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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOC MINH NGUYEN,

Petitioner,

v.

WARDEN, Otay Mesa Detention Facility; FIELD OFFICE DIRECTOR, San Francisco Field Office, United States Immigration and Customs Enforcement; DIRECTOR, United States Immigration and Customs Enforcement; SECRETARY, United States Department of Homeland Security; and UNITED STATES ATTORNEY GENERAL,

Respondents.

CIVIL CASE NO.: 25-CV-2441-AGS

Amended[1] Petition for a Writ of Habeas Corpus

[8 U.S.C. § 2241]

[1] Assistant United States Attorney Janet Cabral notified undersigned counsel in writing that she consented to the filing of an amended petition, and undersigned counsel agreed to submit it on October 24, 2025, a week before the government's response comes due. *See* Exh. C. Mr. Nguyen therefore submits this amended petition under Fed. R. Civ. Pro. 15(a)(2).

INTRODUCTION

Loc Minh Nguyen and his family fled Vietnam in 1979. In the 1990s, he sustained some theft-related convictions, leading to a final order of removal in 2001. But there was a problem: Vietnam has a longstanding policy of not accepting pre-1995 Vietnamese immigrants for deportation. When the former Immigration and Naturalization Service ("INS") could not remove Mr. Nguyen, they released him on an order of supervision. Mr. Nguyen remained on supervision for 24 years.

Nevertheless, ICE re-detained him on June 4, 2025. Contrary to regulation, ICE did not tell Mr. Nguyen why was he was being detained—whether to suggest that he was being detained for a violation or to identify any changed circumstances that made his removal more likely—or give Mr. Nguyen an opportunity to contest re-detention. He has now been detained for over four and a half months. ICE appears to have made little effort to remove him during that time. His deportation officer has never even met with him.

ICE's failure to follow its own regulations is a sufficient reason to release Mr. Nguyen. In recent weeks, Judges Huie, Simmons, Robinson, Montenegro, Bashant, and Ohta have all released immigrants based on such failures. *See, e.g.*, *Ngo v. Noem*, 25-cv-02739-TWR-MMP, ECF. No. 11 (Oct. 23, 2025); *Ho v. Noem*, 25-cv-2453-BAS-BLM, ECF No. 11 (S.D. Cal. Oct. 20, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).

Mr. Nguyen's detention also violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), because—having proved unable to remove him for nearly 25 years, and

having made little effort to remove him months into his detention—the government cannot show that there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. This Court should grant this petition on both grounds.

STATEMENT OF FACTS

I. Mr. Nguyen was ordered removed 24 years ago, and ICE has proved unable to remove him since then.

Mr. Nguyen came to the United States in December 1979, fleeing the communist regime in Vietnam. Exh. A at ¶ 1. He was about five years old. *Id.* A family from North Carolina sponsored him and his parents. *Id.* He was admitted as a refugee and received a green card. *Id.*

As a young man, Mr. Nguyen committed some theft offenses. After a felony offense around 1994, the government put him in removal proceedings. *Id.* at ¶ 2. But he missed his court date because of an arrest for another theft offense. *Id.* at ¶ 3. Eventually, on January 10, 2001, he was ordered removed. *Id.* at ¶ 4. All told, he spent about 16 months in immigration custody. *Id.* at ¶ 5. Mr. Nguyen does not remember how long he was detained after his removal order was entered, but federal law required ICE to hold him for at least three months. 8 U.S.C. § 1231(a). Though he never refused to cooperate with ICE in seeking removal, ICE proved unable to remove him, and he was released. Exh. A at ¶ 5.

Mr. Nguyen lived free in the community for over two decades. He did get some additional convictions, and ICE sometimes revoked his release under 8 C.F.R. § 241.4(*l*) for periods of 90 days or less. *Id.* at ¶ 6.

On June 4, 2025, ICE rearrested Mr. Nguyen. *Id.* at ¶ 7. This time, no one told him why he was being detained, and he did not get a chance to explain why he shouldn't be. *Id.* Nor did anyone tell him what had changed after 20-plus years to make his removal more likely. *Id.*

Those failures continue to this day. As of October 22, 2025, over four-and-a-half months after Mr. Nguyen's arrest, no one has told him why he was re-detained. Exh. B at ¶ 1. No one has told him what changed to make his removal significantly likely or suggested that he was re-detained for a violation of his supervision conditions. *Id.* He has not received an informal interview. *Id.* No one has given him the chance to explain why he should not be re-detained. *Id.* In fact, he has never met with an ICE officer since his arrival at Otay Mesa Detention Center. *Id.* at ¶ 2.

