

1 **Minh Nhat Phan**

2 A# [REDACTED]

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se¹

FILED

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

10 **MINH NHAT PHAN,**

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.: '25CV2422 RBM MSB

Petition for Writ
of
Habeas Corpus

[28 U.S.C. § 2241]

24
25 ¹ Mr. Phan 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

When he was eleven years old, in 1981, Minh Phan and his family fled the communist regime in Vietnam and entered the United States as refugees. He obtained a green card. He later lost it when he was ordered removed in 1996. *See* Exh. A ¶¶ 1–4 (Declaration of Mr. Phan). But there remained a problem: Vietnam had and has a longstanding policy of not accepting pre-1995 Vietnamese immigrants like Mr. Phan for repatriation for political reasons.

The former Immigration and Naturalization Service (INS) detained Mr. Phan continuously from 1996 to 2000 while seeking to have Vietnam accept him. Mr. Phan fully complied with its efforts. Yet the Vietnamese Embassy refused to accept him. After the INS spent three and a half years trying to deport Mr. Phan, Mr. Phan finally filed a habeas petition for his release with four other pre-1995 Vietnamese immigrants. Judge Keep received several rounds of briefing and ultimately ordered their immediate release. Judge Keep found INS did not make a “sufficient showing that Petitioners are a danger to the community or a flight risk.” *Hoang Manh Nguyen et al. v. Adele Fasano*, No. 99-cv-1885-K, ECF No. 10 (S.D. Cal. Feb. 28, 2000) (attached as Exh. B).

Mr. Phan did not knowingly violate any terms of the immigration supervision mandated by Judge Keep’s order for the next 25 years. He sustained no criminal convictions. And he checked in every year until 2021, when—as he understood it based on his deportation officer’s explanation—his case was closed and he no longer needed to report annually. On September 5, 2025, however, Immigration and Customs Enforcement (ICE) rearrested Mr. Phan, in violation of Judge Keep’s order, and without any new evidence that Vietnam will accept him—even though ICE’s own regulations require either a violation or changed circumstances before re-detention. 8 C.F.R. §§ 241.4(l), 241.13(i). Worse yet, in the likely case that ICE still cannot remove Mr. Phan to Vietnam, ICE’s own

1 policies permit third-country removal with as little as 6 hours' notice or no notice
2 at all. *See* Exh. C.

3 Mr. Phan's detention violates Judge Keep's order, ICE's own regulations,
4 *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. *Zadvydas*
5 holds that immigrants with final removal orders must be released if there is "no
6 significant likelihood of removal in the reasonably foreseeable future," *id.* at 701,
7 and neither the statute nor regulations permit re-detention absent changed
8 circumstances. And due process does not permit immigrants to be removed to
9 third countries with too little notice to allow for reopening before an immigration
10 judge ("IJ"). Multiple district courts across the country have agreed this year
11 when granting similar habeas petitions or injunctive relief for pre-1995
12 Vietnamese immigrants. *See Nguyen v. Scott*, No. 25-cv-1398, 2025 WL 2419288
13 (W.D. Wash. Aug. 21, 2025); *Hoac v. Becerra*, No. 25-cv-1740-DC-JDP, 2025
14 WL 1993771 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ,
15 2025 WL 1725791 (D. Mass. June 20, 2025).

16 ICE and its predecessor agency INS have tried and failed to remove
17 Mr. Phan for the last 29 years. ICE is free to keep trying, but not while Mr. Phan
18 waits in indefinite detention.

19 STATEMENT OF THE CASE

20 **I. The former INS and ICE have tried and failed to remove Mr. Phan** 21 **for the last 29 years because Vietnam refuses to issue travel** 22 **documents or repatriate him.**

23 Minh Phan came to the United States as an eleven year-old in October
24 1981, fleeing the communist regime in Vietnam. Exh. A at ¶ 1. Eight years later,
25 when he was 19, he was convicted of attempted second-degree murder. *Id.* ¶ 2. He
26 was later transferred to INS custody and ordered removed in September 1996. *Id.*
27 at ¶ 3. He was detained pending his removal. *Id.* at ¶ 5.

