

1 **Kha Nguyen Tran**

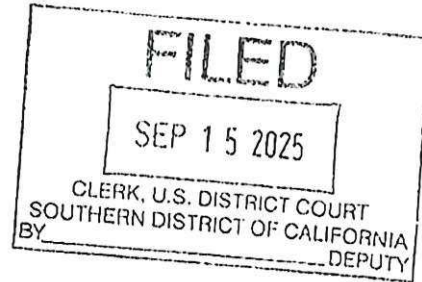
2 A# [REDACTED]

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7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **KHA NGUYEN TRAN,**

11 **Petitioner,**

12 **v.**

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

22 **Respondents.**

**CIVIL CASE NO.: '25CV2391 BTM BLM**

**Petition for Writ**  
**of**  
**Habeas Corpus**

**[28 U.S.C. § 2241]**

23  
24  
25 <sup>1</sup> Mr. Tran is filing this petition for a writ of habeas corpus with the assistance of  
26 the Federal Defenders of San Diego, Inc., who drafted the instant petition. That  
27 same counsel also assisted the petitioner in preparing and submitting his request  
28 for the appointment of counsel, which has been filed concurrently with this  
petition, and all other documents supporting the petition. Federal Defenders has  
consistently used this procedure in seeking appointment for immigration habeas  
cases. The Declaration of Katie Hurrelbrink in Support of Appointment Motion  
attaches case examples.

## INTRODUCTION

Kha Nguyen Tran and his family fled Vietnam and came to the United States around 2004. When he was 19, he pled guilty to assault with a deadly weapon, for which he served less than a year in county jail. He was then ordered removed in January 2007. But there was a problem: In 2007, Vietnam did not accept Vietnamese immigrants for removal. So, after spending a little over 6 months in ICE custody, Mr. Tran was released on an order of supervision.

In 2008, the United States and Vietnam finally signed a repatriation treaty. Under the treaty, Vietnam agreed to consider for removal people who, like Mr. Tran, immigrated to the United States after 1995. ICE re-detained Mr. Tran for the express purpose of trying to deport him under the new treaty. But ICE failed again. After another 6 months in detention, Mr. Tran was again released.

He remained on supervision for about 17 years. During that time, he completed a 5-year term of state probation, with no violations. He sustained no further convictions. He spent time with his family in San Diego. He checked in with ICE each year, making himself available for further removal efforts. Yet ICE was never able to remove him.

Nevertheless, ICE rearrested him on June 16, 2025. Contrary to regulation, ICE did not identify any changed circumstances since 2008 or give Mr. Tran an opportunity to contest re-detention. Now, after nearly three months of trying to deport Mr. Tran under the same 2008 treaty, there is still no indication that ICE has obtained a travel document for him. In the meantime, on July 9, 2025, ICE adopted a new policy permitting removals to third countries with as little as six hours' notice and no meaningful opportunity to make a fear-based claim against removal.

Mr. Tran's detention violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), Mr. Tran's statutory and regulatory rights, and the Fifth Amendment. Under *Zadvydas*, immigrants with final removal orders must be released if there is "no

1 significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.  
 2 Mr. Tran’s serial detentions, with no travel document in sight, shows that that  
 3 standard is met here. ICE’s failure to follow its own regulations provides a  
 4 second, independent ground for release. Finally, ICE may not remove Mr. Tran to  
 5 a third country without providing an opportunity to assert fear of persecution or  
 6 torture before an immigration judge. This Court should grant this habeas petition.

#### 7 STATEMENT OF FACTS

#### 8 **I. Mr. Tran lived a law-abiding life in San Diego for about 17 years, 9 and despite two, six-month stints in ICE detention, ICE was unable 10 to remove him to Vietnam.**

11 Kha Nguyen Tran was born in 1986 in South Vietnam, near Saigon. Exh. A  
 12 at ¶ 1. Around 2004, when he was about 16 years old, his family fled to the  
 13 United States. *Id.* A few years later, when he was about 19, he pled guilty to  
 14 assault with a deadly weapon. *Id.* at ¶ 2. He served 364 days in county jail. *Id.* He  
 15 then completed 5 years of probation with no violations. *Id.*

