IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Brownsville Division

Tho Duc Huynh, *Petitioner*, v. Warden, El Valle Detention Center, *et al.*; *Respondents*.	Civ. Action No. 1:25-cv-156

PETITIONER'S REPLY MEMORANDUM IN SUPPORT OF
AMENDED PETITION FOR WRIT OF HABEAS CORPUS

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Petitioner Tho Huynh, by counsel, hereby submits this reply memorandum in support of his Amended Petition for Writ of Habeas Corpus (Dkt. No. 13).

Introduction

Petitioner was ordered removed from the United States to Vietnam in 2004. Well-established Supreme Court caselaw prevents the government from detaining an individual for more than 180 days after a final order of removal, absent a significant likelihood of removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Respondents already tried in 2007 to remove Petitioner to Vietnam and detained him for 95 days, before releasing him from detention precisely because they correctly determined that there was no significant likelihood of removal in the reasonably foreseeable future.

Eighteen years later, Respondents decided to rearrest Petitioner and throw him into a jail, without any articulable reason to believe that Vietnam was now more willing to accept him for removal. After re-detaining Petitioner, they waited three months before even *asking* the government of Vietnam to issue travel documents; their request is still pending nearly five months after it was sent, with no way to know whether Vietnam will answer (if at all) in "ten days, ten months, or ten years." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

In sum, nothing has changed with regards to Respondents' lack of *ability* to remove Petitioner in the reasonably foreseeable future; the only thing that has changed is that Respondents now have a greater *desire* to do so. Respondents have not demonstrated a significant likelihood of removal in the reasonably foreseeable future, and the writ of habeas corpus should issue.

Procedural History

Petitioner was admitted to the United States as a lawful permanent resident on October 7,

1992. Dkt. No. 10-1 at ¶ 4; Dkt. No. 10-8 at 5. On April 8, 1998, Petitioner was convicted of misdemeanor sexual battery, a crime for which the state-court judge imposed only a suspended sentence. Dkt. No. 10-1 at ¶ 5; Dkt. No. 10-8 at 5; Dkt. No. 13-1 at 2. Petitioner was placed into removal proceedings, and ultimately received an administratively final order of removal to his native Vietnam on October 5, 2004. Dkt. No. 10-1 at ¶ 8; Dkt. No. 13-1 at 6-7 (Board of Immigration Appeals ("BIA") affirmance of Immigration Judge removal order).

On March 1, 2007, U.S. Immigration and Customs Enforcement ("ICE") arrested Petitioner in order to carry out his removal to Vietnam. *See* Ex. A at ¶ 3. ICE held Petitioner in detention for 95 days before releasing him on an Order of Supervision, 8 U.S.C. § 1231(a)(3), because they could not remove him to Vietnam. *Id.* ¶¶ 3-4. *See also* Dkt. No. 1-2 (Petitioner's Order of Supervision dated June 4, 2007, acknowledging that ICE had been unable to remove him "during the period prescribed by law"); *id.* at 2 (boxes requiring Petitioner to obtain a travel document from Vietnam are un-checked). Petitioner thereafter maintained an unblemished record on his supervised release, *see id.* at 4-9, until in 2022 he was "referred to CART" (the Compliance Assistance Reporting Terminal, the lowest level of supervision that ICE operates).[1] *Id.* at 9. Meanwhile, Petitioner applied for a Vietnamese passport in 2019 but received no response from the government of Vietnam. *See* Ex. B. And on April 2, 2024, Respondents issued Petitioner an Employment Authorization Document ("EAD") under "Category C18," with which he works legally in the United States. *See* Ex. C.

Less than a year after issuing the EAD, on January 31, 2025, ICE again took Mr. Huynh back into custody without forewarning, ostensibly for the purpose of executing his removal order to Vietnam. Dkt. No. 10-3 at 8; Dkt. No. 10-1 at ¶ 10. But ICE then proceeded to do *nothing at*

[1] See U.S. Dep't of Homeland Sec'y, *Privacy Impact Assessment Update for the Enforcement Integrated Database* (Dec. 3, 2018), *available at* https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-eid-december2018.pdf.

all to remove Mr. Huynh for 88 days—nearly three full months—until on April 29, 2025, ICE sent a letter requesting travel documents to the Vietnamese consulate. Dkt. No. 10-7. The letter requested that the Vietnamese consulate "issue a passport or other suitable travel document to Mr. HUYNH within 30 days of this request." *Id.* at 1.[2] Indeed, the government of Vietnam has agreed to either issue travel documents to its citizens or otherwise respond within 30 days of a request from the United States. *See* Ex. D (USA-Vietnam Memorandum of Understanding) at 8 ¶¶ 3-4.