II. Vietnam has a longstanding policy of not accepting most Vietnamese immigrants who entered before 1995.

There is an obvious reason why ICE has proved unable to remove Mr. Nguyen for the last 24 years: Vietnam has a longstanding policy of not accepting most pre-1995 Vietnamese immigrants for deportation.

In 2008, Vietnam and the United States signed a repatriation treaty under which Vietnam agreed to consider accepting certain Vietnamese immigrants for deportation. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-1995 Vietnamese immigrants, providing, "Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995." Agreement Between the United States of America and Vietnam, at 2 (Jan. 22, 2008).[2]

Despite that limit, the first Trump administration detained Vietnamese immigrants and held them for months, while the administration tried to pressure Vietnam to take them. *See Trinh*, 466 F. Supp. 3d at 1083–84. That possibility did not materialize, and the administration was forced to release many detainees in 2018. *See id.* at 1084. "In total, between 2017 and 2019, ICE requested travel documents for pre-1995 Vietnamese immigrants 251 times. Vietnam granted

[2] available at https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf

those requests only 18 times, in just over seven percent of cases." *Id.*

Eventually, in 2020, the administration secured a Memorandum of Understanding ("MOU") with Vietnam, which created a process for removing pre-1995 Vietnamese immigrants.[3] The MOU limited such removals to persons meeting certain criteria, but many these criteria have been shielded from public view. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *14 (W.D. Wash. Aug. 21, 2025). Section 8 of the MOU also requires ICE to submit a documentation package along with repatriation requests, which includes a self-declaration from the person to be removed. (Having never met with Mr. Nguyen, ICE could not have obtained that self-declaration from Mr. Nguyen. Exh. B at ¶ 2.)

Even after signing the MOU, Vietnam overwhelmingly declined to timely issue travel documents for pre-1995 immigrants. By October 2021, ICE had adopted a "policy of generally finding that 'pre-1995 Vietnamese immigrants' . . . are not likely to be removed in the reasonably foreseeable future." Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV- 316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021). That admission aligned with two years' worth of quarterly reports that ICE agreed to submit as part of a class action settlement. Those quarterly reports showed that between September 2021 and September 2023, only four immigrants who came to the U.S. before 1995 were given travel documents and deported. Asian Law Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports).[4] During the same period, ICE made 14 requests for travel documents that, as of 2023, had not been granted, including requests made months or years before the September 2023 cutoff. *See id.* (counsel's count based on quarterly reports).

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[3] Available at https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52cb55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf

[4] https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports

On June 9, 2025, the Trump administration rescinded ICE's policy of generally finding that pre-1995 Vietnamese immigrants were not likely to be removed in the reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *7 (W.D. Wash. Aug. 21, 2025). But since then, several courts have found that facts on the ground likely have not changed enough to assure these detainees' timely removal. *See Thanh Nguyen v. Noem*, 25-cv-2760-TWR-KSC, ECF. No. 12 (Oct. 23, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *5 (D. Mass. June 20, 2025).

ARGUMENT

I. Count 1: ICE failed to comply with its own regulations before re-detaining Mr. Nguyen, violating his rights under the Fifth Amendment and the Administrative Procedures Act.

A. ICE failed to comply with its own regulations before re-detaining Mr. Nguyen.

The Department of Homeland Security has implemented a series of regulations to protect the due process rights someone who, like Mr. Nguyen, is re-detained following a period of release. Title 8 C.F.R. § 241.4(*l*) applies to re-detention generally, while 8 C.F.R. § 241.13(i) applies to persons released after providing good reason to believe that they will not be removed in the reasonably foreseeable future, *see Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025), as Mr. Nguyen was, Exh. A at ¶ 3. Many judges in this district have granted habeas petitions or temporary restraining orders when ICE failed to follow these regulations. *See, e.g.*, *Ngo v. Noem*, 25-cv-02739-TWR-MMP, ECF. No. 11 (Oct. 23, 2025); *Bui v. Noem*, 25-CV-2111-JES-DEB, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thanh Nguyen v. Noem*, 25-cv-2760-TWR-KSC, ECF. No. 12 (Oct. 23, 2025); *Ho v. Noem*, 25-cv-2453-BAS-BLM, ECF No. 11 (S.D. Cal. Oct. 20, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __,

2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10, 13 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025).[5]

Under these regulations, an official may "return[s] [a releasee] to custody" because they "violate[d] any of the conditions of release." 8 C.F.R. § 241.13(i)(1); *see also id.* § 241.4(*l*)(1). Otherwise, § 241.13(i) permits revocation of release only if the appropriate official (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2), and (2) makes that finding "on account of changed circumstances." *Id.*