16 After serving his jail sentence, he was transferred to ICE custody. *Id.* at ¶ 3.  
 17 He was then ordered removed on January 23, 2007. *Id.* He stayed in custody for  
 18 approximately six months, during which time ICE attempted to remove him to  
 19 Vietnam. *Id.* at ¶ 4. Mr. Tran complied with everything ICE asked of him. *Id.* He  
 20 believes that ICE applied for a travel document for him during that time. *Id.* But  
 21 when ICE failed to remove him, he was released. *Id.*

22 Up to that point, there was an obvious reason why ICE could not remove  
 23 Mr. Tran: The United States had no repatriation agreement with Vietnam,  
 24 meaning that Vietnamese immigrants could not be removed. *Trinh v. Homan*, 466  
 25 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). That changed in 2008, when the United  
 26 States and Vietnam reached a diplomatic agreement pursuant to which Vietnam  
 27 agreed to start considering repatriation requests for Vietnamese immigrants who  
 28 had arrived in the United States after July 12, 1995. *Id.*

1 Because Mr. Tran fell within the group that Vietnam would consider for  
2 removal, ICE detained him again in late 2008 or early 2009. Exh. A at ¶ 5. Once  
3 again, he stayed in ICE detention for about six months. *Id.* But ICE still was not  
4 able to remove Mr. Tran under the new treaty, even though Mr. Tran again  
5 complied with all of ICE's requests. *Id.* He was therefore released a second time.  
6 *Id.*

7 Mr. Tran remained on release for nearly 17 years. *Id.* at ¶ 6. During that  
8 time, Mr. Tran checked in with ICE each year. *Id.* He sustained no further  
9 convictions. *Id.* He spent time with his 14-year-old U.S. citizen daughter. *Id.* at  
10 ¶¶ 8-9. He lived near his brother and father in San Diego. *Id.* at ¶ 8. And though  
11 his mother had passed away, her family lived a few states away in Seattle,  
12 Washington. *Id.*

13 On June 16, 2025, Mr. Tran appeared as scheduled for his ICE check in. *Id.*  
14 at ¶ 7. ICE agents arrested him and took him to Otay Mesa Detention Center. *Id.*  
15 He has been detained ever since. ICE has not told him what changed to warrant  
16 re-detaining him or given him a chance to contest his re-detention. *Id.* at ¶ 7.

17 While Mr. Tran sits in custody, his finances suffer. He has had to enlist his  
18 father's help in making mortgage payments so that he does not lose his home. *Id.*  
19 at ¶ 9. And he is not making money that he can use to pay child support. *Id.*

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

22 When immigrants cannot be removed to their home country—including  
23 Vietnamese immigrants—ICE has begun deporting those individuals to third  
24 countries without adequate notice or a hearing. The Trump administration  
25 reportedly has negotiated with at least 58 countries to accept deportees from other  
26 nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump's*  
27 *Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York  
28 Times reported that seven countries—Costa Rica, El Salvador, Guatemala,

1 Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are  
2 not their own citizens. *Id.* Since then, ICE has carried out highly publicized third  
3 country deportations to South Sudan and Eswatini.

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

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

1 guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims  
2 for protection under the Convention Against Torture (CAT) before initiating  
3 removal to a third country” like the ones just described. Exh. B.

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

13 Upon serving notice, ICE “will not affirmatively ask whether the alien is  
14 afraid of being removed to the country of removal.” *Id.* (emphasis original). If the  
15 noncitizen “does not affirmatively state a fear of persecution or torture if removed  
16 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]  
17 may proceed with removal to the country identified on the notice.” *Id.* at 2. If the  
18 noncitizen “does affirmatively state a fear if removed to the country of removal”  
19 then ICE will refer the case to U.S. Citizenship and Immigration Services  
20 (“USCIS”) for a screening for eligibility for withholding of removal and  
21 protection under the Convention Against Torture (“CAT”). *Id.* at 2. “USCIS will  
22 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen  
23 does not meet the standard, the individual will be removed. *Id.* If USCIS  
24 determines that the noncitizen has met the standard, then the policy directs ICE to  
25 either move to reopen removal proceedings “for the sole purpose of determining  
26 eligibility for [withholding of removal protection] and CAT” or designate another  
27 country for removal. *Id.*

**CLAIMS FOR RELIEF**

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

**I. Count 1: Mr. Tran’s detention violates *Zadvydas* and 8 U.S.C. § 1231.**

**A. Legal background**

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

If federal law were understood to allow for “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at