1 Removing him to Vietnam, however, was no simple task: Vietnam has a
2 longstanding policy of not accepting pre-1995 Vietnamese immigrants for
3 deportation or repatriation. *See infra*.

4 Nevertheless, INS detained Mr. Phan for almost four years while seeking
5 his deportation. Mr. Phan did not resist his deportation. He fully cooperated with
6 INS, and even suggested the Immigration Judge order him deported in the
7 alternative to Australia, where he had family. *Id.* at ¶¶ 3–4. The Immigration
8 Judge did order him deported to either Vietnam or Australia. *Id.* But Australia
9 denied the request to accept Mr. Phan, and Vietnam apparently did not even
10 respond. *See* Exh. D at 4 (Judge Keep’s summary of the INS’s unsuccessful four-
11 year effort to deport Mr. Phan to Australia or Vietnam).

12 Despite Vietnam’s failure to respond, INS continued to detain Mr. Phan
13 until Judge Keep ordered his release in February 2000. Exh. B.

14 In the meantime, he and his extensive family continued to put down roots in
15 the United States. His mother, father, and sisters are now U.S. citizens. Exh. A at
16 ¶ 7. And Mr. Phan got married and had six children. *Id.* at ¶ 2.

17 On September 5, 2025, ICE arrested Mr. Phan at home. *Id.* at ¶ 9.

18 Mr. Phan had a heart attack late last year and now takes 11 medications to
19 control his cardiovascular condition. *Id.* at ¶ 8. Since he has been in ICE custody,
20 he has not been receiving all of these medications, putting his health at risk. *Id.*
21 He is also scheduled for a September 25 surgery to remove tumors in his neck, but
22 he does not know if OMDC will take him. *Id.*

23 **II. Vietnam has a longstanding policy of refusing to take pre-1995**
24 **Vietnamese immigrants.**

25 There is an obvious reason why ICE has proved unable to remove Mr. Phan
26 for the last 29 years: Vietnam has a longstanding policy of not accepting pre-1995
27 Vietnamese immigrants for deportation. The United States and Vietnam did not
28

1 have normalized diplomatic relations between the end of the war and 1995.²
 2 Despite extensive negotiation that followed the resumption of diplomatic
 3 relations, when Vietnam and the United States finally signed a repatriation treaty
 4 in 2008, the treaty exempted pre-1995 Vietnamese immigrants. (This treaty
 5 remains operative today.) The treaty provides, “Vietnamese citizens are not
 6 subject or return to Vietnam under this Agreement if they arrived in the United
 7 States before July 12, 1995.” Agreement Between the United States of America
 8 and Vietnam, at 2 (Jan. 22, 2008).³

9 The first Trump Administration detained pre-1995 Vietnamese immigrants
 10 anyway, hoping to pressure Vietnam to take them. *See* First Amended Habeas
 11 Corpus Class Action Petition and Class Action Complaint, *Trinh v. Johnson*, 18-
 12 CV-316-CJC-GJS, Dkt. 27 (May 11, 2018).⁴ That possibility did not materialize,
 13 and the administration was forced to release many detainees in 2018. *See id.* at
 14 1084. “In total, between 2017 and 2019, ICE requested travel documents for pre-
 15 1995 Vietnamese immigrants 251 times. Vietnam granted those requests only 18
 16 times, in just over seven percent of cases.” *Id.*

17 Eventually, in 2020, Vietnam signed a Memorandum of Understanding
 18 (“MOU”), which created a process for removing pre-1995 Vietnamese
 19 immigrants.⁵ But the MOU limited such removals to persons meeting certain
 20 criteria, many of which have been shielded from public view. *See Nguyen v. Scott*,
 21

22
 23 ² *See* U.S. Embassy & Consulate in Vietnam, *Chronology of US-Vietnam Relations*,
 24 available at <https://vn.usembassy.gov/chronology-of-u-s-vietnam-relations/#1991>.

25 ³ available at <https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>

26 ⁴ available at
 27 <https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/6101c5798e7c3856610233fb/1627506041756/Trinh+-+Doc+27+First+Amended+Complaint.pdf>.