No matter the reason for re-detention, the re-detained person is entitled to "an initial informal interview promptly," during which they "will be notified of the reasons for revocation." *Id.* §§ 241.4(*l*)(1), 241.13(i)(3). The interviewer must "afford[] the [person] an opportunity to respond to the reasons for revocation," allowing them to "submit any evidence or information" relevant to re-detention and evaluating "any contested facts." *Id.*

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[5] Courts in other districts have done the same. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3fd 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

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

None of the prerequisites to detention apply here. ICE has never told Mr. Nguyen why he was re-detained. Exh. B at ¶ 1. And there are no changed circumstances that justify re-detaining him. The same treaty has applied since 2008, and the same MOU has applied since 2020. Of course, ICE may be planning to try again to remove Mr. Nguyen. But absent any evidence for "why obtaining a travel document is more likely this time around[,] Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Mr. Nguyen received the interview required by regulation. Exh. B at ¶ 1. No one from ICE has ever invited him to contest his detention. *Id.* Indeed, his deportation officer has not met with him at all. *Id.* at ¶ 2.

"[B]ecause officials did not properly revoke petitioner's release pursuant to the applicable regulations, that revocation has no effect, and [Mr. Nguyen] is entitled to his release (subject to the same Order of Supervision that governed his most recent release)." *Liu*, 2025 WL 1696526, at *3.

B. Because these violations are egregious and systemic, this Court should order additional process before any attempt to cure the regulatory violation by way of re-detention.

As the citations above show, this is far from the only case in which ICE has re-detained immigrants without following regulations. Courts in this district have identified almost a dozen violations just in the last few weeks. Respondents have also made concerning claims about what compliance would look like. Respondents have repeatedly argued that an administrative arrest warrant satisfies the regulation, even though such warrants say nothing about regulatory violations, changed circumstances, or a significant likelihood of removal. *See, e.g.*, *Rokhfirooz*, 2025 WL 2646165, at *3; *Truong v. Noem*, 25-cv-2597-JES, Dkt. No. 13 at 6–7 (S.D. Cal. Oct. 22, 2025). Respondents believe it is "unclear" whether a conversation with a deportation officer, during which a petitioner is not offered any chance to contest their re-detention, satisfied the interview requirement. *Thanh Nguyen v. Noem*, 25-cv-2760-TWR, Dkt. No. 10, at 12 (S.D. Cal. Oct. 22, 2025). And Respondents have attempted to issue re-detention notices months after detaining. *See, e.g.*, *Ngo v. Noem*, 25-cv-2739-TWR (S.D. Cal. Oct. 21, 2025).

Assuming without conceding that a regulatory violation could be cured through re-detention, ICE's practices in this district instill no confidence that any re-detention here would be consistent with the regulations' strictures. Instead, ICE would likely do what it has done in the past: re-detain without providing the process required by law. That re-detention would be inconsistent with a court order granting this petition and would result in duplicative litigation.

To avoid that outcome, at least two courts have required Respondents to file status reports before any re-detention. *Truong v. Noem*, 25-cv-2597 (S.D. Cal. Oct. 22, 2025); *Khambounheuang v. Noem*, 25-cv-2575-JO, Dkt. No. 17 (S.D. Cal. Oct. 23, 2025). The order in *Khambounheuang* was the most specific: It required ICE to file a written declaration attesting to full compliance with regulatory obligations 48

hours prior to any re-detention. 25-cv-2575-JO, Dkt. No. 17, at 2. This Court should follow suit here to permit Mr. Nguyen to lodge any objections to ICE's compliance prior to re-detention.

II. Count 2: Mr. Nguyen's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

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

If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

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

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

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

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

B. The six-month grace period has expired.

As an initial matter, the six-month grace period has long since ended. The *Zadvydas* grace period lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Nguyen's order of removal was entered in January 2001. Exh. A at ¶ 4. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six months after he was ordered removed and three months after the removal period expired, both of which occurred in June 2001. Furthermore, Mr. Nguyen was detained for about 16 months around the time that he was ordered removed. Exh. A at ¶ 5. He does not remember how much of that detention occurred post-removal order. *Id.* But federal law requires the government to detain immigrants for at least

90 days. 8 U.S.C. § 1231(a). He has also been detained for three-month stints since then. Exh. A at ¶ 6. And Mr. Nguyen has been detained for over 4 months in 2025. Exh. A at ¶ 7. Together, these periods of detention total more than six months. For both reasons, this threshold requirement is met.