1 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by  
2 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

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

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

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

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

18 **B. The six-month grace period has expired, and even if it had not,**  
19 **Mr. Tran can readily rebut the presumption that his detention is**  
20 **reasonable.**

21 As an initial matter, the six-month grace period has long since ended. The  
22 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,  
23 *three months* after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*,  
24 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Tran’s order of removal was  
25 entered in January 2007. Exh. A at ¶ 3. Accordingly, his 90-day removal period  
26 began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six  
27 months after the entry of his removal order and three months after the end of his  
28 90-day removal period, both of which occurred in July 2007. Furthermore, Mr. Tran

1 had been detained for about a year in total, even before his current detention of  
2 nearly three months. *Id.* at ¶¶ 4, 5, 7. Thus, this threshold requirement is met.

3 The government has sometimes proposed calculating the removal period  
4 differently where, as here, an immigrant is released and then rearrested. But these  
5 proposed alternative calculations contradict the statute and *Zadvydas*.

6 *First*, the government has sometimes argued that release and rearrest resets  
7 the six-month grace period completely, taking the clock back to zero.

8 “Courts . . . broadly agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL  
9 6003485, at \*7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation*  
10 *adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*,  
11 No. 17-CV-06785-LB, 2018 WL 1876907, at \*6 (N.D. Cal. Apr. 19, 2018)  
12 (collecting cases). This proposal would create an obvious end run around  
13 *Zadvydas*, because ICE could detain an immigrant indefinitely by releasing and  
14 quickly rearresting them every six months.

15 *Second*, the government has sometimes claimed that rearrest at least resets  
16 the 90-day removal period under 8 U.S.C. § 1231(a)(1). *See, e.g., Farah v. INS*,  
17 No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at \*5 (D. Minn. Jan. 29, 2013)  
18 (adopting this view). But as a court explained in *Bailey v. Lynch*, that view cannot  
19 be squared with the statutory definition of the removal period in 8 U.S.C.  
20 § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL 5791407, at \*2 (D.N.J. Oct. 3,  
21 2016). “Pursuant to the statute, the removal period, and in turn the [six-month]  
22 presumptively reasonable period, begins from the latest of ‘the date the order of  
23 removal becomes administratively final,’ the date of a reviewing court’s final  
24 order where the removal order is judicially removed and that court orders a stay of  
25 removal, or the alien’s release from detention or confinement where he was  
26 detained for reasons other than immigration purposes at the time of his final order  
27 of removal.” *Id.* None of these statutory starting points have anything to do with  
28 whether or when an immigrant is detained. *See id.* Because the statutorily-defined

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

3 For all these reasons, the six-month grace period poses no barrier to  
4 granting this *Zadvydas* petition.

5 **C. Vietnam’s refusal to accept Mr. Tran, both before and after the**  
6 **2008 treaty, provides very good reason to believe that he is not**  
7 **likely to be removed in the reasonably foreseeable future.**

8 Because the six-month grace period has passed, this Court must evaluate  
9 Mr. Tran’s *Zadvydas* claim using the burden-shifting framework. At the first stage  
10 of the framework, Mr. Tran must “provide[] good reason to believe that there is  
11 no significant likelihood of removal in the reasonably foreseeable future.”  
12 *Zadvydas*, 533 U.S. at 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  
21 F. 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 “**Significant likelihood of removal.**” This component focuses on whether  
24 Mr. Tran will likely be removed: Continued detention is permissible only if it is  
25 “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533 U.S.  
26 at 701. This inquiry targets “not only the *existence* of untapped possibilities, but  
27 also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.  
28 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,

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

5 “**In the reasonably foreseeable future.**” This component of the test  
6 focuses on when Mr. Tran will likely be removed: Continued detention is  
7 permissible only if removal is likely to happen “in the reasonably foreseeable  
8 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s  
9 removal efforts. If the Court has “no idea of when it might reasonably expect  
10 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal  
11 is likely to occur—or even that it might occur—in the reasonably foreseeable  
12 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at \*3  
13 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL  
14 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d  
15 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Tran  
16 “would *eventually* receive” a travel document, he can still meet his burden by  
17 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,  
18 2016 WL 6679830, at \*2 (E.D. Mich. Nov. 14, 2016).