28 ⁵ <https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf>.

No. 2:25-CV-01398, 2025 WL 2419288, at *14 (W.D. Wash. Aug. 21, 2025).
 Section 8 of the MOU also requires ICE to submit a documentation package along
 with repatriation requests, which includes a self-declaration from the person to be
 removed.⁶

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

On June 9, 2025, the Trump administration rescinded ICE’s policy of
 generally finding that pre-1995 Vietnamese immigrants were not likely to be
 removed in the reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-

⁶<https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf>

⁷<https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf>.

⁸ <https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports>

1 01398, 2025 WL 2419288, at *7 (W.D. Wash. Aug. 21, 2025). Since then, several
 2 courts have rejected the Trump administration's efforts to detain these
 3 immigrants, enjoining their detention or granting their petitions outright. *See*
 4 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *17 (W.D. Wash.
 5 Aug. 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
 6 1993771, at *4 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-CV-11470-
 7 MJJ, 2025 WL 1725791, at *5 (D. Mass. June 20, 2025).

8 ARGUMENT

9 This Court should order Mr. Phan's immediate release on conditions.
 10 *Zadvydas* holds that immigration statutes do not authorize the government to
 11 detain immigrants like Mr. Phan, for whom there is "no significant likelihood of
 12 removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001). Judge
 13 Keep came to the same conclusion over 25 years ago, ordering that Mr. Phan be
 14 released. *See Hoang Manh Nguyen et al. v. Adele Fasano*, No. 99-cv-1885-K,
 15 ECF Nos. 7, 10 (S.D. Cal. Feb. 28, 2000) (attached as Exh. B). No changed
 16 circumstances justify reevaluating that decision, and Mr. Phan has not gotten a
 17 chance to contest his re-detention per ICE regulations. Finally, Mr. Phan cannot
 18 be ordered removed to a third country without adequate notice and an opportunity
 19 to move for reopening before an IJ. These claims are taken in turn.

20 **I. Count 1: Mr. Phan's detention violates Judge Keep's order that he be**
 21 **released on conditions and the due process rights contained in 8 C.F.R.**
 22 **§§ 241.4 et seq.**

23 Twenty-five years ago, Judge Keep ordered that Mr. Phan be released from
 24 then-INS's custody. She explained, "A deportable alien who is indefinitely
 25 continued in INS custody suffers a deprivation of liberty." *Hoang Manh Hguyen*
 26 *et al.*, No. 99-cv-1885-K, ECF No. 7 at 15 (attached as Exh. B). "Petitioners'
 27 detention must be evaluated in light of the fact that they have been detained for
 28 periods of time ranging from almost three years to almost four years"—in
 Mr. Phan's case, he had been in INS custody for almost four years—"Vietnam

1 has not responded to requests for travel documents, there is no treaty with
2 Vietnam in place, no projected date when a treaty will be in place, and no country
3 that will accept them.” *Id.* at 16. Judge Keep concluded that Mr. Phan’s
4 “deportation is not possible or foreseeable.” *Id.* at 18.

5 Judge Keep thus granted Mr. Phan’s writ of habeas corpus and ordered the
6 San Diego District Director of the INS and Attorney General Janet Reno to
7 “release [him] from custody on such conditions as the district director may
8 prescribe, including bond, pursuant to 8 C.F.R. §§ 241.4 and 241.5.” *Hoang Manh*
9 *Hguyen et al.*, No. 99-cv-1885-K, ECF No. 10 at 2 (attached as Exh. B).

10 ICE’s decision to re-detain Mr. Phan violates Judge Keep’s order that he be
11 released on conditions subject to the procedural and substantive protections of 8
12 C.F.R. §§ 241.4 *et seq.* *See Hoang Manh Hguyen et al.*, No. 99-cv-1885-K, ECF
13 No. 10 at 2 (attached as Exh. B); *see also Zhu v. Genalo*, No. 2025 WL 2452352,
14 *4–*9 (S.D.N.Y. Aug. 26, 2025) (describing the procedural and substantive
15 protections of 8 C.F.R. §§ 241.4 *et seq* in detail, determining that ICE failed to
16 follow its own regulations when recently re-detaining an immigrant who had been
17 ordered released and remained compliant on release conditions for five years, and
18 ordering the immigrant’s immediate release). Despite being released subject to
19 court-ordered regulatory requirements of notice and an interview before he is re-
20 detained, Mr. Phan has been re-detained without such process.

