

1 **Sisawang Khambounheuang**

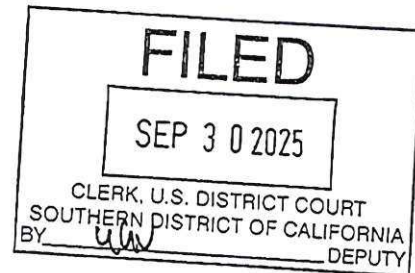
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3 Otay Mesa Detention Center

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

10 **SISAWANG KHAMBOUNHEUANG,**

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.: '25CV2575 JO SBC

Petition for Writ
of
Habeas Corpus

[28 U.S.C. § 2241]

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24
25 ¹ Mr. Khambounheuang is filing this petition for a writ of habeas corpus with the
26 assistance of the Federal Defenders of San Diego, Inc., who drafted the instant
27 petition. That same counsel also assisted the petitioner in preparing and
28 submitting his request 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 Kara Hartzler in Support of
Appointment Motion attaches case examples.

1 INTRODUCTION

2 Sisawang Khambounheuang was born in Laos. His father was a Laotian
3 soldier who fought alongside the United States. After his father was killed in the
4 Vietnam War, Mr. Khambounheuang and his remaining family members were
5 sent to a Thai refugee camp for several years. In 1979, they came to the United
6 States and became lawful permanent residents.

7 Mr. Khambounheuang was convicted of assault and ordered removed in
8 2000. Afterwards, he spent two years in immigration detention while ICE tried to
9 remove him. When Laos refused to accept him, he was finally released.

10 For the next 23 years, Mr. Khambounheuang complied with all his check-in
11 appointments and committed no new crimes. However, on August 13, 2025, ICE
12 arrested him at his check-in appointment and has detained him ever since. They
13 did so without providing any notice or complying with the agency's own
14 regulations. What's more, ICE has adopted a new policy permitting removals to
15 third countries with as little as six hours' notice and no meaningful opportunity to
16 make a fear-based claim against removal.

17 Mr. Khambounheuang's detention violates *Zadvydas v. Davis*, 533 U.S.
18 678, 701 (2001), which holds that immigrants must be released if there is "no
19 significant likelihood of removal in the reasonably foreseeable future." His
20 detention also violates ICE's own regulations, which require either a new
21 violation or changed circumstances before a person can be re-detained. 8 C.F.R.
22 §§ 241.4(l), 241.13(i). And under the Fifth Amendment, immigrants cannot be
23 detained indefinitely with no reasonably foreseeable prospect of removal. Finally,
24 ICE may not remove Mr. Khambounheuang to a third country without providing
25 an opportunity to assert fear of persecution or torture before an immigration
26 judge. This Court should grant Mr. Khambounheuang's habeas petition.
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28

STATEMENT OF THE CASE

I. From 2000 to 2002, ICE tried and failed to remove Mr. Khambounheuang because Laos refused to issue travel documents.

Sisawang Khambounheuang was born in Laos; his father fought in the Vietnam War alongside the U.S. army and was killed. Exhibit A, “Khambounheuang Declaration,” at ¶ 1. Mr. Khambounheuang and his remaining family fled to a refugee camp in Thailand for several years before they were able to immigrate to the United States. *Id.* When they arrived in the U.S., they all became lawful permanent residents. *Id.*

In the 1990s, Mr. Khambounheuang was convicted of assault with a deadly weapon in Kansas. *Id.* at ¶ 2. This conviction came from an incident where he went with his brother-in-law to collect a debt. *Id.* Although Mr. Khambounheuang did not personally shoot anyone, his brother-in-law did, and Mr. Khambounheuang was held jointly responsible for that crime. *Id.*

As a result of that conviction, Mr. Khambounheuang was eventually placed in removal proceedings and sent to an immigration detention center in Louisiana. *Id.* at ¶ 3. An immigration judge ordered him removed on July 17, 2000. *Id.*

But ICE was not able to effectuate Mr. Khambounheuang’s removal to Laos. For the next two years, ICE tried and failed to obtain travel documents for him. *Id.* at ¶ 4. During this time, Mr. Khambounheuang filed a petition for habeas corpus. *Id.* Finally, ICE gave up and released him on May 31, 2002. *Id.*

