under applicable regulations and due**
13 **process under the 5th Amendment.**

14 Two regulations establish the process due to someone who is re-detained in immigration custody
15 following a period of release. 8 C.F.R. § 241.4(1) applies to all re-detentions, generally. 8 C.F.R. §
16 241.13(i) applies as an added, overlapping framework to persons released upon good reason to believe
17 that they will not be removed in the reasonably foreseeable future, as Mr. Ly was. See *Phan v. Noem*,
18 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3-*5 (S.D. Cal. Oct. 10, 2025) (explaining this
19 regulatory framework and granting a habeas petition for ICE's failure to follow these regulations for a
20 refugee of Vietnam who entered the United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-
21 VET, 2025 WL 2646165 at *2 (same as to an Iranian national).

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

27 No matter the reason for re-detention, the re-detained person is entitled to certain procedural
28 protections. For one, “[u]pon revocation,” the noncitizen “will be notified of the reasons for revocation of

his or her release or parole." *Phan*, 2025 WL 2898977 at *3, *4 (quoting §§ 241.4(1)(1), 241.13(i)(3)). Further, the person "will be afforded an initial informal interview promptly after his or her return' to be given an opportunity to respond to the reasons for revocation stated in the notification." *Id.*

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

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

ICE followed none of its regulatory prerequisites to re-detention when they abruptly seized Mr. Ly at a routine check-in on September 22, 2025 despite more than two decades of compliance:

First, ICE did not identify a proper reason under the regulations to re-detain Mr. Ly. Mr. Ly was not returned to custody because of a conditions violation, and there was apparently no determination before or at his arrest that there are "changed circumstances" such that there is "a significant likelihood that [Mr. Ly] may be removed in the reasonably foreseeable future." § 241.13(i)(2).

Second, ICE did not notify Mr. Ly of the reasons for his re-detention upon revocation of release. See §§ 241.4(1)(1), 241.13(i)(3). No officer has explained to him, orally or in writing, why he was taken back into custody. He was re-detained on September 22, 2025. Specifically, ICE did not provide Mr. Ly with any written notice stating that his Order of Supervision was being revoked; did not identify any alleged violation of that Order; and did not state any changed circumstances justifying re-detention.

Third, Mr. Ly did not receive the informal interview required by regulation under 8 C.F.R. § 241.13(i)(3), which would allow Mr. Ly to submit evidence refuting the reasons for revocation of his Order of Supervision. No one from ICE has invited him to contest his detention or even spoken to him. He has not been afforded a meaningful opportunity to respond to the reasons for revocation or submit

1 evidence rebutting his re-detention.

2 Numerous courts have released re-detained immigrants after finding that ICE failed to comply
3 with applicable regulations in violation of petitioner's due process rights. *See, e.g., Nguyen v. Noem*, No.
4 8:25-cv-02629-FWS-MAR, ECF No. 11 (Dec. 5, 2025); *Morales Sanchez v. Bondi*, 5:25-cv-02530-AB-
5 DTB, ECF No. 22 (Dec. 5, 2025); *Min v. SantaCruz*, 2025 WL 3295564, at *5 (C.D. Cal. Nov. 26,
6 2026); *Hassanzadeh v. Warden, Desert View Facility*, 2025 WL 3306272, at *4 (C.D. Cal. Nov. 25,
7 2025); *Hashemi v. Noem*, 2025 WL 3468694, at *6 (C.D. Cal. Nov. 19, 2025) (finding violations of DHS
8 regulations to constitute a violation of Petitioner's due process); *Bui v. Warden of Otay Mesa Detention*
9 *Facility*, 2025 WL 2988356, at *5 (S.D. Cal. Oct. 23, 2025) (same); *Constantinovici v. Bondi*, 2025 WL
10 2898985, at *7 (S.D. Cal. Oct. 10, 2025) (same); *Phan v. Noem*, 2025 WL 2898977, at *5 (S.D. Cal. Oct.
11 10, 2025) (same); *Esmail v. Noem*, 2025 WL 3030589, at *3 (C.D. Cal. Sept. 12, 2025) (same); *Diaz v.*
12 *Wofford*, 2025 WL 2581575, at *9 (E.D. Cal. Sept. 5, 2025) (same); *Delkash v. Noem*, 2025 WL
13 2683988, at *6 (C.D. Cal. Aug. 28, 2025) (same); *M.S.L. v. Bostick*, 2025 WL 2430267, at *12 (D. Or.
14 Aug. 21, 2025) (same); *Yang v. Kaiser*, 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (same);
15 *Phan*, 2025 WL 1993735, at *4 (same); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y.
16 2025). *Phan*, 2025 WL 2898977 at *5; *Rokhfirooz*, 2025 WL 2646165; *Grigorian*, 2025 WL 2604573;
17 *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025);
18 *You v. Nielsen*, 321 F. Supp. 3d 451,463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383,387 (D.
19 Mass. 2017); *Zhu v. Genalo*, No. 1 :25-CV-06523 (JLR), 2025 WL 2452352, at *7-9 (S.D.N.Y. Aug. 26,
20 2025); *MS.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10-12 (D. Or. Aug. 21, 2025);
21 *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2-3 (E.D. Tex. July 18, 2025);
22 *Hoac v. Becerra*, No. 2:25- cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*,
23 2025 WL 1696526, at *2; *MQ. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31,
24 2025).