21 Mr. Phan may also be subject to the regulations in 8 C.F.R. § 241.13(i),
22 which applies to noncitizens released under § 241.4 who have provided good
23 reason to think that their removal is not reasonably foreseeable. That regulation
24 conditions re-detention on (1) a violation or changed circumstances, (2) an
25 informal interview, and (3) an opportunity to contest re-detention. 8 C.F.R.
26 § 241.13(i). Re-detaining someone without any chance to contest re-detention
27 would violate either regulation. *See Zhu*, No. 2025 WL 2452352, *8 n.3.

28 That matters, because ICE is required to follow its own regulations. *United*

1 *States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v.*
 2 *INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (“The legal proposition that agencies
 3 may be required to abide by certain internal policies is well-established.”). A
 4 court may review a re-detention decision for compliance with the regulations. *See*
 5 *Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July
 6 16, 2025); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D.
 7 Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir.
 8 2023)).

9 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
 10 the applicable regulations, that revocation has no effect, and petitioner is entitled
 11 to his release (subject to the same Order of Supervision that governed his most
 12 recent release).” *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *3 (D.
 13 Kan. June 17, 2025); *see Edmund Girgorian v. Pamela Bondi*, No. 25-cv-22914-
 14 RAR, 2025 WL 2604573 (S.D. Fl. Sept. 9, 2025) (granting a habeas petition for a
 15 re-detained immigrant in light these regulatory violations, and collecting nine
 16 cases from “[c]ourts around the country” that “have concluded likewise”).

17 For this reason alone—violation of a court order that is still in effect and
 18 the applicable regulations it incorporates—this Court should grant Mr. Phan’s
 19 petition.

20 **II. Count 2: Mr. Phan’s detention violates *Zadvydas*.**

21 **A. Legal background**

22 The year after Judge Keep ordered Mr. Phan’s release, in *Zadvydas v.*
 23 *Davis*, 533 U.S. 678 (2001), the Supreme Court considered the same problem and
 24 came to the same result. Federal law requires ICE to detain an immigrant during
 25 the “removal period,” which typically spans the first 90 days after the immigrant
 26 is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period
 27 expires, detention becomes discretionary—ICE may detain the migrant while
 28 continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would

1 not lead to excessive detention, as removal happens within days or weeks. But
2 some detainees cannot be removed quickly. Perhaps their removal “simply
3 require[s] more time for processing,” or they are “ordered removed to countries
4 with whom the United States does not have a repatriation agreement,” or their
5 countries “refuse to take them,” or they are “effectively ‘stateless’ because of their
6 race and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir.
7 2001). In these and other circumstances, detained immigrants can find themselves
8 trapped in detention for months, years, decades, or even the rest of their lives.

9 If federal law were understood to allow for “indefinite, perhaps permanent,
10 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at
11 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
12 interpreting the federal detention statute to incorporate implicit limits. *Id.* at 689.

13 As an initial matter, *Zadvydas* held that detention is “presumptively
14 reasonable”—and therefore, authorized—for at least six months. *Id.* at 701. This
15 acts as a kind of grace period for effectuating removals.

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

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

26 Using this framework, Mr. Phan already has made all the threshold
27 showings needed to shift the burden to the government, back in 1999, after he had
28 been detained pending removal for close to four years. He can make them again

1 today.