But 30 days came and went—and then another 30 days, and another, and another—with no response from the Vietnamese consulate, *see* Dkt. No. 10-1 at ¶ 14. Nearly five months after sending the request, ICE has seemingly done nothing whatsoever to follow up with the Vietnamese consulate. *Id.* Petitioner has now been detained for 235 days (nearly eight months) since his re-detention, with ICE making no progress whatsoever on obtaining travel documents to Vietnam. Counting the 95 days Petitioner was detained in 2004-2007, his total custody under 8 U.S.C. § 1231(a)(6) adds up to 330 days—nearly a full year.[3]

During Petitioner's current detention, ICE has carried out one internal custody review. On April 16, 2025, ICE determined to maintain Petitioner in custody based on two reasons: "ICE has the necessary means to obtain a travel document to effectuate removal and removal is likely

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[2] Respondents' travel document request to the government of Vietnam is apparently not in proper form, as it lacks "a copy of the final order of removal, sentence imposed, copies or summary of criminal judgment and conviction documents if the crimes were the basis for removal, decision of discharge from prison or reduction of sentence, (documents in English are expected be translated into Vietnamese and certified by a competent authority)[.]" *Compare* Dkt. No. 10-7 *with* Ex. C (USA-Vietnam Memorandum of Understanding) at 4 ¶ 2.

[3] Respondents argue that "[f]or purposes of this Court's jurisdiction under 28 U.S.C. § 2241, the relevant time period in which Petitioner has been continually detained by ICE started on January 31, 2025, when Petitioner was arrested and taken into ICE custody," Dkt. No. 9 at 9 ¶ 18, but they provide no reason why Petitioner's 2007 detention under the same statute and for the same purposes does not also count towards the total. Under Respondents' view of the 180-day clock, if the government releases a noncitizen from custody after 181 days on a finding that he cannot be removed, then re-arrests him the following morning, the holding of *Zadvydas* does not allow him to file a habeas corpus petition until he spends *another* 181 days in detention. This is obviously and apparently absurd.

and reasonably foreseeable. Your illegal entry into the United States shows a disregard to laws and indicates that you are a flight risk." Dkt. No. 13-9 at 1. This was, of course, false: as of April 16, 2025, ICE had not even *asked* the Vietnamese consulate for a travel document, much less received any assurances that one would be forthcoming, *see* Dkt. No. 10-7; and Petitioner never unlawfully entered the United States, *see* Dkt. No. 10-1 at ¶ 4.

Petitioner's health is declining rapidly while in detention for nearly eight months. As he explains, "I suffer from medical problems that require injections for my eyes, ear, and face, but the facility has not been able to provide this treatment. They have not found a doctor to perform the injections and only give me Tylenol or Advil, which do not relieve my pain. My eye keeps getting worse, it constantly waters, and is almost swollen shut. There is also a COVID-19 outbreak inside the facility, and many detainees are infected. This places me at serious risk, especially since my dorm is overcrowded and the conditions are very unsanitary." Ex. A at ¶ 7; *see also* Dkt. Nos. 1-4 through 1-8.

Meanwhile, Petitioner is taking steps to attempt to reopen his removal case and rescind his order of removal, but those steps have not yet borne fruit. On March 21, 2025, Petitioner filed a Motion to Reopen, *see* Ex. E hereto (BIA decision denying Motion to Reopen) at 1. The BIA denied the motion on May 16, 2025. *Id.* Petitioner then appealed the BIA's decision denying his Motion to Reopen to the U.S. Court of Appeals for the Fourth Circuit. *Huynh v. Bondi*, No. 25-1619 (4th Cir., filed June 2, 2025). On June 26, 2026, the Fourth Circuit entered a stay of removal pending the disposition of the appeal. Dkt. No. 13-10.

