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 9 **IN THE UNITED STATES DISTRICT COURT**
 10 **FOR THE DISTRICT OF ARIZONA**

11
 12 Ngo Van Quan,
 13
 14 Petitioner,
 15 v.
 16 Estepa, et al.,
 17 Respondents.


No. 25-cv-02407-PHX-DJH (JFM)
**ANSWER TO PETITION FOR A
 WRIT OF HABEAS CORPUS
 PURSUANT TO 28 U.S.C. § 2241**

18
 19 **I. INTRODUCTION.**

20 Respondents, by and through undersigned counsel, hereby respond to the Petition
 21 for Writ of Habeas Corpus (Doc. 1). Petitioner, Ngo Van Quan, is a repeat criminal
 22 offender with a lengthy list of violent convictions in the United States who is subject to a
 23 final order of removal to Vietnam. Most recently, he has been detained by U.S.
 24 Immigration and Customs Enforcement (“ICE”) since March 31, 2025, after he was
 25 released from criminal custody in Santa Ana, California, where he was serving time for
 26 the offenses of burglary, conspiracy, receiving stolen property and petty theft. In this
 27 habeas petition, Petitioner seeks a Court order directing ICE to immediately release him
 28 from immigration detention on an order of supervision. However, Respondents urge this

1 Court to deny his habeas request for release due to his substantial criminal history and
2 because he cannot establish that his removal is not likely to occur in the reasonably
3 foreseeable future. For these reasons, argued in full below, the Court should deny the
4 habeas petition.

5 II. FACTUAL AND PROCEDURAL BACKGROUND.

6 Petitioner is a native and citizen of Vietnam, born on  in
7 Vietnam. *See* Exhibit A, Declaration of Deportation Officer Miguel Martinez. On or about
8 May 27, 1988, Petitioner applied for admission at the Los Angeles airport. *Id.* ¶ 4. On that
9 same date, the Legacy Immigration and Naturalization Service (INS) officers admitted
10 him into the United States as a refugee, pursuant to Section 207 of the Immigration and
11 Nationality Act (INA). *Id.* On July 12, 1989, Petitioner filed an application for Creation
12 of Record of Lawful Permanent Residence, Form I-181, with INS. *Id.* ¶ 5. On July 20,
13 1989, INS approved Petitioner's Form I-181, pursuant to Section 209(a) of the INA,
14 thereby granting Petitioner permanent residency. *Id.* ¶ 6.

15 Since becoming a lawful permanent resident in 1989, Petitioner has received
16 numerous convictions of serious crimes over the last two decades. *See generally* Exhibit
17 A. On January 2, 1997, Petitioner was convicted of automotive burglary, burglary,
18 conspiracy to commit a crime, possession of burglary tools, tampering with evidence,
19 conspiracy to commit an automotive burglary crime and larceny and was sentenced to
20 252 days' incarceration. *Id.* ¶ 8. On March 14, 1997, Petitioner was convicted of the
21 offenses of burglary of a commercial vehicle and receiving stolen property and sentenced
22 to three years' probation. *Id.* ¶ 10. On April 22, 1997, Petitioner was convicted of the
23 offenses of providing false identification to police officers and possession of drug
24 paraphernalia, and he was sentenced to three years' probation and 10 days incarceration.
25 *Id.* ¶ 12.

26 On September 17, 1997, Petitioner was convicted of the offenses of providing false
27 identification to police officers, buying or selling articles with serial numbers removed,
28 driving without a license, and vehicle theft, and sentenced him to three years' probation
and 30 days' incarceration. Exhibit A ¶ 14. On January 28, 1998, Petitioner was convicted

1 of three counts of automotive burglary, probation violation, and attempting to commit
2 residential burglary and he was sentenced to 1,214 days incarceration. *Id.* ¶ 16. On
3 January 19, 2001, INS officers lodged an immigration detainer, to take Petitioner into
4 immigration detention after he was released from criminal custody. *Id.* ¶ 17. However,
5 the Lea County Jail did not honor the detainer, and Petitioner was released. *Id.*
6 Consequently, on November 25, 2002, Petitioner was convicted of the offenses of two
7 counts of receiving or transferring a stolen vehicle, and possession of burglary tools. *Id.*
8 ¶ 19. He was sentenced to 18 months' incarceration. *Id.* On June 11, 2003, Petitioner was
9 convicted of violating his parole and sentenced to three years' incarceration. *Id.* ¶ 21. On
10 June 12, 2003, Petitioner was convicted of the offenses of receiving or transferring a
11 stolen vehicle and resisting an officer. *Id.* ¶ 22. He was sentenced to two years'
12 incarceration. *Id.*

13 On June 30, 2003, Petitioner came to the attention of ICE officers pursuant to his
14 incarceration in the New Mexico Department of Correction (NMDOC). Exhibit A ¶ 23.
15 ICE lodged a Form I-247, an immigration detainer, with NMDOC. *Id.* On March 16,
16 2004, ICE issued Petitioner a Notice to Appear (NTA), Form I-862, charging him for
17 violating Section 237(a)(2)(A)(iii) of the INA, in that, at any time after admission, he was
18 convicted of an aggravated felony as defined in section 101(a)(43)(G) of the INA, a law
19 relating to a theft offense (including receipt of stolen property) or burglary offense for
20 which the term of imprisonment at least one year was imposed. *Id.* ¶ 24. On April 29,
21 2005, NMDOC turned over custody of Petitioner to ICE at the El Paso Service Processing
22 Center, in El Paso, Texas. *Id.* ¶ 25.