2
3 **B. The six-month grace period has expired.**

4 As an initial matter, the six-month grace period has long since ended. The
5 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,
6 *three months* after the statutory removal period has ended.” *Kim Ho Ma v.*
7 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Phan’s order of
8 removal was entered in September 1996. Exh. A at ¶ 3. Accordingly, his 90-day
9 removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period
10 thus expired six months after the entry of his removal order and three months after
11 the end of his 90-day removal period, both of which occurred in March 1997.
12 Mr. Phan was detained throughout that period and for more than three years after
13 it. *See* Exh. D at 7. Thus, this threshold requirement is met.

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

17 *First*, the government has sometimes argued that release and rearrest resets
18 the six-month grace period completely, taking the clock back to zero.
19 “Courts . . . broadly agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL
20 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation*
21 *adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*,
22 No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018)
23 (collecting cases). This proposal would create an obvious end run around
24 *Zadvydas*, because ICE could detain an immigrant indefinitely by releasing and
25 quickly rearresting them every six months.

26 *Second*, the government has sometimes claimed that rearrest at least resets
27 the 90-day removal period under 8 U.S.C. § 1231(a)(1). *See, e.g., Farah v. INS*,
28 No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013)

(adopting this view). But as a court explained in *Bailey v. Lynch*, that view cannot be squared with the statutory definition of the removal 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, 2016). “Pursuant to the statute, the removal period, and in turn the [six-month] presumptively reasonable period, begins from the latest of ‘the date the order of removal becomes administratively final,’ the date of a reviewing court’s final order where the removal order is judicially removed and that court orders a stay of removal, or the alien’s release from detention or confinement where he was detained for reasons other than immigration purposes at the time of his final order of removal.” *Id.* None of these statutory starting points have anything to do with whether or when an immigrant is detained. *See id.* Because the statutorily-defined removal period has nothing to do with release and rearrest, releasing and rearresting the immigrant cannot reset the removal period.

C. **Vietnam’s rejection of Mr. Phan’s travel document request, along with Vietnam’s longstanding policy of not accepting pre-1995 Vietnamese immigrants, provides good reason to believe that Mr. Phan will not likely be removed in the reasonably foreseeable future.**

Because the six-month grace period has long passed, this Court must evaluate Mr. Phan’s *Zadvydas* claim using the burden-shifting framework. At the first stage of the framework, Mr. Phan must “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

“**Good reason to believe.**” The “good reason to believe” standard is a relatively forgiving one. “A petitioner need not establish that there exists no possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to believe” . . . place a burden upon the detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or show that his detention is indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,

2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says: Petitioners need only give a “good reason”—not prove anything to a certainty.

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

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

Mr. Phan readily satisfies this standard for two reasons.

1 *First*, as explained above, Vietnam generally does not accept pre-1995
2 Vietnamese immigrants for deportation. Even after Vietnam signed the 2020
3 MOU, ICE had to admit that there was no reasonable likelihood of removing such
4 immigrants in the reasonably foreseeable future—an admission amply backed up
5 by two years’ experience under the MOU. Though the Trump administration
6 rescinded this admission, there is no evidence that facts on the ground have
7 changed. Thus, several courts have found that these barriers likely continue to
8 obstruct removal for people like Mr. Phan. *See Nguyen*, 2025 WL 2419288; *Hoac*,
9 2025 WL 1993771; *Nguyen*, 2025 WL 1725791.

10 *Second*, Mr. Phan’s own experience bears this out. ICE has now had 29
11 years to deport him, including 5 years under the MOU. Yet ICE has proved
12 unable to remove him.

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

17 **D. *Zadvydas* unambiguously prohibits this Court from denying**
18 **Mr. Phan’s petition because of his criminal history.**

19 If released on supervision, Mr. Phan poses no risk of danger or flight. He
20 has been on supervision for over 25 years. Exh. A at ¶ 6. During that time, he did
21 not sustain any further criminal convictions. *Id.* And so far as he knows, he has
22 checked in as required. It was his understanding that he was not required to check
23 in after 2021, when a tribunal deemed his case closed and his deportation officer
24 failed to give him another check-in date. *Id.* And ICE has never told him
25 otherwise, *id.*, even though he and his family have lived at the same address for at
26 least the last 10 years. Exh. E at ¶ 2 (Mindy Phan Declaration). Mr. Phan fully
27 acknowledges the seriousness of his conviction. He deeply regrets what he did
28 that day. *Id.* at ¶ 2. That is why he has worked so hard to change his life in the

1 decades since. The 19 year old who committed those acts is not reflective of the
2 55-year-old father of six that he is today. *Id.*

3 But even if the government did try to argue that Mr. Phan posed a danger or
4 flight risk, *Zadvydas* squarely holds that those are not grounds for detaining an
5 immigrant when there is no reasonable likelihood of removal in the reasonably
6 foreseeable future.