Other than taking advantage of legal remedies available to him under the statute and regulations, Petitioner denies having "refused to help with efforts to obtain Travel Documents from Vietnam." Dt. No. 10-1 at ¶ 15. As Petitioner explains, on one occasion, *while he was in*

the hospital for head pain, ICE officials asked him to sign a document; he refused to do so without his lawyer reviewing it first. *See* Ex. A at ¶ 5; Ex. F. But at no time since Petitioner returned from the hospital to the detention center did Respondents ask Petitioner to sign any travel documents, and Petitioner affirmatively stated that he would do so if asked, as long as his attorney reviewed them first. *See* Ex. A at ¶ 6; Ex. F.

Legal Standard

"[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days[.]" 8 U.S.C. § 1231(a)(1)(A). The 90-day removal period generally begins "[t]he date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). However, "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien," then the removal period begins as of "the date of the court's *final order*," 8 U.S.C. § 1231(a)(1)(B)(ii)—not the entry of the stay of removal, but the final order of the Court of Appeals. Finally, the removal period may be extended beyond 90 days "if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C).

Once the 90-day removal period has ended, the statute provides no mechanism for the government to unilaterally elect to rewind the clock back to zero simply by re-detaining the alien, or because the government believes it now has a better chance of actually removing the alien. *See generally* 8 U.S.C. § 1231(a)(1). "[T]he text of § 1231(a)(1)(B) does not mention restarting the removal period." *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *8 (W.D. La. Oct. 15, 2019), *R&R adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019), citing *Bailey v. Lynch*, 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) ("The removal period does not restart simply

because an alien who has previously been released is taken back into custody."); *see also Alam v. Nielsen*, 312 F. Supp. 3d 574, 581-82 (S.D. Tex. 2018) (rejecting the argument that the Section 1231(a)(1)(A) removal period is restarted when an Order of Supervision is revoked for the purposes of removal); *Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025), citing *Nguyen v. Hyde*, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month period not reset where alien is "re-detained" after having been on supervised release).

Detention during the removal period is mandatory. 8 U.S.C. § 1231(a)(2)(A). Certain noncitizens may be detained beyond the removal period. 8 U.S.C. § 1231(a)(6). Constitutional limits on detention beyond the removal period are well established: detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas*, 533 U.S. at 701. "[W]here detention's goal is no longer practically attainable, detention no longer 'bear[s][a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). The purpose of detention beyond the removal period is to "secure[] the alien's removal." *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court "read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien's removal." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699). As the Supreme Court explained, where there is no possibility of removal, immigration detention presents substantive due process concerns because "the need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is weak or nonexistent." *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when "necessary to bring about that alien's removal." *Id.* at 689.

To balance these competing interests, the *Zadvydas* Court established a rebuttable

presumption regarding what constitutes a "reasonable period of detention" for noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to justify continued detention if the noncitizen provides a "good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

Where a petitioner has provided "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701. Finally, what constitutes "the reasonably foreseeable future" is not a fixed period of time: "for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.*

Argument

I. Petitioner is not in the removal period, and is currently detained pursuant to 8 U.S.C. § 1231(a)(6).

Petitioner was issued an administratively final order of removal on October 5, 2004. Dkt. No. 13-1 at 6-7. He was neither confined in criminal custody nor did he appeal to the Court of Appeals at that time, and accordingly his Section 1231(a)(1)(A) removal period ended on January 3, 2005. Since then, Petitioner's detention is permitted (if at all) pursuant to 8 U.S.C. § 1231(a)(6). *See* Dkt. No. 9 at 8 ¶ 16 (conceding detention under 8 U.S.C. § 1231(a)(6)); Dkt. No. 10-8 at 1 ("In the alien subject to mandatory detention based on statutes and allegations? N/A. . . Is the final order date within 90 days of the current date? No.").

Although Petitioner recently obtained a stay of removal from the U.S. Court of Appeals for the Fourth Circuit on June 26, 2025, *see* Dkt. No. 13-10, this does not serve to reset the removal period clock to zero, which only happens upon "the date of the [Fourth Circuit's] final

order[.]" 8 U.S.C. § 1231(a)(1)(B)(ii); *see Hendricks v. Reno*, 221 Fed. App'x 131, 133 (3d Cir. 2007) (removal period restarts only after conclusion of review by Court of Appeals).

II. Petitioner has met his initial burden of showing no significant likelihood of removal in the reasonably foreseeable future, and Respondents have not replied with any evidence to the contrary.