19 Mr. Tran readily satisfies this standard. Vietnam has twice refused to accept  
20 Mr. Tran. ICE tried and failed to remove Mr. Tran in the six months following his  
21 removal order. Exh. A at ¶ 4. And ICE failed again after signing the operative  
22 2008 repatriation treaty, despite detaining Mr. Tran for six months with the  
23 express purpose of trying to remove him under that treaty. *Id.* at ¶ 5. Nothing  
24 changed in the decade-plus that Mr. Tran was out on release, even though  
25 Mr. Tran was checking in throughout that period and was therefore available to  
26 help seek travel documents. *Id.* at ¶ 6. And though ICE has had nearly three  
27 months’ worth of detention—an entire statutory removal period—to try yet again  
28 in 2025, there is no indication that ICE has obtained a travel document. *Id.* at ¶ 7.

1 Enough is enough. Having serially detained Mr. Tran without ever  
2 obtaining a travel document, it is time to let Mr. Tran go. ICE can continue trying  
3 to remove him, but not while Mr. Tran waits in indefinite detention. Because  
4 Mr. Tran has met his burden, the government must prove that there remains a  
5 “significant likelihood of removal in the reasonably foreseeable future.”  
6 *Zadvydas*, 533 U.S. at 701. When it proves unable to do so, Mr. Tran must be  
7 released.

8 **D. *Zadvydas* unambiguously prohibits this Court from denying**  
9 **Mr. Tran’s petition because of his criminal history.**

10 If released on supervision, Mr. Tran poses no risk of danger or flight. He  
11 has been on supervision for about 17 years. Exh. A at ¶ 6. During that time, he  
12 maintained strong community ties with his family and daughter, he checked in  
13 with ICE as ordered, and he sustained no further convictions. *Id.* at ¶¶ 6–8.  
14 Mr. Tran was undeniably convicted of a serious crime as a 19-year-old, *id.* at ¶ 2,  
15 but that conviction is not reflective of the 39-year-old man he is today.

16 Even if the government did try to argue that Mr. Tran posed a danger or  
17 flight risk, however, *Zadvydas* squarely holds that those are not grounds for  
18 detaining an immigrant when there is no reasonable likelihood of removal in the  
19 reasonably foreseeable future. 533 U.S. at 684–91.

20 The two petitioners in *Zadvydas* both had significant criminal history.  
21 Mr. Zadvydas himself had “a long criminal record, involving drug crimes,  
22 attempted robbery, attempted burglary, and theft,” as well as “a history of flight,  
23 from both criminal and deportation proceedings.” *Id.* at 684. The other petitioner,  
24 Kim Ho Ma, was “involved in a gang-related shooting [and] convicted of  
25 manslaughter.” *Id.* at 685. The government argued that both men could be detained  
26 regardless of their likelihood of removal, because they posed too great a risk of  
27 danger or flight. *Id.* at 690–91.

1 The Supreme Court rejected that argument. The Court appreciated the  
2 seriousness of the government's concerns. *Id.* at 691. But the Court found that the  
3 immigrant's liberty interests were weightier. *Id.* The Court had never  
4 countenanced "potentially permanent" "civil confinement," based only on the  
5 government's belief that the person would misbehave in the future. *Id.*

6 The Court also noted that the government was free to use the many tools at  
7 its disposal to mitigate risk: "[O]f course, the alien's release may and should be  
8 conditioned on any of the various forms of supervised release that are appropriate  
9 in the circumstances, and the alien may no doubt be returned to custody upon a  
10 violation of those conditions." *Id.* at 700. The Ninth Circuit later elaborated, "All  
11 aliens ordered released must comply with the stringent supervision requirements  
12 set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration  
13 officer periodically, answer certain questions, submit to medical or psychiatric  
14 testing as necessary, and accept reasonable restrictions on [their] conduct and  
15 activities, including severe travel limitations. More important, if [they] engage[ ]  
16 in any criminal activity during this time, including violation of [their] supervisory  
17 release conditions, [they] can be detained and incarcerated as part of the normal  
18 criminal process." *Ma*, 257 F.3d at 1115.

19 These conditions have proved sufficient to protect the public over the last  
20 17 years. They will continue to do so while ICE keeps trying to deport Mr. Tran.