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

15 The Supreme Court rejected that argument. The Court appreciated the
16 seriousness of the government’s concerns. *Id.* at 691. But the Court found that the
17 immigrant’s liberty interests were weightier. *Id.* The Court had never
18 countenanced “potentially permanent” “civil confinement,” based only on the
19 government’s belief that the person would misbehave in the future. *Id.*

20 The Court emphasized that immigrants’ release “may and should be
21 conditioned on any of the various forms of supervised release that are appropriate
22 in the circumstances, and the alien may no doubt be returned to custody upon a
23 violation of those conditions.” *Id.* at 700. The Ninth Circuit later elaborated, “All
24 aliens ordered released must comply with the stringent supervision requirements
25 set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration
26 officer periodically, answer certain questions, submit to medical or psychiatric
27 testing as necessary, and accept reasonable restrictions on [their] conduct and
28 activities, including severe travel limitations. More important, if [they] engage[]

1 in any criminal activity during this time, including violation of [their] supervisory
2 release conditions, [they] can be detained and incarcerated as part of the normal
3 criminal process.” *Ma*, 257 F.3d at 1115.

4 These conditions have proved sufficient to protect the public for 25 years.
5 They will continue to do so while ICE continues trying to deport Mr. Phan.

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

8 In addition to unlawfully detaining him, ICE’s policies threaten his removal
9 to a third country without adequate notice and an opportunity to be heard. These
10 policies violate the Fifth Amendment, 8 U.S.C. § 1231, the Convention Against
11 Torture, and implementing regulations. *See, e.g., Nguyen v. Scott*, 2025 WL
12 2419288 at *18–25 (holding as much as to a pre-1995 Vietnam petitioner and
13 granting a preliminary injunction against his removal to a third country).

14 **A. Factual background**

15 When removable immigrants cannot be removed to their home country—
16 including Vietnamese immigrants—ICE has begun deporting those individuals to
17 third countries without adequate notice or a hearing. The Trump administration
18 reportedly has negotiated with at least 58 countries to accept deportees from other
19 nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump’s*
20 *Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York
21 Times reported that seven countries—Costa Rica, El Salvador, Guatemala,
22 Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are
23 not their own citizens. *Id.* Since then, ICE has carried out highly publicized third
24 country deportations to South Sudan and Eswatini.

25 The Administration has reportedly negotiated with countries to have many
26 of these deportees imprisoned in prisons, camps, or other facilities. The
27 government paid El Salvador about \$5 million to imprison more than 200
28 deported Venezuelans in a maximum-security prison notorious for gross human

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

15 On June 23 and July 3, 2025, facing arguments from the Solicitor General
16 concerning the procedures for issuing national class-wide relief, the Supreme
17 Court issued a stay of a class-wide preliminary injunction issued in *D.V.D. v. U.S.*
18 *Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968,
19 at *1, 3 (D. Mass. Apr. 18, 2025). That injunction had required ICE to follow the
20 statutory and constitutional requirements before removing any individual to a
21 third country nationwide. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153
22 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).

23 On July 9, 2025, ICE rescinded previous guidance meant to give
24 immigrants a “‘meaningful opportunity’ to assert claims for protection under the
25 Convention Against Torture (CAT) before initiating removal to a third country”
26 like the ones just described. Exh. C.