Petitioner has now been detained for a cumulative 330 days: nearly five months beyond the 90-day removal period and an additional nearly two months beyond the 180-day *Zadvydas* period. Continued detention is permissible only if there is a significant likelihood of removal in the reasonably foreseeable future. Petitioner now bears the initial burden of "provid[ing] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" 533 U.S. at 701. And as the Supreme Court held that "for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink," *id.*, therefore after nearly a full year of "prior postremoval confinement"—nearly double the presumptive 180-day period under Section 1231(a)(6)—the window of time that constitutes the "reasonably foreseeable future" must be vanishingly short.

Here, Petitioner meets his burden by showing *the government's own conclusion* in 2007 that removal was not reasonably foreseeable (Dkt. No. 13-2), coupled with the lack of any articulable reason to believe that fact has changed over time. It is simply incorrect that "the Petition fails to cite any evidence, other than conclusory statements," and that the Petition relies solely on the passage of time to try to meet Petitioner's burden. Dkt. 9 at 10 ¶ 20. To the contrary, Petitioner attached the government's own finding that he cannot be removed. Dkt. No. 13-2.

In addition, Petitioner herewith provides his April 2024 Employment Authorization Document, with "Category C18." *See* Ex. C. Pursuant to 8 U.S.C. § 1231(a)(7), "No alien

ordered removed shall be eligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that—(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien, or (B) the removal of the alien is otherwise impracticable or contrary to the public interest." In addition, pursuant to 8 C.F.R. § 274a.12(c)(18), a "C18" work permit may be issued "only if the alien cannot be removed due to the refusal of all countries designated by the alien or under section 241 of the Act to receive the alien, or because the removal of the alien is otherwise impracticable or contrary to the public interest." Accordingly, just over a year ago, Respondents still understood that removal was either impossible or impracticable.

Finally, although it is true that the mere passage of time does not in and of itself suffice to meet a petitioner's burden under *Zadvydas*, the passage of an uncommonly long period of time under circumstances where the receiving government has promised a quick response should at least constitute secondary evidence in favor of Petitioner. Here, the government of Vietnam has agreed to respond to travel document requests within 30 days, Ex. D at 4 ¶¶ 4-5; but nearly five months later, they have given no answer to Respondents' request for travel documents for this Petitioner.

This case is on all fours with *Nguyen v. Scott*, 2025 WL 2419288 (W.D. Wash., Aug. 21, 2025). In *Nguyen*, the court determined that the Section 1231(a)(6) period is counted cumulatively, and does not reset upon re-detention. *Id.* at *13. In Nguyen, as here, "Petitioner has shown that ICE did not even request that Vietnam issue him a travel document until after he filed a habeas petition," and ICE's revocation of release paperwork "falsely stated that circumstances had changed because his case was 'under current review by the Government of Vietnam for the issuance of a travel document.'" *Id.* at *14. The court thus found that the

petitioner had met his burden of proof under *Zadvydas*. Finally, the court held that the government had not provided evidence sufficient to rebut the presumption, where its declarations "[a]t most [] establish that Vietnam is accepting more of its citizens for repatriation, including at least some citizens who arrived in the United States before 1995," and found "unpersuasive" the government's argument that "this evidence of *some* increased deportations is enough to establish a significant likelihood that *any* Vietnamese citizen, including Petitioner, will be removed to Vietnam in the reasonably foreseeable future, justifying their detention." *Id.* at *16.

Since Petitioner has provided "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future"—and, indeed, Respondents themselves so found in April 2024—this case is entirely different from *Andrade v. Gonzalez*, 459 F.3d 538 (5th Cir. 2006), cited in Respondents' memorandum (Dkt. No. 9 at 10 ¶ 20) where a habeas petitioner relied *solely* on the passage of time to argue that they had met their burden. Petitioner's evidence is sufficient to shift the burden to the government to "respond with evidence sufficient to rebut" Petitioner's showing. *Zadvydas*, 533 U.S. at 701; *see also Escalante*, 2025 WL 2206113, at *3 (citing 8 C.F.R. § 241.4(b)(4) for the proposition that "upon revocation of supervised release, it is the Service's burden to show a significant likelihood that the alien may be removed.").