Since 2002, Mr. Khambounheuang has attended all his check-in appointments and has not committed any new criminal offenses. *Id.* at ¶ 5. Yet when he went for his annual check-in appointment on August 13, 2025, ICE arrested him. *Id.* at ¶ 6. They did not provide him any notice or give him an interview or an opportunity to contest detention. *Id.*

Mr. Khambounheuang has been working as a restaurant cook for many years. *Id.* at ¶ 8. More recently, he has been the full-time caregiver for his mother,

1 who has early onset dementia. *Id.* Although other family members have been
 2 trying to care for her, his mother continually asks for Mr. Khambounheuang. *Id.*

3 **II. Laos has no repatriation agreement with the United States, a**
 4 **longstanding policy of refusing to accept deportees, and a longstanding**
 5 **history of discrimination against the Hmong.**

6 The Lao People's Democratic Republic is an authoritarian state and one of
 7 the poorest nations in Asia. *See* Congressional Research Service, *In Focus: Laos*
 8 (Dec. 2, 2024) ("2024 CRS").² When the communist party came to power in Laos
 9 in 1975, hundreds of thousands of refugees fled, including many who had fought
 10 alongside the U.S. government in the Vietnam War. *Id.*; *see* The Economist,
 11 *America's secret war in Laos* (Jan. 21, 2017).³ During the war, the United States
 12 had dropped over 2.5 million tons of bombs on Laos in what remains the largest
 13 bombardment of any country in history. *Id.* Many members of the Hmong ethnic
 14 minority were specifically recruited to fight with the United States in Laos. *Id.*
 15 Now, over 360,000 Hmong live in the United States. CRS, *supra*.

16 No repatriation agreement exists between Laos and the United States. Laos
 17 has also been historically unwilling to accept deportees from the United States
 18 through informal negotiations. As a result, there are around 4,800 nationals of
 19 Laos living in the United States with final removal orders who have not been
 20 removed. Asian Law Caucus, *Status of Ice Deportations to Southeast Asian*
 21 *Countries: Laos* (July 29, 2025).⁴ Last year, zero people were removed to Laos; in
 22 the five years before that, between 0 and 11 people were removed per year. *See*

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 26 ² <https://www.congress.gov/crs-product/IF10236>.

27 ³ <https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-laos>.

28 ⁴ <https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation>.

1 U.S. Immigration and Customs Enforcement, *Annual Report: Fiscal Year 2024*, at
2 100 (Dec. 19, 2024).⁵

3 In 2018, the United States issued visa sanctions on Laos “due to lack of
4 cooperation in accepting their citizens who have been ordered removed.”⁶ The
5 federal government explained that Laos had not “established repeatable processes
6 for issuing travel documents to their nationals ordered removed from the United
7 States.” *Id.*

8 In June of this year, President Trump reiterated, “Laos has historically
9 failed to accept back its removable nationals.” *See* Presidential Proclamation,
10 *Restricting the Entry of Foreign Nationals to Protect the United States from*
11 *Foreign Terrorists and Other National Security and Public Safety Threats*,
12 § 3(c)(i) (June 4, 2025).⁷ As a result, he included Laos as one of 19 countries in
13 his travel ban, banning all Lao immigrant, tourist, student, and exchange visitors
14 from the United States. *Id.*; *see* American Immigration Council, *Trump’s 2025*
15 *Travel Ban* (Aug. 6, 2025).⁸ In response, the Lao government has issued travel
16 documents to a few dozen nationals of Laos with final removal orders. *See* Ben
17 Warren, *Hmong refugees from Michigan among those deported to Laos, despite*
18 *calls for release*, *The Detroit News* (Aug. 15, 2025) (noting 32 Laotian nationals
19 were deported on a flight in August).⁹

20 Since then, at least one court has rejected the Trump administration’s
21 efforts to re-detain a Laotian immigrant without following its own regulations.
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23 ⁵ <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

24 ⁶ <https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions>.

25 ⁷ <https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/>

26 ⁸ <https://www.americanimmigrationcouncil.org/report/trump-2025-travel-ban/>.

27 ⁹ <https://www.detroitnews.com/story/news/local/michigan/2025/08/15/hmong-refugees-among-those-deported-to-laos/85680464007/>.