23 On May 12, 2005, an Immigration Judge (IJ), in El Paso, Texas, ordered Petitioner
24 removed from the United States to Vietnam. *Id.* ¶ 26. Because he did not appeal the IJ's
25 decision, it was an administratively final removal order. Accordingly, Petitioner has been
26 subject to a valid final removal order to Vietnam since May 12, 2005.

27 Four months later, on September 7, 2005, Petitioner was released from
28 immigration custody under an order of supervision (OSUP), Form I-220B. Exhibit A ¶
27. On February 22, 2007, Petitioner was convicted of the offense of violating a domestic

1 violence court order and was sentenced to three years' probation and 17 days
2 incarceration. *Id.* ¶ 29. Over the next several years, Petitioner continued to receive
3 numerous criminal convictions for offenses such as drug possession, grand theft auto,
4 criminal street gang activity, various possession of firearms convictions, and domestic
5 violence. *Id.* ¶¶ 29-123. At various times he was released from criminal custody into
6 ICE custody but was ultimately released on an OSUP each time. *Id.*

7 Most recently, on January 28, 2025, Petitioner was convicted of the offenses of
8 vandalism, burglary, possession of burglary tools, receipt of stolen property, drug
9 possession and carrying a switchblade. Exhibit A ¶ 125. He was sentenced to 176 days'
10 incarceration and two years' probation. *Id.* Just a few months later, on March 7, 2025,
11 Petitioner was arrested for the offense of burglary, conspiracy, receiving stolen property
12 and petty theft with more than two priors. *Id.* ¶ 126. On March 31, 2025, Petitioner was
13 released from Orange County Jail to ICE's Office in Santa Ana, California. *Id.* ¶ 127. On
14 April 1, 2025, ICE transferred Petitioner to the Florence Detention Center and
15 subsequently to the Central Arizona Florence Correctional Complex in Florence, Arizona.
16 *Id.* ¶ 128. On September 9, 2025, ICE submitted a travel document request for Petitioner
17 to the Vietnam Attache. *Id.* ¶ 129. ICE is currently awaiting a travel document from
18 Vietnam so that it can effectuate Petitioner's removal from the United States. *Id.* ¶ 130.

19 **III. ARGUMENT.**

20 **A. Standard Governing Detention of Aliens with Final Removal Orders.**

21 The detention, release, and removal of aliens subject to a final order of removal is
22 governed by § 241 of the INA, 8 U.S.C. § 1231. Pursuant to INA § 241(a), the Attorney
23 General has 90 days to remove an alien from the United States after an order of removal
24 becomes final. During this "removal period," detention of the alien is mandatory. *Id.* After
25 the 90-day period, if the alien has not been removed and remains in the United States, his
26 detention may be continued, or he may be released under the supervision of the Attorney
27 General. INA § 241, 8 U.S.C. § 1231(a)(3) and (a)(6). ICE may detain an alien for a
28 "reasonable time" necessary to effectuate the alien's removal. INA § 241(a), 8 U.S.C. §
1231(a). However, indefinite detention is not authorized by the statute. *Zadvydas v. Davis*,

1 533 U.S. 678, 689 (2001).

2 In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable
3 period of detention for aliens, like Petitioner, who are detained under section 1231(a). *See*
4 *Zadvydas*, 533 U.S. at 701-702. *Zadvydas* places the burden on the alien to show, after a
5 detention period of six months, that there is “good reason to believe that there is no
6 significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. If the
7 alien makes that showing, the Government must then introduce evidence to refute that
8 assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40
9 (9th Cir. 2002). The court must “ask whether the detention in question exceeds a period
10 reasonably necessary to secure removal. It should measure reasonableness primarily in
11 terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment
12 of removal. Thus, if removal is not reasonably foreseeable, the court should hold
13 continued detention unreasonable and no longer authorized by statute.” *Zadvydas*, 533
14 U.S. at 699.

15 **B. Petitioner’s Detention is Lawful and Constitutionally Permitted.**

16 Petitioner, after many years of criminal custody and being released from ICE
17 detention under OSUPs, most recently came into ICE detention after again being released
18 from criminal custody, on March 31, 2025. Exhibit A ¶ 127. He is subject to a valid, final
19 and executable removal order to Vietnam and has been since May 12, 2005. *Id.* ¶ 26.
20 Petitioner has been most recently detained for just over six months to allow the
21 government to execute his final removal order to Vietnam.