25 "A growing number of courts...have unequivocally found that the government's failure to
26 follow its release revocation procedures renders the re-detention unlawful and requires release."

27 *Hashemi*, 2025 WL 3468694, at *6. In sum, Respondents' detention of Mr. Ly without notice and an
28 interview violates his right to procedural due process, constituting a violation of the Fifth Amendment.

1 **B. CLAIM TWO: Mr. Ly's Continued Detention Violates *Zadvydas* and 8 U.S.C. § 1231:**

2 (1) Legal background: The statute, as interpreted by *Zadvydas*, renders detention
3 mandatory for 90 days after removal is ordered, presumptively acceptable for 180 days after
4 removal is ordered, and allowable after 180 days after removal is ordered only if there is a
5 significant likelihood of removal in the reasonably foreseeable future.

6 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting
7 people like Mr. Ly: Federal law requires ICE to detain an immigrant during the "removal period," which
8 typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After
9 that 90-day removal period expires, detention becomes discretionary – ICE may detain the migrant while
10 continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive
11 detention, as removal happens within days or weeks. But some detainees cannot be removed quickly.
12 Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to
13 countries with whom the United States does not have a repatriation agreement," or their countries "refuse
14 to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma*
15 *v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants
16 can find themselves trapped in detention for months, years, decades, or even the rest of their lives. If
17 federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a
18 serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
19 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689. *Zadvydas*
20 held that § 1231(a)(6) presumptively permits the government to detain an immigrant for 180 days after
21 his or her removal order becomes final. After those 180 days have passed, the immigrant must be
22 released unless his or her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six months
23 have passed, the petitioner must only make a *prima facie* case for relief there is "good reason to believe
24 that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* Then the
25 burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.*
26 Further, even before the 180 days have passed, the immigrant must still be released if he rebuts the
27 presumption that his detention is reasonable. *See, e.g., Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092
28 (C.D. Cal. 2020) (collecting cases on rebutting the *Zadvydas* presumption before six months have

1 passed); *Zavvar v. Scott*, Civil No. 25-2104-TDC, 2025 WL 2592543, *6 (D. Md. Sept. 8, 2025) (finding
2 the presumption rebutted for a person who was immediately released after being ordered removed and,
3 years later, re-detained for less than six months). Mr. Ly can make all the threshold showings needed to
4 prove his *Zadvydas* claim and shift the burden to the government.

5 **(2) ICE had until November 1999 to remove Mr. Ly – 6 months after his final order of**
6 **removal:**

7 The six-month grace period has long since ended. The *Zadvydas* grace period is linked to the date
8 the final order of removal is issued. It lasts for "six months after a final order of removal—that is, three
9 months after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5
10 (9th Cir. 2001); *see also* 8 U.S.C. § 1231(a)(1)(B) (linking the statutory removal period to issuance of the
11 final order and other proceedings associated with the original removal order).

12 Here, Mr. Ly's order of removal was entered on May 7, 1999. Accordingly, his 90-day removal
13 period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period expired in August 1999, three
14 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-
15 4108(EP), *2-*3. The government has sometimes argued that release and rearrest resets the six-month
16 grace period completely, taking the clock back to zero. "Courts ... broadly agree" that this is not correct.
17 *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), report and recommendation
18 adopted, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also, Sied v. Nielsen*, No. 17-CV-06785-LB,
19 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018).

20 It has also sometimes argued that rearrest creates a new three-month grace period. As a court
21 explained in *Bailey v. Lynch*, that view cannot be squared with the statutory definition of the removal
22 period in 8 U.S.C. § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3,
23 2016). "Pursuant to the statute, the removal period, and in turn the [six-month] presumptively reasonable
24 period, begins from the latest of 'the date the order of removal becomes administratively final,' the date
25 of a reviewing court's final order where the removal order is judicially removed and that court orders a
26 stay of removal, or the alien's release from detention or confinement where he was detained for reasons
27 other than immigration purposes at the time of his final order of removal." *Id.* None of these statutory
28 starting points have anything to do with whether or when an immigrant is detained. *See, id.* Because the

1 statutorily-defined removal period has nothing to do with release and rearrest, releasing and rearresting
2 the immigrant cannot reset the removal period.