1 *See Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL 2579569 (W.D.
 2 Wash. Sept. 5, 2025) (granting TRO to Laotian national in light of the
 3 government's failure to follow its regulations regarding re-detention and
 4 questions regarding the validity of his underlying criminal conviction).

5 There are special concerns with the deportation of people of Hmong
 6 descent to Laos. "The U.S. government and Hmong-American groups remain
 7 concerned about human rights issues and the Lao government's treatment of its
 8 ethnic Hmong minority." 2024 CRS, *supra*. The Hmong people who remain in
 9 Laos "face constant threats, including arbitrary arrests, enforced disappearances,
 10 extrajudicial killings, and military blockades that cut off access to food, water and
 11 healthcare." Unrepresented Nations & Peoples Organization, *Genocide Watch*
 12 *Report: Hmong at Risk* (Mar. 18, 2025).¹⁰

13 **III. The government is carrying out deportations to third countries without**
 14 **providing sufficient notice and opportunity to be heard.**

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

28 ¹⁰ <https://unpo.org/genocide-watch-report-hmong-at-risk/>.

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

16 On June 23 and July 3, 2025, the Supreme Court issued a stay of a national
17 class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of*
18 *Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D.
19 Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional
20 requirements before removing an individual to a third country. *U.S. Dep't of*
21 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025
22 WL 1832186 (U.S. July 3, 2025). On July 9, 2025, ICE rescinded previous
23 guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims
24 for protection under the Convention Against Torture (CAT) before initiating
25 removal to a third country” like the ones just described. Exhibit B, ICE
26 Memorandum on Third Country Removals, July 9, 2025.

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 CLAIMS FOR RELIEF

24 This Court should order Mr. Khambounheuang’s immediate release on
25 conditions. *Zadvydas* holds that immigration statutes do not authorize the
26 government to detain immigrants like Mr. Khambounheuang, for whom there is
27 “no significant likelihood of removal in the reasonably foreseeable future.” 533
28

1 U.S. 678, 701 (2001). ICE's own regulations require a violation or changed
2 circumstances before re-detention, as well as a chance to contest a re-detention
3 decision. Finally, Mr. Khambounheuang cannot be ordered removed to a third
4 country without adequate notice and an opportunity to move for reopening before
5 an IJ. These claims are taken in turn.

6 **I. First claim: Mr. Khambounheuang's detention violates *Zadvydas* and 8**
7 **U.S.C § 1231.**

8 **A. Legal background**

9 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
10 the issue of indefinite immigration detention. Federal law requires ICE to detain
11 an immigrant during the "removal period," which typically spans the first 90 days
12 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-
13 day removal period expires, detention becomes discretionary—ICE may detain
14 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
15 this scheme would not lead to excessive detention, as removal happens within
16 days or weeks. But some detainees cannot be removed quickly. Perhaps their
17 removal "simply require[s] more time for processing," or they are "ordered
18 removed to countries with whom the United States does not have a repatriation
19 agreement," or their countries "refuse to take them," or they are "effectively
20 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*,
21 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
22 immigrants can find themselves trapped in detention for months, years, decades,
23 or even the rest of their lives.

24 If federal law were understood to allow for "indefinite, perhaps permanent,
25 detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at
26 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
27 interpreting the federal detention statute to incorporate implicit limits. *Id.* at 689.

28 As an initial matter, *Zadvydas* held that detention is "presumptively

1 reasonable”—and therefore, authorized—for at least six months. *Id.* at 701. This
2 acts as a kind of grace period for effectuating removals.

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

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

13 Using this framework, Mr. Khambounheuang already has made all the
14 threshold showings needed to shift the burden to the government, back in 2002,
15 after he had been detained pending removal for two years. He can make them
16 again today.

17 **B. The six-month grace period has expired.**

18 As an initial matter, the six-month grace period has long since ended. The
19 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,
20 *three months* after the statutory removal period has ended.” *Kim Ho Ma v.*
21 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Khambounheuang’s
22 order of removal was entered in 2000. Exh. A at ¶ 3. He was detained for two
23 years, from 2000 to 2002. *Id.* at ¶ 4. Thus, this threshold requirement is met.