22 Therefore, to be entitled to release from detention, Petitioner has the burden to
23 show that his removal is not likely to occur in the reasonably foreseeable future.
24 *Zadvydas*, 533 U.S. at 701. Only then does the burden shift to the Government to show
25 that removal is significantly likely to occur in the reasonably foreseeable future. *Id.*
26 Petitioner has not met his burden to show that his removal is unlikely in the reasonably
27 foreseeable future and, even if he could, the Government can overcome that with evidence
28 showing that his removal is likely.

1 In *Zadvydas*, the Supreme Court designated six months as a presumptively
2 reasonable time period to allow the Government to remove an alien detained under
3 8 U.S.C. § 1231(a), but an alien is not automatically entitled to release after six months
4 of detention. *Id.* at 701 (“This 6-month presumption, of course, does not mean that every
5 alien not removed must be released after six months. To the contrary, an alien may be
6 held in confinement until it has been determined that there is no significant likelihood of
7 removal in the reasonably foreseeable future.”) (emphasis added). The passage of time
8 alone is insufficient to establish that no significant likelihood of removal exists in the
9 reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash.
10 2002). In *Lema*, where the alien had been detained for more than a year, the district court
11 held that the passage of time was only the first step in the analysis, and that the alien must
12 then provide good reason to believe that no significant likelihood of removal exists in the
13 reasonably foreseeable future. *Id.*

14 Petitioner cannot establish that his removal is not likely to occur in the reasonably
15 foreseeable future. As an initial matter, Petitioner’s detention is not prolonged. Petitioner
16 has only been detained since March 31, 2025, therefore the six month presumptively
17 reasonable period under *Zadvydas* only recently expired on October 1, 2025, just eight
18 days ago. Exhibit A at ¶ 25. Even if his ICE detention over the years were counted toward
19 the presumptively reasonable period under *Zadvydas*, which it should not be, it would
20 still be Petitioner’s burden to establish that his removal at this time is not likely. *Zadvydas*,
533 U.S. at 701. He has not met this burden.

21 In *Zadvydas*, the Court emphasized that the “basic purpose” of immigration
22 detention is “assuring the alien’s presence at the moment of removal” and concluded this
23 purpose was not served by the continued detention of aliens whose removal was not
24 “reasonably foreseeable.” *Zadvydas*, 533 U.S. at 699. Removal was not reasonably
25 foreseeable in *Zadvydas* because no country would accept the deportees or because the
26 United States lacked an extradition treaty with their home countries. Similarly, in *Clark*
27 *v. Martinez*, 543 U.S. 371, 386 (2005), an alien’s removal to Cuba was not reasonably
28 foreseeable when the Government conceded “that it is no longer even involved in

1 repatriation negotiations with Cuba.” *Id.* at 386. And in *Nadarajah v. Gonzales*, 443 F.3d
2 1069 (9th Cir. 2006), the Court of Appeals relied on the apparent impossibility of removal
3 in holding that an alien’s continued detention was not authorized where the Board of
4 Immigration Appeals had twice awarded the alien asylum, as well as protection under the
5 Convention Against Torture, yet his detention continued for over five years while the
6 Government appealed the decisions. *Id.* at 1081. The Ninth Circuit held that *Nadarajah*
7 had successfully demonstrated that, as a result of the asylum and CAT determinations,
8 there was a “powerful indication of the improbability of his foreseeable removal.” *Id.*

9 This case is distinguishable from *Zadvydas*, *Clark*, and *Nadarajah* because
10 Petitioner is an alien whom the Government lawfully can remove and is in the process of
11 removing. Further, here, the Government has successfully submitted a travel document
12 request to the Government of Vietnam and is awaiting receipt of travel documents. There
13 are currently no impediments to removing aliens to Vietnam. Accordingly, Petitioner’s
14 removal to Vietnam is foreseeable and Petitioner has failed to meet his burden to establish
15 otherwise. *See generally* Doc. 1. There is a significant likelihood of removal in the
16 reasonably foreseeable future such that Petitioner’s detention is not yet constitutionally
17 indefinite as contemplated by *Zadvydas*. 533 U.S. at 701. Indeed, uncertainty as to
18 Petitioner’s exact removal date does not warrant his release. *Prieto-Romero v. Clark*, 534
19 F.3d 1053, 1064 (9th Cir. 2008). In this case, there is no reason to believe that Vietnam
20 will not issue a travel document for Petitioner, and no reason why Petitioner cannot be
21 removed to Vietnam once the travel document is received. Petitioner’s detention is
22 therefore not prolonged, not indefinite, and remains constitutional. The habeas petition
23 should be denied.
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Respectfully submitted this 9th day of October, 2025.

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United States Attorney
District of Arizona

s/Theo Nickerson
THEO NICKERSON
Assistant United States Attorney
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2025, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and mailed a copy by U.S. Mail of the same to the following individual, who is not registered in the CM/ECF System:

Ngo Van Quan 
Florence Correctional Center
P.O. Box 6300
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s/ Theo Nickerson
Assistant United States Attorney