To be clear, Petitioner does not argue that Respondents must have travel documents in hand in order to re-detain him or to continue his custody past 180 days. But Respondents must have some *articulable* reason, which they present to the court through evidence, to believe that Vietnam will issue such travel documents. As the Fifth Circuit explained in the *Zadvydas* case on remand from the Supreme Court, a noncitizen with a final order of removal can be returned to immigration custody "upon a showing that. . . there has then become a substantial likelihood of

removal in the reasonably foreseeable future[.]" *Zadvydas v. Davis*, 285 F.3d 398, 404 (5th Cir. 2002). Here, Respondents have made no such showing: the government's only evidence that removal is reasonably foreseeable consists of a *request* sent to the Vietnamese consulate (Resp. Ex. 7) nearly five months ago, with no response from the consulate and no follow-up whatsoever from ICE.[4] (Again, the request was not even *sent* until 88 days after Petitioner was re-detained by ICE.)

It does not take much imagination to conceive of what evidence the government has at its disposal, unavailable to Petitioner, which the government chose not to provide this Court. How many requests for travel documents for "pre-1995 Vietnamese aliens" has the government of Vietnam granted in the past six months, how many has it denied, and how many has it ignored? Since the government of Vietnam specifically requires criminal conviction information, *see* Ex. D at 4 ¶ 2, do they issue travel documents to deportees with convictions for sex offenses? Any of these might have sufficed to meet the government's burden to "respond with evidence sufficient to rebut" Petitioner's showing, and their absence in the record speaks volumes. In a habeas corpus proceeding in which discovery is not generally available to Petitioner without leave of Court, the absence of such evidence surely cannot be to Petitioner's detriment. *See also Singh*, 362 F. Supp. 3d at 101 ("[N]othing in the record suggests that DHS is now any closer to obtaining the necessary documents than it was when Singh first was taken into custody."); *Senor v. Barr*, 401 F. Supp. 3d 420, 431 (W.D.N.Y. 2019) ("The government has not given this Court any reason to believe that removal is significantly likely to occur in the reasonably foreseeable

[4] Respondents also provide this Court with an internal ICE email stating that the government's "policy that there is generally no significant likelihood of removal to Vietnam of pre-1995 Vietnamese aliens is hereby rescinded." Dkt. No. 10-10 at 1. This broadcast memo—issued after Petitioner had already been detained for 129 days, so therefore irrelevant to justify Petitioner's initial detention—means that Respondents no longer concede the legal test at issue in this litigation; but it certainly does not constitute evidence before this Court that there *is* a significant likelihood of removal of this Petitioner. A litigant cannot manufacture affirmative evidence of a disputed fact, merely by revoking its prior stipulation that the fact does not exist.

future. . . . So there is a real question about when—or even whether—that removal will occur."); *Agabada v. Ashcroft*, 2002 WL 1969660, at *1 (D. Mass. Aug. 22, 2002) ("The affidavit of the deportation officer supporting the motion to dismiss gives the court no assurance that removal will occur 'in the reasonably foreseeable future.' . . . . The respondent's submission gives the court no confidence as to when, or even whether, the petitioner will ever be repatriated.").

Ultimately, Respondents' memorandum of law does not actually attempt to argue that they have provided "evidence sufficient to rebut [the] showing" of no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701; *see also Singh*, 362 F. Supp. 3d at 101-102 ("Furthermore, despite this Court's explicit invitation, DHS has done nothing to rebut that showing. DHS has not produced anything from the Indian consulate providing even a possible timeline for obtaining travel documents or deportation."). Therefore, if this Court finds that Petitioner has met his initial burden of production, Respondents have no remaining defense, and the writ of habeas corpus should issue.

III. This Court should not credit Respondents' conclusory statement that Petitioner somehow is at fault for his own prolonged detention.

Respondents offer two reasons why, they claim, Petitioner is responsible for his own prolonged detention: first, because he "refused to help with efforts to obtain Travel Documents from Vietnam and denied receipt or acknowledgement of ICE's Warning for Failure to Depart," Dkt. No. 9 at 11 ¶ 21; and second, that "the Petitioner voluntarily challenged the 2003 removal order by appealing to the Fourth Circuit BIA's May 2025 denial of Petitioner's request to reopen BIA's 2004 final decision on removal," thus "appealing a removal order beyond the statutory deadline to do so[.]" *Id.*

First, as Petitioner and his immigration counsel explain, ICE asked Petitioner to sign travel documents on one occasion, *while he was in the hospital for head pain*; they never

followed up with him after he returned to the detention center. *See* Ex. A at ¶¶ 5-6; Ex. F. The party unreasonably delaying Petitioner's removal is not Petitioner but Respondents.