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

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

1 “Courts . . . broadly agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL
2 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation*
3 *adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*,
4 No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018)
5 (collecting cases). This proposal would create an obvious end run around
6 *Zadvydas*, because ICE could detain an immigrant indefinitely by releasing and
7 quickly rearresting them every six months.

8 *Second*, the government has sometimes claimed that rearrest at least resets
9 the 90-day removal period under 8 U.S.C. § 1231(a)(1). *See, e.g., Farah v. INS*,
10 No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013)
11 (adopting this view). But as a court explained in *Bailey v. Lynch*, that view cannot
12 be squared with the statutory definition of the removal period in 8 U.S.C.
13 § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3,
14 2016). “Pursuant to the statute, the removal period, and in turn the [six-month]
15 presumptively reasonable period, begins from the latest of ‘the date the order of
16 removal becomes administratively final,’ the date of a reviewing court’s final
17 order where the removal order is judicially removed and that court orders a stay of
18 removal, or the alien’s release from detention or confinement where he was
19 detained for reasons other than immigration purposes at the time of his final order
20 of removal.” *Id.* None of these statutory starting points have anything to do with
21 whether or when an immigrant is detained. *See id.* Because the statutorily-defined
22 removal period has nothing to do with release and rearrest, releasing and
23 rearresting the immigrant cannot reset the removal period.

24 **C. Laos’ refusal to accept Mr. Khambounheuang, along with its**
25 **longstanding policy of not accepting deportees, provides good**
26 **reason to believe that he will not likely be removed in the**
reasonably foreseeable future.

27 Because the six-month grace period has long passed, this Court must
28 evaluate Mr. Khambounheuang’s *Zadvydas* claim using the burden-shifting

1 framework. At the first stage of the framework, Mr. Khambounheuang must
2 “provide[] good reason to believe that there is no significant likelihood of removal
3 in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This standard
4 can be broken down into three parts.

5 **“Good reason to believe.”** The “good reason to believe” standard is a
6 relatively forgiving one. “A petitioner need not establish that there exists no
7 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
8 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
9 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
10 foreseeable, significant likelihood of removal or show that his detention is
11 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
12 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
13 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
14 Petitioners need only give a “good reason”—not prove anything to a certainty.

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

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

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

11 Mr. Khambounheuang readily satisfies this standard for two reasons.

12 *First*, as explained above, Laos generally does not accept deportees. Last
13 year, zero people were removed to Laos; in the five years before that, between 0
14 and 11 people were removed per year. *See* U.S. Immigration and Customs
15 Enforcement, *Annual Report: Fiscal Year 2024*, at 100 (Dec. 19, 2024).¹¹
16 Although President Trump has pressured Laos to begin accepting deportees, that
17 has resulted in Laos issuing travel documents for only a few dozen nationals out
18 of the several hundred thousand Laotians. And since then, at least one court has
19 rejected the Trump administration's efforts to re-detain a Laotian immigrant
20 without following its own regulations. *See Phetsadakone v. Scott*, No. 25-cv-
21 1678-JNW, 2025 WL 2579569 (W.D. Wash. Sept. 5, 2025) (granting TRO to
22 Laotian national in light of the government's failure to follow its regulations
23 regarding re-detention and questions regarding the validity of his underlying
24 criminal conviction).

25 *Second*, Mr. Khambounheuang's own experience bears this out. ICE has
26 now had 25 years to deport him, yet ICE has proved unable to do so.

27
28 ¹¹ <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

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

5 **D. *Zadvydas* unambiguously prohibits this Court from denying**
6 **Mr. Khambounheuang’s petition because of his criminal history.**

7 If released on supervision, Mr. Khambounheuang poses no risk of danger
8 or flight. He has been on supervision for over 23 years. He spends most of his
9 time working and caring for his elderly mother. *Id.* at ¶ 8. Mr. Khambounheuang
10 fully acknowledges his criminal history and deeply regrets his conduct.