3 **(3) Mr. Ly's personal experience, and Vietnam's general policy of not repatriating most**
4 **pre-1995 Vietnamese immigrants, provide good reason to believe that Mr. Ly will not likely be**
5 **removed in the reasonably foreseeable future.**

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

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

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

26 **"In the reasonably foreseeable future."** This component of the test focuses on when Mr. Ly
27 will likely be removed: Continued detention is permissible only if removal is likely to happen "in the
28 reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's

1 removal efforts. If the Court has "no idea of when it might reasonably expect [Petitioner] to be
2 repatriated, this Court certainly cannot conclude that his removal is likely to occur – or even that it might
3 occur – in the reasonably foreseeable future." *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL
4 4880158, at *3 (S.D. Miss. July 7, 2020), report and recommendation adopted, 2020 WL 4876859 (S.D.
5 Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even
6 if this Court concludes that Mr. Ly "would eventually receive" a travel document, he can still meet his
7 burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL
8 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

9 **A. Mr. Ly's own experience shows that there is good reason to believe that his removal is**
10 **neither significantly likely nor reasonably foreseeable:**

11 ICE has now had more than twenty-four years to deport Mr. Ly, including more than five years
12 under the 2020 MOU. He has cooperated with ICE's removal efforts throughout that time. Yet ICE has
13 proven unable to remove him. Second, the general experience of other Vietnamese immigrants also bears
14 this out. Vietnam often does not accept pre-1995 Vietnamese immigrants for deportation. Even after
15 Vietnam signed the 2020 MOU, ICE had to admit that there was no reasonable likelihood of removing
16 such immigrants in the reasonably foreseeable future. *See*, Order on Joint Motion for Entry of Stipulated
17 Dismissal, *Trinh*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021) – an admission backed up
18 by two years' experience under the MOU, Asian Law Caucus, Resources on Deportation of Vietnamese
19 Immigrants Who Entered the US. Before 1995 (Jul. 15, 2025) (providing links to all quarterly reports).

20 In a recent case, *Tran v. Noem*, 2025 WL 3268491 (E.D. Cal. Nov. 24, 2025), the court found
21 respondents' statement, "ERO is actively working on obtaining a travel document for Petitioner to
22 Vietnam," insufficient to demonstrate a significant likelihood of removal in the reasonably foreseeable
23 future. *Id.* at *3. Similarly, in *Nguyen v. Noem*, 2025 WL 3265815 (S.D. Cal. Nov. 21, 2025), the court
24 noted that it had found, in several cases involving individuals from Vietnam, that, "The Government
25 failed to establish any "changed circumstances" showing a significant likelihood of removal for refugees
26 of Vietnam who entered the United States before 1995[.]" "While Respondents claim ICE has removed
27 324 pre-1995 Vietnam refugees in the past fiscal year, this alone does not make Petitioner's removal
28 reasonably foreseeable." *Id.* at *1 (citing *Phan*, 2025 WL 2898977, at *4–5; *Thai v. Noem*, 3:25-cv-

02436-RBM-MMP, ECF No. 10, at 6-9 (S.D. Cal. Oct. 17, 2025)); *see also* *Nguyen v. Scott*, 2025 WL 2419288, at *16 (W.D. Wash. Aug. 21, 2025) ("The Court agrees that these developments show there is at least some possibility that Vietnam will accept Petitioner at some point. But that is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future."); *Phan v. Becerra*, 2025 WL 1993735, at *4 (E.D. Cal. July 16, 2025) (rejecting respondents' argument that removal is reasonably foreseeable simply "because removals to Vietnam are in fact occurring"); *Hoac v. Becerra*, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) ("Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance."); *see also*, *Than Nguyen*, No. 25-CV-2760-TWR at ECF No. 12 (minute order noting grant of *Zadvydas* petition as to pre-1995 Vietnamese immigrant on October 23, 2025); *Ho*, No. 25-cv-2453-BAS at ECF No. 11 (granting preliminary injunction ordering release as to pre-1995 Vietnamese immigrant on October 20, 2025).

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

B: Vietnam's Longstanding Refusal to Accept Pre-1995 Refugees:

Vietnam has long refused to accept many individuals, including refugees like Mr. Ly, who entered the U.S. before normalization of relations in 1995. Courts have taken judicial notice of the rarity of travel documents for such individuals and have repeatedly found removal to Vietnam not reasonably foreseeable for this class of noncitizens. *See, e.g., Trinh v. Homan*, 466 F. Supp. 3d 1077, 1088 (C.D. Cal. 2020); *Hoac v. Becerra*, 2025 WL 1993771, at 4–5 (E.D. Cal. July 16, 2025); *Phan v. Noem*, 2025 WL 2898977, at 3–4. Vietnam has a general policy of not accepting pre-1995 Vietnamese immigrants for deportation. In 2008, Vietnam and the United States signed a repatriation treaty under which Vietnam agreed to consider accepting certain Vietnamese immigrants for deportation. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-1995 Vietnamese immigrants, providing, "Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995." Agreement Between the United States of America and Vietnam, at 2 (Jan. 22, 2008).