27 Under the new guidance, ICE may remove any immigrant to a third country
28 “without the need for further procedures,” as long as—in the view of the State

1 Department—the United States has received “credible” “assurances” from that
2 country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails
3 to credibly promise not to persecute or torture releasees, ICE may still remove
4 immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’
5 notice. But “[i]n exigent circumstances,” a removal may take place in as little as
6 six hours, “as long as the alien is provided reasonably means and opportunity to
7 speak with an attorney prior to the removal.” *Id.*

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

23 **B. Legal background**

24 U.S. law enshrines protections against dangerous and life-threatening
25 removal decisions. By statute, the government is prohibited from removing an
26 immigrant to any third country where a person may be persecuted or tortured, a
27 form of protection known as withholding of removal. *See* 8 U.S.C.
28

1 § 1231(b)(3)(A). The government “may not remove [a noncitizen] to a country if
2 the Attorney General decides that the [noncitizen’s] life or freedom would be
3 threatened in that country because of the [noncitizen’s] race, religion, nationality,
4 membership in a particular social group, or political opinion.” *Id.*; *see also* 8
5 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

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

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

21 Due process also demands that the government “ask the noncitizen whether
22 he or she fears persecution or harm upon removal to the designated country and
23 memorialize in writing the noncitizen’s response. This requirement ensures DHS
24 will obtain the necessary information from the noncitizen to comply with section
25 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said].”
26 *Aden*, 409 F. Supp. 3d at 1019. “Failing to notify individuals who are subject to
27 deportation that they have the right to apply for asylum in the United States and
28 for withholding of deportation to the country to which they will be deported

1 violates both INS regulations and the constitutional right to due process.”
2 *Andriasian*, 180 F.3d at 1041.

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

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

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

26 The policies in the June 6, 2025 memo do not adhere to these requirements.

27 First, under the policy, ICE need not give immigrants *any* notice or *any*
28 opportunity to be heard before removing them to a country that—in the State

1 Department's estimation—has provided “credible” “assurances” that the person
2 will not be persecuted or tortured. By depriving immigrants of any chance to
3 challenge the State Department's view in their particular case, this policy plainly
4 violates “[t]he essence of due process,” “the requirement that a person in jeopardy
5 of serious loss be given notice of the case against him and opportunity to meet it.”
6 *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

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

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

23 Resolution of a prolonged-detention habeas petition may require an
24 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).

25 Mr. Phan hereby requests such a hearing on any material, disputed facts.

26 //

27 //

28 //

Conclusion

For those reasons, Mr. Phan requests that this Court order his release due to the violations of Judge Keep's order and the regulations they incorporate. At a minimum, he asks that the Court order the respondents to prove that there is a "significant likelihood of removal in the reasonably foreseeable future" and, if they do not, order his release. *Zadvydas*, 533 U.S. at 701. He also requests this Court order that ICE provide him reasonable notice and an opportunity to be heard, sufficient for him to contact an attorney and have that attorney prepare and file a motion to reopen with the immigration court, before ICE removes him to a third country different from the countries listed in his removal order.

DATED: 9-14-2025

Respectfully submitted,



MINH NHAT PHAN

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
ATTN: Janet Cabral
880 Front Street
Suite 6253
San Diego, CA 92101

Date: 9/16/2025

/s/ Katie Hurrelbrink
Katie Hurrelbrink

Exhibit A

1 **Minh Nhat Phan**

2 A# 

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se¹

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

10 MINH NHAT PHAN,

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
Minh Nhat Phan
in Support of Petition
for a Writ of Habeas Corpus**

23 I, Minh Nhat Phan, declare:

- 24 1. I came to the United States with my family in October 1981 when I was 11
25 years old. We were refugees fleeing the communist regime in Vietnam. I
26 got a green card.

27 ¹ Mr. Phan is filing this petition for a writ of habeas corpus and all associated
28 documents with the assistance of the Federal Defenders of San Diego, Inc.
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.