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

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

23 The Supreme Court rejected that argument. The Court appreciated the
24 seriousness of the government’s concerns. *Id.* at 691. But the Court found that the
25 immigrant’s liberty interests were weightier. *Id.* The Court had never
26 countenanced “potentially permanent” “civil confinement,” based only on the
27 government’s belief that the person would misbehave in the future. *Id.*
28

1 The Court also noted that the government was free to use the many tools at
2 its disposal to mitigate risk: “[O]f course, the alien’s release may and should be
3 conditioned on any of the various forms of supervised release that are appropriate
4 in the circumstances, and the alien may no doubt be returned to custody upon a
5 violation of those conditions.” *Id.* at 700. The Ninth Circuit later elaborated, “All
6 aliens ordered released must comply with the stringent supervision requirements
7 set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration
8 officer periodically, answer certain questions, submit to medical or psychiatric
9 testing as necessary, and accept reasonable restrictions on [their] conduct and
10 activities, including severe travel limitations. More important, if [they] engage[]
11 in any criminal activity during this time, including violation of [their] supervisory
12 release conditions, [they] can be detained and incarcerated as part of the normal
13 criminal process.” *Ma*, 257 F.3d at 1115. These conditions have proved sufficient
14 to protect the public over the last 23 years and will continue to.

15 **II. Second claim: ICE failed to comply with its own regulations before re-**
16 **detaining Mr. Khambounheuang, violating his rights under the Fifth**
17 **Amendment and the Administrative Procedures Act.**

18 In addition to *Zadvydas*’s protections, a series of regulations provide extra
19 process for someone who, like Mr. Khambounheuang, is re-detained following a
20 period of release. Under 8 C.F.R. § 241.4(l), ICE may re-detain an immigrant on
21 supervision only with an interview and a chance to contest a re-detention. When
22 an immigrant is specifically released after giving good reason why they cannot be
23 removed, additional regulations apply. ICE may revoke a noncitizen’s release and
24 return them to ICE custody due to failure to comply with conditions of release, 8
25 C.F.R. § 241.13(i)(1), or if, “on account of changed circumstances, the Service
26 determines that there is a significant likelihood that the [noncitizen] may be
27 removed in the reasonably foreseeable future.” *Id.* § 241.13(i)(2).
28

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

12 ICE is required to follow its own regulations. *United States ex rel. Accardi*
13 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
14 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
15 abide by certain internal policies is well-established.”). A court may review a re-
16 detention decision for compliance with the regulations. *See Phan v. Beccerra*, No.
17 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v.*
18 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)
19 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

20 None of the prerequisites to detention apply here. Mr. Khambounheuang
21 did not violate the conditions of his release. And there are no changed
22 circumstances that justify re-detaining him. No repatriation agreement has been
23 signed. Absent any evidence for “why obtaining a travel document is more likely
24 this time around[,] Respondents’ intent to eventually complete a travel document
25 request for Petitioner does not constitute a changed circumstance.” *Hoac v.*
26 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July
27 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D.
28 Kan. June 17, 2025)). Nor has Mr. Khambounheuang received the interview

1 required by regulation. No one from ICE has ever invited him to contest his
2 detention. *Id.*

3 Numerous courts have released re-detained immigrants after finding that
4 ICE failed to comply with applicable regulations. *Ceesay v. Kurzdorfer*, 781 F.
5 Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463
6 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017);
7 *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y.
8 Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267,
9 at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT,
10 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-
11 cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025
12 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1
13 (S.D.N.Y. Mar. 31, 2025). “[B]ecause officials did not properly revoke
14 petitioner’s release pursuant to the applicable regulations, that revocation has no
15 effect, and [Mr. Khambounheuang] is entitled to his release (subject to the same
16 Order of Supervision that governed his most recent release).” *Liu*, 2025 WL
17 1696526, at *3.

18 **III. Claim 3: ICE may not remove Mr. Khambounheuang to a third**
19 **country without adequate notice and an opportunity to be heard.**

20 In addition to unlawfully detaining him, ICE’s policies threaten
21 Mr. Khambounheuang’s removal to a third country without adequate notice and
22 an opportunity to be heard. These policies violate the Fifth Amendment, the
23 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).
6 The government “may not remove [a noncitizen] to a country if the Attorney
7 General decides that the [noncitizen’s] life or freedom would be threatened in that
8 country because of the [noncitizen’s] race, religion, nationality, membership in a
9 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
10 1208.16. Withholding of removal is a mandatory protection.