21 **II. Count 2: ICE failed to comply with its own regulations before re-**  
22 **detaining Mr. Tran, violating his rights under the Fifth Amendment and**  
23 **the Administrative Procedures Act.**

24 In addition to *Zadvydas*'s protections, a series of regulations provide extra  
25 process for someone who, like Mr. Tran, is re-detained following a period of  
26 release. Under 8 C.F.R. § 241.4(l), ICE may re-detain an immigrant on  
27 supervision only with an interview and a chance to contest a re-detention. When  
28 an immigrant is specifically released after giving good reason why they cannot be  
removed, additional regulations apply. ICE may revoke a noncitizen's release and

1 return them to ICE custody due to failure to comply with conditions of release, 8  
2 C.F.R. § 241.13(i)(1), or if, “on account of changed circumstances, the Service  
3 determines that there is a significant likelihood that the [noncitizen] may be  
4 removed in the reasonably foreseeable future.” *Id.* § 241.13(i)(2).

5 The regulations further provide noncitizens with a chance to contest a re-  
6 detention decision. ICE must “notif[y] [the person] of the reasons for revocation of  
7 his or her release.” *Id.* § 241.13(i)(3). ICE must then “conduct an initial informal  
8 interview promptly” after re-detention “to afford the alien an opportunity to respond  
9 to the reasons for revocation stated in the notification.” *Id.* During the interview,  
10 the person “may submit any evidence or information” showing that the  
11 prerequisites to re-detention have not been met, and the interviewer must evaluate  
12 “any contested facts.” *Id.* Neither regulation allows ICE to re-detain someone with  
13 no interview and no chance to contest the decision. *Zhu v. Genalo*, No. 1:25-CV-  
14 06523 (JLR), 2025 WL 2452352, at \*8 n.3 (S.D.N.Y. Aug. 26, 2025) (finding that  
15 either § 241.4 or § 241.13 led to the same result).

16 ICE is required to follow its own regulations. *United States ex rel. Accardi*  
17 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,  
18 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to  
19 abide by certain internal policies is well-established.”). A court may review a re-  
20 detention decision for compliance with the regulations. *See Phan v. Beccerra*, No.  
21 2:25-CV-01757, 2025 WL 1993735, at \*3 (E.D. Cal. July 16, 2025); *Nguyen v.*  
22 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at \*3 (D. Mass. June 20, 2025)  
23 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

24 None of the prerequisites to detention apply here. Mr. Tran did not violate  
25 the conditions of his release. And there are no changed circumstances that justify  
26 re-detaining him. The same treaty has applied since 2008, and ICE tried and failed  
27 to remove Mr. Tran under those treaty’s terms. Of course, ICE may be planning to  
28 try yet again. But absent any evidence for “why obtaining a travel document is more

likely this time around[,] Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at \*2 (D. Kan. June 17, 2025)). Nor has Mr. Tran received the interview required by regulation. Exh. A at ¶ 7. No one from ICE has ever invited him to contest his detention. *Id.*

Numerous courts have released re-detained immigrants after finding that ICE failed to comply with applicable regulations. *Cesay 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, 2025 WL 1993771, at \*4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at \*2; *M.Q. v. United States*, 2025 WL 965810, at \*3, \*5 n.1 (S.D.N.Y. Mar. 31, 2025). "[B]ecause officials did not properly revoke petitioner's release pursuant to the applicable regulations, that revocation has no effect, and [Mr. Tran] is entitled to his release (subject to the same Order of Supervision that governed his most recent release)." *Liu*, 2025 WL 1696526, at \*3.

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

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

1           **A. Legal background**

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

11           Similarly, Congress codified protections enshrined in the CAT prohibiting  
12 the government from removing a person to a country where they would be tortured.  
13 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of  
14 the United States not to expel, extradite, or otherwise effect the involuntary return  
15 of any person to a country in which there are substantial grounds for believing the  
16 person would be in danger of being subjected to torture, regardless of whether the  
17 person is physically present in the United States.”); 28 C.F.R. § 200.1; *id.*  
18 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

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

1 necessary information from the noncitizen to comply with section 1231(b)(3) and  
2 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.  
3 3d at 1019. “Failing to notify individuals who are subject to deportation that they  
4 have the right to apply for asylum in the United States and for withholding of  
5 deportation to the country to which they will be deported violates both INS  
6 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at  
7 1041.