Despite that limit, the first Trump administration detained Vietnamese immigrants and held them

1 for months, while trying to pressure Vietnam to take them. *See Trinh*, 466 F. Supp. 3d at 1083-84. That
2 possibility did not materialize. "In total, between 2017 and 2019, ICE requested travel documents for
3 pre-1995 Vietnamese immigrants 251 times. Vietnam granted those requests only 18 times, in just over
4 seven percent of cases." *Id.* at 1087-88. The administration was forced to release many of these detainees
5 in 2018. *See Id.* at 1088.

6 Eventually, in 2020, the administration secured a Memorandum of Understanding ("MOU") with
7 Vietnam, which created a process through which the Vietnamese government could consider some pre-
8 1995 Vietnamese immigrants for removal. *See Exhibit B.* The 2020 MOU limited consideration to
9 persons meeting certain criteria, but many of these criteria have been shielded from public view. *See*
10 *Nguyen v. Scott*, 2025 WL 2419288, at *14 (W.D. Wash. Aug. 21, 2025). When an immigrant does
11 qualify, the MOU provides only that Vietnam has "discretion whether to issue a travel document," which
12 it exercises "on a case-by-case basis." *Hoac v. Becerra*, 2025 WL 1993771, at *5 (E.D. Cal. July 16,
13 2025). Moreover, the 2020 MOU states that Vietnam will only issue travel documents to individuals who
14 have already completed any term of imprisonment to which they are sentenced in the U.S., and a badly
15 redacted section below that appears to have covered up the words "(ODP)," which might be the program
16 under which Mr. Ly immigrated to the U.S., and for which Vietnam may also deny or limit the issuance
17 of travel documents.

18 Even after signing the MOU, Vietnam overwhelmingly declined to timely issue travel documents
19 for pre-1995 immigrants. By October 2021, ICE had adopted a "policy of generally finding that 'pre-
20 1995 Vietnamese immigrants' ... are not likely to be removed in the reasonably foreseeable future." Order
21 on Joint Motion for Entry of Stipulated Dismissal, *Trinh v. Homan*, 8:18-cv-316-CJC-GJS, Dkt. 161 at 3
22 (C.D. Cal. Oct. 7, 2021). That admission aligned with two years' worth of quarterly reports that ICE
23 agreed to submit as part of a class action settlement. Those quarterly reports showed that between
24 September 2021 and September 2023, only four immigrants who came to the U.S. before 1995 were
25 given travel documents and removed to Vietnam. Asian Law Caucus, *Resources on Deportation of*
26 *Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul. 15, 2025) (providing links to all
27 quarterly reports). During the same period, ICE made 14 requests for travel documents that, as of 2023,
28 had not been granted, including requests made months or years before the September 2023 cutoff. *See Id.*

1 (proposed counsel's count based on quarterly reports).

2 On June 9, 2025, the Trump administration rescinded ICE's policy of generally finding that pre-
3 1995 Vietnamese immigrants were not likely to be removed in the reasonably foreseeable future. See
4 *Nguyen v. Scott*, 2025 WL 2419288, at *7 (W.D. Wash. Aug. 21, 2025).

5 But since then, several courts have found that facts on the ground have not changed enough to
6 show that any individual pre-1995 Vietnamese immigrant will be timely removed to Vietnam. See,
7 *Nguyen*, 2025 WL 2419288, at *17; *Hoac*, 2025 WL 1993771, at *4; *Nguyen v. Hyde*, 2025 WL
8 1725791, at *5 (D. Mass. June 20, 2025); *Ho v. Noem*, No. 25-cv-2453-BAS, ECF No. 11 at 3, 6 (S.D.
9 Cal. Oct. 20, 2025); *Thanh Nguyen v. Noem*, No. 25-cv-2760-TWR, ECF No. 12 (S.D. Cal. Oct. 23,
10 2025); *Phan v. Beccerra*, 2025 WL 1993735, at *5 (E.D. Cal. July 16, 2025).

11 ICE has failed to produce any evidence that Vietnam has changed its position or that a travel
12 document for Mr. Ly is realistically obtainable after more than twenty-four years of unsuccessful
13 attempts. Furthermore, the U.S. government's assertion in one habeas case that they removed 324 pre-
14 1995 Vietnamese nationals in FY 2025 does not come close to clearing the backlog of at least 11,147
15 Vietnamese nationals who have been ordered removed from the U.S. See Exhibit C. Moreover, the 2020
16 MOU makes it clear that they will not issue a travel document to anyone who still must complete a term
17 of imprisonment in the U.S., and Mr. Ly has a pending criminal case in the Superior Court of California,
18 County of Orange, for which a warrant will be issued on March 9, 2026, if he does not appear, and for
19 which he can still be convicted and sentenced to a term of imprisonment. The U.S. was required to
20 provide Vietnam with a copy or summary of this pending criminal case and to provide a certified
21 Vietnamese translation of it as part of any request to issue Mr. Ly a travel document. A poorly redacted
22 section of the 2020 MOU also suggests that Vietnam may deny or limit the issuance of travel documents
23 to individuals who immigrated to the U.S. through "ODP," which may be the program through which
24 Mr. Ly immigrated to the U.S.