Petitioner also refused to sign the "Warning for Failure to Depart" document presented to him on April 9, 2025, again because his lawyer had advised him not to sign any documents without her review. But Respondents cannot draw any causal connection between Petitioner's failure to sign the "Warning for Failure to Depart" and the Vietnamese consulate's utter non-responsiveness to their travel documents request, as the "Warning for Failure to Depart" is not a document provided to the consulate. Dkt. No. 10-7.

Second, as to Petitioner's good-faith exercise of his legitimate procedural rights to seek to set aside his removal order, on March 21, 2025, Petitioner filed a motion before the Board of Immigration Appeals ("BIA") to set aside his 2004 removal order on the basis that due to an intervening Supreme Court decision in 2018, his criminal convictions are no longer sufficient to strip him of his status as lawful permanent resident and render him deportable. *See* Ex. E. After the BIA denied the motion, *id.*, Petitioner then appealed the BIA's decision denying his Motion to Reopen to the U.S. Court of Appeals for the Fourth Circuit. *Huynh v. Bondi*, No. 25-1619 (4th Cir., filed June 2, 2025). On June 26, 2026, the Fourth Circuit entered a stay of removal pending the disposition of the appeal. Dkt. No. 13-10. Respondents are thus incorrect the Petitioner "appeal[ed] a removal order beyond the statutory deadline to do so," Dkt. No. 9 at 11 ¶ 21: Petitioner did not appeal his 2004 removal order to the Fourth Circuit, but rather the May 16, 2025 decision denying his Motion to Reopen, Ex. E. The Fourth Circuit would not have issued a stay of removal if the appeal were obviously and apparently 21 years untimely. *See Nken v. Holder*, 566 U.S. 418, 434 (2009) (requiring a strong showing of likelihood of success on the merits before a Court of Appeals may issue a stay of removal).

Respondents' citations to *Lawal v. Lynch*, 156 F. Supp. 846 (S.D. Tex. 2016) and *Balogun v. INS*, 9 F.3d 347 (5th Cir. 1993) are thus unavailing: in the former case, the petitioner "told the Consulate that he had renounced his Nigerian citizenship," 156 F. Supp. at 854; in the latter case, the petitioner frustrated his own removal by "deliberately withholding information and otherwise obstructing the INS from obtaining a travel document from the Nigerian Embassy." 9 F.3d at 351. To the contrary, as the Western District of Texas held in *Glushchenko v DHS*, 566 F. Supp. 3d 693, 709 (W.D. Tex. 2021):

> This court has found no bright-line standard establishing how much and what type of evidence is necessary for the government to put forth to justify the continued detention of an alien under § 1231(a)(1)(C). As such, the court adopts the standard of proof used in other civil confinement contexts and holds that the government must demonstrate a lack of cooperation by clear and convincing evidence to justify extended detention. Furthermore, the court implements a two-part test to establish a lack of cooperation: (1) the alleged non-compliance with removal efforts must be a product of the detainee's intentional or deliberate conduct; and (2) the non-compliance must deprive the government of documents necessary to effectuate a departure from the United States or otherwise prevent the alien's removal from the United States subject to an order of removal. Finally, the court finds that the government is required to renew requests for compliance with the removal process on a regular basis until the government can obtain such compliance.

Applying this standard, Respondents have not demonstrated non-cooperation by clear and convincing evidence. First, their evidence of non-compliance consists of one nonspecific and wholly conclusory sentence in a declaration: "on April 30, 2025, HUYNH refused to help with efforts to obtain Travel Documents from Vietnam." Dkt. No. 10-1 at ¶ 15. Second, the alleged non-compliance (Petitioner's failure to sign a travel document application while in the hospital for head pain, unless his lawyer first reviewed the documents) does not meet the two-part test. Finally, the government did not once renew its request for compliance after Petitioner returned to the detention center. *See also Babanov v. Velasco*, 2010 WL 11646530, at *9 (S.D. Tex. June 22, 2010) ("The Court holds that Section 1231(a)(1)(C) may not be used to justify continued

detention when ICE has not made reasonable efforts to remove that alien and has not presented the alien with a reasonable opportunity to complete the travel documents it claims are necessary to his departure.").