- 1 2. When I was 19 years old, in 1989, I sustained a conviction. Judge Keep's
2 order says that I was convicted of attempted second degree murder, though
3 I thought that I was convicted of attempted involuntary manslaughter.
4 Thankfully, no one died. I deeply regret my actions. I've tried to make
5 amends and become a better person since then. In the 25 years since my
6 release from INS custody, I have committed myself to raising a family. My
7 wife and six children are all U.S. citizens.
- 8 3. Because of my conviction, I was ordered removed in September 1996. I had
9 family in Australia, so I asked the Immigration Judge to order me deported
10 to either Vietnam or Australia. The Immigration Judge did order me
11 deported to either Vietnam or Australia.
12
- 13 4. INS tried to remove me in the late 1990s and I fully complied with their
14 efforts.
- 15 5. INS continued to detain me until my attorney filed a habeas petition.
16 Eventually, almost four years after I was ordered deported, they released
17 me.
18
- 19 6. While on release, I have not had any criminal convictions. I also checked in
20 with ICE each year until 2021. In 2021, I applied to renew my work permit,
21 but a court denied it, saying my case had been closed since 2011. I asked
22 my deportation officer about it, but he said he didn't have any other
23 information. He did not give me a date to check in. Because my case was
24 closed, I believed I didn't have to check in anymore. ICE has not told me
25 otherwise.
- 26 7. I have a lot of family in the United States. My mother and father are
27 citizens, and so are my sisters. When they were working, my parents were
28 gardeners in Balboa Park.

1 8. I had a heart attack last December. I now take 11 medications. OMDC is
2 only giving me some of them now. I was scheduled for surgery to remove
3 tumors in my neck on September 25, but I do not know if OMDC will take
4 me.

5
6 9. Last Friday, ICE agents came to my home and arrested me. ICE has posted
7 about my arrest all over the internet and the news.

8 10. ICE has never given me an informal interview or an opportunity to respond
9 to the reasons for my revocation of release.

10 11. I have no legal education or training. I also do not have free access to the
11 internet in custody.

12 12. Right now, my only income is \$2300 retirement per month from the city of
13 San Diego. I used to work in the Metro Waste Water Collection
14 Department. My wife does not work outside the home. I have no savings,
15 and I must support my wife and kids. Our house is paid for by my dad and
16 sister. My sister owns the house. I pay utilities, taxes, and insurance. I also
17 pay insurance on my and my kids' cars, as well as phone bills for my
18 family.
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1 I declare under penalty of perjury that the foregoing is true and correct,
2
3 executed on Sept 14-2025, in San Diego, California.

4 

5 MINH NHAT PHAN

6 Declarant
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Exhibit B



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

HOANG MANH NGUYEN; NAM VIET
NGUYEN; NGOC VAN NGUYEN; MINH
NHAT PHAN,

Petitioners,

vs.

ADELE FASANO, San Diego District
Director, Immigration and Naturalization
Service; JANET RENO, United States
Attorney General,

Respondents.

CASE NO. 99-CV-1885-K (CGA)

ORDER GRANTING WRIT OF
HABEAS CORPUS AND STAYING
ISSUANCE OF WRIT

On September 7, 1999, Petitioners Hoang Manh Nguyen, Nam Viet Nguyen, Ngoc Van Nguyen, and Minh Nhat Phan, through counsel, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Respondents opposed. On February 1, 2000, this court ordered Respondents to show cause why Petitioners should not be immediately released. Respondents filed a supplemental return on February 14, 2000. Petitioners filed a reply on February 18, 2000.

Respondents' supplemental return attempted to reargue their position on the constitutionality of holding Petitioners. Respondents did not show a compelling interest in Petitioners' continued detention. There was not a sufficient showing that Petitioners are a danger to the community or a flight risk.

///

///

1 Accordingly, this court **GRANTS** Petitioners' writ of habeas corpus, but **STAYS** issuance of
2 the writ until March 20, 2000. Issuance of the writ is stayed in order to allow the district director to
3 order the Petitioners released from custody on such conditions as the district director may prescribe,
4 including bond, pursuant to 8 C.F.R. §§ 241.4 and 241.5.

5
6 **IT IS SO ORDERED.**

7 **DATE** 2/25/00


Judith N. Keep, District Judge
United States District Court

9
10 **CC:** ALL COUNSEL
MAGISTRATE JUDGE CYNTHIA G. AARON

Exhibit C

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