25 **C. CLAIM THREE: ICE MAY NOT REMOVE MR. LY TO A THIRD COUNTRY**
26 **WITHOUT NOTICE, AN OPPORTUNITY TO BE HEARD, AND PROPER IMMIGRATION**
27 **PROCEEDINGS:**

28 In addition to unlawfully detaining him, ICE's policies threaten his removal to a third country

1 without adequate notice and an opportunity to be heard. These policies violate the Fifth Amendment, the
 2 Convention Against Torture, and implementing regulations.

3 **1. ICE's June 2025 Third-Country Removal Practices without Due Process:**

4 The government is carrying out deportations to third countries without providing sufficient notice
 5 and opportunity to be heard. The United States government has reportedly negotiated with at least 58
 6 countries to accept deportees from other nations. On June 25, 2025, the New York Times reported that
 7 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had
 8 agreed to accept deportees who are not their own citizens. Since then, ICE has carried out highly-
 9 publicized third country deportations to South Sudan and Eswatini. *See* Edward Wong et al, *Inside the*
 10 *Global Deal-Making Behind Trump's Mass Deportations*, N.Y. TIMES (June 25, 2025);
 11 <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrantsdeportations.html>.

12 On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a "meaningful
 13 opportunity' to assert claims for protection under the Convention Against Torture (CAT) before initiating
 14 removal to a third country" like the ones just described. *See* Exhibit D (July 9, 2025, Third Country
 15 Removal Policy). Instead, under new guidance, ICE may remove any immigrant to a third country
 16 "without the need for further procedures," as long as—in the view of the State Department—the United
 17 States has received "credible" "assurances" from that country that deportees will not be persecuted or
 18 tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still
 19 remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours' notice. But
 20 "[i]n exigent circumstances," a removal may take place in as little as six hours, "as long as the alien is
 21 provided reasonable means and opportunity to speak with an attorney prior to the removal." *Id.* Under
 22 this policy, the U.S. has deported noncitizens to prisons and military camps in Rwanda, Eswatini, South
 23 Sudan, and Ghana. Many are still detained to this day, in countries to which they have never been,
 24 without charge. *See* Musi & Gerald Imray, *supra* at [https://apnews.com/article/eswatini-dep01iees-us-](https://apnews.com/article/eswatini-dep01iees-us-trump-immigration74b2f942003a80a21b33084a4109a0d2)
 25 [trump-immigration74b2f942003a80a21b33084a4109a0d2](https://apnews.com/article/eswatini-dep01iees-us-trump-immigration74b2f942003a80a21b33084a4109a0d2).

26 In February, Secretary of State Marco Rubio announced that El Salvador had agreed to accept for
 27 deportation any illegal alien in the U.S. who is a criminal from any nationality with the explicit
 28 understanding that deportees will be imprisoned. *See* <https://www.npr.org/2025/02/04/g-s1-46352/rubio->

1 el-salvadordeportees-americans.

2 Punishment and deterrence appear to be the point of the Administration's third country removal
3 scheme. In an official video, President Donald Trump stated that "If illegal aliens choose to remain in
4 America, they're remaining illegally and they will face severe consequences. Illegal aliens who stay in
5 America face punishments, including significant jail time, enormous financial penalties, confiscation of
6 all property, garnishment of all wages, imprisonment and incarceration, and sudden deportation in a
7 place and manner solely of our discretion." See [https://www.newsweek.com/trump-self-deportation-](https://www.newsweek.com/trump-self-deportation-immigrants2070509)
8 [immigrants2070509](https://www.newsweek.com/trump-self-deportation-immigrants2070509).

9 Federal courts have found that ICE's implementation of these policies violates due process and
10 statutory protections. See, e.g., *Nguyen*, 2025 WL 2419288, at *19 (finding July 9, 2025 ICE memo
11 contravenes Ninth Circuit law); *Van Tran v. Noem*, 2025 WL 2770623 (S.D. Cal. Sept. 29, 2025)
12 (granting TRO preventing third-country removal); *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-
13 10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025).

14 Mr. Ly, as a stateless refugee with no safe country of return, faces a substantial risk that ICE will
15 attempt to remove him to a third country using these unlawful fast-track procedures, without adequate
16 notice, an opportunity to apply for protection, or reopening of his immigration proceedings for punitive
17 purposes.