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

22 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,  
23 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016), and  
24 for good reason: To have a meaningful opportunity to apply for fear-based  
25 protection from removal, immigrants must have time to prepare and present  
26 relevant arguments and evidence. Merely telling a person where they may be sent,  
27 without giving them a chance to look into country conditions, does not give them a  
28 meaningful chance to determine whether and why they have a credible fear.

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

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

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

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

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

**Conclusion**

For those reasons, Mr. Tran requests that this Court grant this habeas petition.

DATED: 09/11/25

Respectfully submitted,



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**KHA NGUYEN TRAN**

Petitioner

**PROOF OF SERVICE**

I, the undersigned, caused to be served the within Petition for Writ of Habeas Corpus by hand delivery to:

U.S. Attorney's Office, Southern District of California  
Civil Division  
880 Front Street  
Suite 6253  
San Diego, CA 92101

Date: 9/15/2025

/s/ Katie Hurrelbrink  
Katie Hurrelbrink

# Exhibit A

1 **Kha Nguyen Tran**

2 A# 

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se<sup>1</sup>

7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **KHA NGUYEN TRAN,**

11 **Petitioner,**

12 **v.**

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

22 **Respondents.**

**CIVIL CASE NO.:**

**Declaration of**  
**Kha Nguyen Tran**

23 I, Kha Nguyen Tran, declare:

- 24 1. I was born in 1986 in South Vietnam, near Saigon. My family and I came
- 25 to the United States as refugees around 2004, when I was about 16.
- 26 2. When I was about 19 years old, I pled guilty to assault with a deadly
- 27 weapon. I served 364 days in county jail and completed 5 years of
- 28 probation with no violations. That is my only conviction.

<sup>1</sup> Mr. Tran is filing this motion with the assistance of the Federal Defenders of San Diego, Inc. That same counsel also assisted the petitioner in preparing and submitting his request for the appointment of counsel, which has been filed concurrently with this petition.

- 1 3. When I got out of jail, I was transferred to ICE custody. I was ordered  
2 removed on January 23, 2007.
- 3 4. I stayed in custody for a little over 6 months after that. At that point, ICE  
4 released me because Vietnam would not accept me for removal. I  
5 cooperated with everything that ICE asked of me. I believe that ICE  
6 requested a travel document for me at that time.
- 7 5. I stayed out of custody until late 2008 or early 2009. After the United States  
8 signed a treaty with Vietnam, ICE thought they might be able to remove  
9 me, because I entered the United States after 1995. I was detained for a  
10 little over 6 months again, but ICE still could not remove me, so they  
11 released me. I again complied with everything that ICE asked of me.
- 12 6. I remained on release for almost 17 years. During that time, I have checked  
13 in with ICE each year, and I have not had any more convictions.
- 14 7. On June 16, 2025, I went in for my annual ICE check in. ICE agents  
15 arrested me and brought me to Otay Mesa Detention Center. They did not  
16 tell me what had changed to warrant re-detaining me or give me a chance to  
17 contest my re-detention.
- 18 8. I have a 14-year-old U.S. citizen daughter. My mom has passed away, but  
19 her family lives in Seattle, Washington. My brother and father live in San  
20 Diego.
- 21 9. My mortgage is about \$2,200 per month, and child support is \$140 per  
22 month. I have about \$9,000 in savings. In custody, I'm not able to make  
23 money. My dad is helping me pay the mortgage. I do not think I can afford  
24 an attorney.
- 25 10. English is not my first language. I have no legal training, and I know  
26 nothing about immigration law. I do not believe that I could effectively  
27 handle a habeas petition by myself.
- 28 11. My detention facility also does not allow me to use the internet to look up  
whatever I want. I would struggle to get up-to-date information about ICE's  
and Vietnam's current policies for people like me.

1 I declare under penalty of perjury that the foregoing is true and correct,  
2  
3 executed on 09 / 11 / 25, in San Diego, California.

4   
5 **KHA NGUYEN TRAN**  
6 Declarant  
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# Exhibit B

CASE NO. PX 25-951

IDENTIFICATION: JUL 10 2025

ADMITTED: JUL 10 2025

To All ICE Employees  
July 9, 2025

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

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

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

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

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

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

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

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

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

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

Attachments:

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