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

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

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

21 “[L]ast minute” notice of the country of removal will not suffice,
22 *Andriasian*, 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App’x 724 (9th
23 Cir. 2016), and for good reason: To have a meaningful opportunity to apply for
24 fear-based protection from removal, immigrants must have time to prepare and
25 present relevant arguments and evidence. Merely telling a person where they may
26 be sent, without giving them a chance to look into country conditions, does not
27 give them a meaningful chance to determine whether and why they have a
28 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. That is not enough time for a detained person to assess their risk in the third country and evidence to support a credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know nothing about a third country, but if given the opportunity to investigate, immigrants would find credible reasons to fear persecution or torture—like patterns of holding deportees indefinitely 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. Khambounheuang 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. Khambounheuang hereby requests such a hearing on any disputed facts.

1 **CONCLUSION**

2 For those reasons, Mr. Khambounheuang requests that this Court order the
3 respondents to prove that there is a “significant likelihood of removal in the
4 reasonably foreseeable future” and, if they do not, order his release. *Zadvydas*,
5 533 U.S. at 701. Moreover, this Court should prohibit the government from
6 removing Mr. Khambounheuang to a third country without due process
7 safeguards.

8
9 DATED: 9-17-25

Respectfully submitted,

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12 _____
13 SISAWANG KHAMBOUNHEUANG
14 Petitioner
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PROOF OF SERVICE

I, the undersigned, caused to be served this Petition for Writ of Habeas Corpus
by e-mail to:

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

Date: 9-30-25


Kara Hartzler

EXHIBIT A

1 **Sisawang Khambounheuang**

2 A# [REDACTED]

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 **SISAWANG KHAMBOUNHEUANG,**

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
Sisawang Khambounheuang
in Support of Petition
for a Writ of Habeas Corpus**

23 I, Sisawang Khambounheuang, declare:

- 24 1. I was born in Laos. My father was a Laotian soldier who fought in the Lao
25 Royal Army alongside the United States. After he was killed in the war, my
26 remaining family members and I were sent to a Thai refugee camp for
27 several years before finally coming to the United States in 1979. Soon after
28 we arrived in the United States, we all became lawful permanent residents.

¹ Mr. Khambounheuang is filing this motion and all associated 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 Kara Hartzler in Support of Appointment Motion attaches case examples.

- 1 2. In 1996, I was convicted of assault in Kansas. This conviction came from
2 an incident where I went with my brother-in-law to collect a debt. I did not
3 personally shoot anyone, but my brother-in-law did, and I was held jointly
4 responsible for the crime.
- 5 3. As a result of this conviction, I was eventually placed in removal
6 proceedings in Louisiana. An immigration judge ordered me removed on
7 July 17, 2000.
- 8 4. After I was ordered removed, ICE continued to detain me for about two
9 years. I was finally released on May 31, 2002, after I filed a habeas petition.
- 10 5. Since 2002, I have been reporting to ICE every year. I have never missed a
11 check in, and I have no other criminal convictions since then.
- 12 6. Even though I have never missed a check in and have no subsequent
13 criminal convictions, ICE arrested me when I attended my check in
14 appointment on August 13, 2025. They never gave me any advance notice
15 that I would be detained. Nor did they ever give me an informal interview
16 or a chance to contest my detention before they arrested me.
- 17 7. I have complied with ICE's request to fill out a form seeking my travel
18 documents. However, I have no family left in Laos, which makes it
19 unlikely that Laos will accept me.
- 20 8. I worked as a cook at a restaurant for many years, but I had to quit several
21 months ago to become the primary caretaker for my mother, who has early
22 onset dementia. Now that I am not around, she constantly asks where I am
23 because we are very close. Other people in our family have been trying to
24 take care of her, but it is very difficult for them.
- 25 9. I have no legal education or training. I did not graduate from high school
26 because I had to drop out early to help take care of my family, since my dad
27 was not around. I also do not speak English very well, so it would be
28 extremely difficult for me to represent myself.

1 I declare under penalty of perjury that the foregoing is true and correct,
2 executed on 9-17-25, in San Diego, California.
3

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5 **SISAWANG KHAMBOUNHEUANG**
6 Declarant
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EXHIBIT B

PLAINTIFFS' EXHIBIT NO.

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