18 **2. The Convention Against Torture, statutory withholding of removal, and due process**
19 **prohibit deportation to third countries without meaningful notice and an opportunity to be heard.**

20 U.S. law enshrines protections against dangerous and life-threatening removal decisions. By
21 statute, the government is prohibited from removing an immigrant to any third country where they may
22 be persecuted or tortured, a form of protection known as withholding of removal. See 8 U.S.C. § 123
23 l(b)(3)(A). The government "may not remove [a noncitizen] to a country if the Attorney General decides
24 that the [noncitizen' s] life or freedom would be threatened in that country because of the [noncitizen's]
25 race, religion, nationality, membership in a particular social group, or political opinion." *Id.*; see also 8
26 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

27 Similarly, Congress codified protections enshrined in the CAT prohibiting the government from
28 removing a person to a country where they would be tortured. See FARRA 2681-822 (codified as 8

1 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise
2 effect the involuntary return of any person to a country in which there are substantial grounds for
3 believing the person would be in danger of being subjected to torture, regardless of whether the person is
4 physically present in the United States."); 28 C.F.R. § 200.1; *Id.* §§ 208.16-208.18, 1208.16-1208.18.
5 CAT protection is also mandatory.

6 To comport with the requirements of due process, the government must provide notice of the
7 third country removal and an opportunity to respond, including an opportunity to assert any persecution
8 or fear-based claim to that third country. Due process requires "written notice of the country being
9 designated" and "the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)."

10 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); accord *D.V.D. v. US. Dep't of Homeland*
11 *Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180
12 F.3d 1033, 1041 (9th Cir. 1999).

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

21 If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek
22 asylum, withholding, and relief under CAT before an immigration judge in reopened removal
23 proceedings. The amount and type of notice must be "sufficient" to ensure that "given [a noncitizen's]
24 capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for
25 withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*, 424 U.S. 319,
26 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at* 1
27 (requiring the government to move to reopen the noncitizen's immigration proceedings if the individual
28 demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen

1 days, for the non-citizen to seek reopening of their immigration proceedings" if the noncitizen is found to
2 not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a
3 respondent to file a motion to reopen and seek relief).

4 "[L]ast minute" notice of the country of removal will not suffice, *Andriasian*, 180 F.3d at 1041;
5 accord *Najjar v. Lunch*, 630 Fed. App'x 724 (9th 28 Cir. 2016), and for good reason: To have a
6 meaningful opportunity to apply for fear-based protection from removal, immigrants must have time to
7 prepare and present relevant arguments and evidence. Merely telling a person where they may be sent,
8 without giving them a chance to look into country conditions, does not give them a meaningful chance to
9 determine whether and why they have a credible fear.

10 In Petitioner's case, no country other than Vietnam meets the criteria for removal under 8 U.S.C.
11 § 1231(b)(2)(A)-(E). Moreover, to remove Petitioner to a third country, the statute requires that the
12 Attorney General—here, an immigration judge—first determine that it is "impracticable, inadvisable, or
13 impossible" to remove Petitioner to Vietnam and that the designated third country "will accept
14 [Petitioner] into that country." *Id.* § 1231(b)(2)(E)(vii); see *Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th
15 Cir. 2004) (8 U.S.C. § 1231(b)(E)(vii) "indisputably requires the Attorney General to prove that the
16 proposed country of removal is willing to accept the alien"); see also *Jama v. Immigr. & Customs Enf't*,
17 543 U.S. 335, 344 (2005). It is the immigration judge, not DHS, that the statute authorizes to designate a
18 third country for removal. 8 U.S.C. § 1231(b)(2)(E)(vii) ("the Attorney General shall remove the alien to
19 . . ."); see also 8 C.F.R. § 1240.10(f) (in removal proceedings the immigration judge "shall . . . identify for
20 the record a country, or countries in the alternative, to which the alien's removal may be made").

21 Here, to remove Petitioner to a third country would require Respondent to move to reopen
22 Petitioner's removal proceedings to ask an immigration judge to designate a third country under the
23 statutory process. See, e.g., *Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) (unpublished)
24 (holding that should a new country of removal be designated, "the agency must provide [the noncitizen]
25 with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of
26 removal from" the third country); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019)
27 (finding that removal proceedings "shall be reopened and a hearing shall be held before the immigration
28

1 judge so that petitioner may apply for relief from removal” as to a country not designated in prior
 2 proceedings).

3 Courts have granted prospective relief to noncitizens, like Mr. Ly, even in the face of
 4 governmental assurances that they are not trying to deport the petitioner to a third country. *See, e.g.,*
 5 *Hambarsonpour v. Bondi*, 2025 WL 3251155, at *4 (W.D. Wash. Nov. 21, 2025) (granting prospective
 6 relief despite government’s contention that ICE was not planning a third country removal); *Abubaka v.*
 7 *Bondi*, 2025 WL 3204369, at *6 (W.D. Wash. Nov. 17, 2025) (granting prospective relief for pre-1995
 8 Vietnamese immigrant and listing additional cases); *Nguyen*, 2025 WL 2419288, at *19 (granting
 9 prospective relief for pre-1995 immigrant from Vietnam). Several courts have recently granted individual
 10 TROs against removal to third countries under similar circumstances. *See generally*, *J.R. v. Bostock*, 25-
 11 cv01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025) (immediately enjoining removal to
 12 “Cuba, Libya, or any third country in the world absent prior approval from this Court”); *Phan*, 2025 WL
 13 1993735, at *7 (enjoining Respondents from “re-detaining or removing Petitioner to a third country
 14 without notice and an opportunity to be heard”); *Hoac*, 2025 WL 1993771, at *7 (same); *Vaskanyan v.*
 15 *Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v. Kaiser*, 25-cv-
 16 05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025).