For the foregoing reasons, Respondents' arguments regarding Petitioner's alleged non-compliance with removal are unavailing.

IV. Petitioner has exhausted all administrative remedies; in any event, exhaustion is not required for a District Court to grant a habeas petition.

Respondents' argument that "the Court should dismiss Petitioner's habeas action for failure to exhaust administrative remedies," Dkt. No. 9 at 12 ¶ 23, is belied by the facts and finds little support in the two-and-a-half decades of caselaw interpreting *Zadvydas*.

Petitioner was re-detained by ICE and his Order of Supervision revoked on January 31, 2025. *See* Dkt. No. 10-1 at ¶ 10. Pursuant to 8 C.F.R. § 241.4(*l*)(1), Petitioner should have been "afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification," but ICE violated this regulation and did not afford an initial informal interview. *See* Dkt. No. 10-10.

Next, on March 26, 2025, ICE conducted an internal review of Petitioner's custody, consisting of a file review and an interview. *See* Dkt. Nos. 10-5, 10-6. This review hardly sufficed as a due-process safety valve sufficient to deprive this Court of habeas jurisdiction, as is evident by ICE's Decision to Continue Detention on April 16, 2025 that Petitioner should remain in custody based on two reasons: "ICE has the necessary means to obtain a travel document to effectuate removal and removal is likely and reasonably foreseeable. Your illegal entry into the United States shows a disregard to laws and indicates that you are a flight risk." Dkt. No. 13-9 at 1. Again, this was false: as of April 16, 2025, ICE had not even *asked* the Vietnamese consulate

for a travel document, much less received assurances that one would be forthcoming, *see* Dkt. No. 10-7; and Petitioner never unlawfully entered the United States, *see* Dkt. No. 10-1 at ¶ 4.

The April 23, 2025 file review states that within three months (or by July 23, 2025), "jurisdiction over the custody decision in your case will be transferred to the ICE Headquarters (ERO Removal Division)[.]" Dkt. No. 13-9 at 1. Petitioner duly checked the box requesting a personal interview. *Id.* at 2. Petitioner's deadline for submission of evidence to the ERO Removal Division has not yet elapsed as it is timed to the not-yet-scheduled interview, *id.* Yet nearly two months thereafter, ICE headquarters has not scheduled the interview. *See* Dkt. No. 10-1. The failure of the government to timely provide Petitioner with the procedures to which he is entitled to by regulation cannot possibly be charged to Petitioner as a failure to exhaust administrative remedies.

In any event, the administrative remedies at issue here are not mandatory, and exhaustion is merely a prudential requirement. *See, e.g.*, *Salad v. Dep't of Corr.*, 769 F. Supp. 3d 913, 921–22 (D. Alaska 2025); *Nassar v. Clausen*, 2008 WL 314698, at *1 (W.D. Mich. Feb. 4, 2008) ("there is no administrative exhaustion requirement as to this kind of habeas challenge"). The two cases cited by Respondents, Dkt. No. 9 at p. 12 ¶ 25, are distinguishable: in *Parker v. Sessions*, 2018 WL 11491450, at *1 (S.D. Tex. July 16, 2018), the habeas petition was dismissed first and foremost "because, to date, [the petitioner] has not been in ICE custody for longer than six months. Likewise, he has not provided any evidence that his removal will not occur in the 'reasonably foreseeable future.'"). Here, as described above, the Petitioner has been detained for 235 days since his re-detention, or 330 days in total. And in *Hung Van Le v. Sessions*, 2018 WL 3361515, at *1 (S.D. Tex. July 10, 2018), the court dismissed the habeas petition explaining that "Le's reliance on *Zadvydas* is unavailing because he has not been in

custody for longer than six months."

Respondents' Motion to Dismiss on the grounds of failure to exhaust administrative remedies should therefore be denied.

Conclusion

For the foregoing reasons, Respondents' Motion to Dismiss should be denied, and Petitioner's petition for writ of habeas corpus should be granted. This Court should order Petitioner released from custody on an Order of Supervision, 8 U.S.C. § 1231(a)(3).

Respectfully submitted,

Date: September 23, 2025

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Certificate of Service

I, Simon Sandoval-Moshenberg, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants.

Respectfully submitted,

Date: September 23, 2025

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