17 **D. CLAIM 4: ICE MAY NOT REMOVE MR. LY TO A THIRD COUNTRY BECAUSE THE**
 18 **CONSTITUTION PROHIBITS PUNITIVE THIRD COUNTRY REMOVALS:**

19 The government’s third country removal program defies 130 years of constitutional immigration
 20 law between civil penalty and infamous punishment. *See, e.g., Zadvydas*, 533 U.S. at 694. Respondents’
 21 third country removal program is designed to punish those it deports by subjecting them to imprisonment
 22 upon their arrival in the receiving countries. Respondents’ program is not simply about removing
 23 individuals to third countries. It is about removing them to be imprisoned upon arrival and paying
 24 countries to carry out said imprisonment; selecting countries and overseas prisons (like CECOT and
 25 Guantanamo) notorious for cruelty, torture, lawlessness, and other human rights abuses; and broadcasting
 26 these third country removals across public media platforms to demonize the deportees and strike extreme
 27 fear in the immigrant community that people self-deport. This program is about punitive banishment.

28 To determine whether a given sanction constitutes punishment, courts look to intent. If the

1 government's intent is to punish, "that is the end of the inquiry." *Am. Civ. Liberties Union of Nevada v.*
2 *Masto*, 670 F.3d 1046, 1053 (9th Cir. 2012) (citing *Smith v. Doe*, 538 U.S. 84, 92 (2003)).

3 Here, the government's own statements show intent to deport individuals, particularly those with
4 criminal convictions, into situations of forever confinement or substantial harm. When the government's
5 intent to punish is unclear, courts move to the second step of the inquiry to determine whether the
6 practices are "so punitive either in purpose or effect as to negate the [government's] intention to deem it
7 civil." *Id.* (quoting *Smith*, 538 U.S. at 92). To determine punitive purpose or effect, courts often turn to
8 the factors laid out in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963). See also *Hudson v.*
9 *United States*, 522 U.S. 93, 99 (1997) ("the factors listed in *Kennedy v. Mendoza-Martinez*, provide
10 useful guideposts"). Those factors are: "[w]hether the sanction involves an affirmative disability or
11 restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a
12 finding of scienter, whether its operation will promote the traditional aims of punishment—retribution
13 and deterrence, whether the behavior to which it applies is already a crime, whether an alternative
14 purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in
15 relation to the alternative purpose assigned." *Mendoza-Martinez*, 372 U.S. at 168-69.

16 Under these factors, the government's third country removal program undeniably constitutes
17 punishment, as each factor is met. For example, under the first factor, the government's practices of
18 deporting people only to have them imprisoned or subjected to other forms of physical harm, is an
19 "affirmative disability or restraint." The "paradigmatic affirmative disability" is the "punishment of
20 imprisonment." *Smith*, 538 U.S. at 100. Moreover, under this factor, "we inquire how the effects of the
21 [sanction] are felt by those subject to it. If the disability or restraint is minor and indirect, its effects are
22 unlikely to be punitive." *Id.* at 99-100. There can be no question that being deported to a country to be
23 imprisoned or experience other extreme harm will be felt as a significant and direct disability or restraint.

24 The second factor is also satisfied. "[D]evices of banishment and exile have throughout history
25 been used as punishment." *Mendoza-Martinez*, 372 U.S. at 168 n.23. In 1791, the year the Bill of Rights
26 was ratified, deportation was exclusively used and understood as punishment. *Fong Yue Ting v. U.S.*, 149
27 U.S. 698, 740-41 (1893) (Brewer, J. dissenting) (citing President James Madison); see *Id.* at 740 ("[I]t
28 needs no citation of authorities to support the proposition that deportation is punishment. Everyone

1 knows that to be forcibly taken away from home and family and friends and business and property, and
2 sent across the ocean to a distant land, is punishment, and that oftentimes most severe and cruel.”).
3 Banishment as a form of punishment dates to ancient times and was used on citizens and noncitizens
4 alike. Peter L. Markowitz, *Deportation is Different*, 13 U. Pa. J. Const. L. 1299, 1308-09 (2011) (tracing
5 the use of banishment from medieval England through colonial America).

6 The program satisfies the third, fifth, sixth and seventh factors too because Respondents have
7 designed this program specifically for those being deported for criminal convictions, there is no logical
8 nonpunitive rationale for deporting people into dangerous conditions of imprisonment or other harm, and
9 the program is designed to be patently excessive in relation to the purpose of simply removing people
10 from the country.

11 The fourth factor, whether it promotes the traditional aims of punishment—retribution and
12 deterrence, is also satisfied. The government’s own statements make clear that its goals are retribution
13 and deterrence to encourage people to leave the country on their own. As DHS Secretary Kristi Noem
14 stated, “President Trump and I have a clear message to criminal illegal aliens: LEAVE NOW. If you do
15 not leave, we will hunt you down, arrest you, and you could end up in this El Salvadorian prison.” *See*
16 <https://www.dhs.gov/medialibrary/assets/video/58918>. impermissible absent criminal process. *See*
17 *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (warning that civil detention may not “become a ‘mechanism
18 for retribution or general deterrence’—functions properly those of criminal law, not civil commitment”
19 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 373 (1997) (Kennedy, J., concurring) (emphasis added));
20 *see Hendricks*, 521 U.S. at 373 (Kennedy, J. concurring) (“[W]hile incapacitation is a goal common to
21 both the criminal and civil systems of confinement, retribution and general deterrence are reserved for
22 the criminal system alone.”). The Supreme Court has made clear that such “general deterrence”
23 justifications are Petitioner is likely to succeed on the merits of his claim that the Constitution prohibits
24 him from being subjected to Respondents’ punitive third country removal program. The prohibition
25 against imposing punitive measures on an individual subject to a final order of removal is as old as
26 immigration law. *Wong Wing v. United States*, 163 U.S. 228 (1896). In *Wong Wing*, the Supreme Court
27 struck down a provision of the Chinese Exclusion Act that imposed one year of imprisonment at hard
28 labor as an immigration sanction before their deportation. *Id.* at 237. The Court drew a distinction

between “deportation,” which it described as a sanction for failure to comply with the legal requirements of residency in the U.S. that may be imposed by executive authorities, and “punishment,” which may not. *Id.* at 236- 37. The Court held that the government could not attach a punishment to deportation—here, imprisonment— without criminal charges, a judicial trial, and the concomitant protections of the Fifth, Sixth and Eighth Amendments. *Id.*

IX. REQUEST FOR EVIDENTIARY HEARING:

This Court must hold an evidentiary hearing on any disputed facts. Resolution of this petition may require factual development. The Ninth Circuit has recognized that prolonged-detention habeas petitions may require evidentiary hearings on disputed issues. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).

Mr. Ly therefore respectfully requests that this Court hold an evidentiary hearing on any material disputed facts.

IX. PRAYER FOR RELIEF

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

1. Order Respondents to answer the petition;
2. Permit Petitioner to file a reply in support;
3. Allow Petitioner to conduct discovery in order to support his claims;
4. Convene an evidentiary hearing, if needed, to resolve disputed facts;
5. Order and enjoin Respondents to immediately release Petitioner from custody and reinstate his Order of Supervision with the same conditions in place at the time of his unlawful re-detention;
6. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 123 l(a)(6) unless and until Respondents obtain a travel document for his removal;
7. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. § § 241.4(/), 24 l.13(i), and any other applicable statutory and regulatory procedures;
8. Enjoin Respondents from removing Petitioner to any country other than Vietnam, unless they provide the following process, *see D.V.D. v. US. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):

- a) Written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
 - b) A meaningful opportunity, and a minimum of 10 days, to raise a fear-based claim for CAT protection prior to removal;
 - c) If Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
 - d) If Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.
9. Order all other relief that the Court deems just and proper.

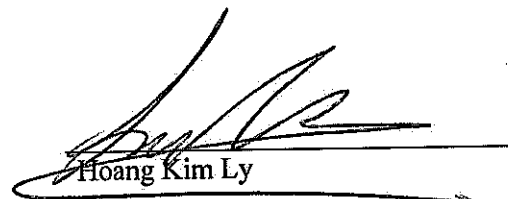
Conclusion

For those reasons, this Court should grant this habeas petition.

Verification

I, Hoang Kim Ly, verify that the facts set forth therein are true and correct to the best of my knowledge.

DATED: 2/27/2026


Hoang Kim Ly

Petitioner
Pro Se

TABLE OF EXHIBITS FOR MOTION

Exhibit A Register of Actions from the Superior Court of California, County of Orange

Exhibit B 2020 Memorandum of Understanding ("2020 MOU")

Exhibit C Transactional Records Access Clearinghouse (TRAC), Outcomes of
Immigration Court Proceedings from October 1997 through September 2025,
Removals of Vietnamese nationals in all cases

Exhibit D U.S. Immigration and Customs Enforcement, Memorandum to all ICE
employees, "Third Country Removals Following the Supreme Court's Order in
Department of Homeland Security v. D.V.D., No. 24A1153 (U.S. June 23,
2025)