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

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

Second, the government has sometimes claimed that rearrest at least resets the 90-day removal period under 8 U.S.C. § 1231(a)(1). *See, e.g.*, *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (adopting this view). But as a court explained in *Bailey v. Lynch*, that view cannot be squared with the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B), which has nothing to do with release or re-arrest. No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016).

Thus, the six-month grace period poses no barrier to granting this *Zadvydas* petition.

C. Vietnam's decades-long policy of not repatriating most pre-1995 Vietnamese immigrants provides very good reason to believe that Mr. Nguyen will not likely be removed in the reasonably foreseeable future.

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

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

"Significant likelihood of removal." This component focuses on <u>whether</u> Mr. Nguyen will likely be removed: Continued detention is permissible only if it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities, but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words, even if "there remains *some* possibility of removal," a petitioner can still meet its burden if there is good reason to believe that successful removal is not

significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

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

Mr. Nguyen readily satisfies this standard for two reasons.

First, as explained above, Vietnam has historically not accepted most pre-1995 Vietnamese immigrants for deportation. Even after Vietnam signed the 2020 MOU, ICE had to admit that there was no reasonable likelihood of removing such immigrants in the reasonably foreseeable future, Order on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—an admission amply backed up by two years' experience under the MOU, Asian Law Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports). Though the Trump administration rescinded this admission, *Nguyen*, 2025 WL 2419288, at *7, several courts have found that these barriers continue to obstruct removal for people like Mr. Nguyen. *See Thanh Nguyen v. Noem*, 25-cv-

2760-TWR-KSC, ECF. No. 12 (Oct. 23, 2025); *Nguyen*, 2025 WL 2419288; *Hoac*, 2025 WL 1993771; *Nguyen*, 2025 WL 1725791.

Second, Mr. Nguyen's own experience bears this out. ICE has now had 24 years to deport him, including 5 years under the MOU. Yet ICE has proved unable to remove him.

Third, since detaining Mr. Nguyen in June, it appears that ICE has not been diligent in trying to remove him. Exh. B at ¶ 2. Mr. Nguyen has now been in detention for almost 5 months—more than a 90-day statutory removal period and nearing an entire six-month *Zadvydas* grace period. Exh. A at ¶ 7. Yet no deportation officer has ever met with Mr. Nguyen. Exh. B at ¶ 2. ICE's apparent "lack of effort only reinforces the conclusion that the Petitioner's removal is not likely to occur in the reasonably foreseeable future." *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002); *accord Conchas-Valdez v. Casey*, 25-CV-2469-DMS-JLB, Dkt. No. 9 at 6 (S.D. Cal. Oct. 6, 2025) (Sabraw, J.) ("[T]he Government's minimal work on this case—one resettlement request and two follow up emails over the course of seven months—do not instill confidence that it will be able to secure Petitioner's removal in the reasonably foreseeable future.").

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

D. *Zadvydas* unambiguously prohibits this Court from denying Mr. Nguyen's petition because of his criminal history.

The government cannot defeat a *Zadvydas* claim by alleging that Mr. Nguyen will pose a danger or flight risk. *Zadvydas* squarely holds that those

are not grounds for detaining an immigrant when there is no reasonable likelihood of removal in the reasonably foreseeable future. 533 U.S. at 684–91.

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

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

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

These conditions have proved sufficient to protect the public for over two decades. They will continue to do so while ICE keeps trying to deport Mr. Nguyen.

III. 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. Nguyen hereby requests such a hearing on any material, disputed facts.

IV. Prayer for relief

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enter the following orders relating to any attempt to cure the regulatory violation through re-detention, *see Khambounheuang v. Noem*, 25-CV-2575 (S.D. Cal. Oct. 23, 2025):
    (1) Enjoin Respondents from removing Petitioner from the United States or this District, or from re-detaining him, unless and until the government demonstrates compliance with the procedural requirements of 8 C.F.R. § 241.13(i), including (a) providing Petitioner with written notice of the reasons for any revocation of release, and (b) providing petitioner an informal interview and opportunity to respond.
    (2) Order the government to file a written declaration attesting to full compliance with these obligations 48 hours prior to any re-detention.
4. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: October 24, 2025

s/ Katie Hurrelbrink

Katie Hurrelbrink
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Nguyen
Email: katie hurrelbrink@fd.org

Exhibit A

Loc Minh Nguyen
A# [redacted]
Otay Mesa Detention Center
P.O. Box 439049
San Diego, CA 92143-9049

Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOC MINH NGUYEN,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.: 25-CV-2441-AGS

Declaration of Loc Minh Nguyen in Support of Motion for Appointment of Counsel

I, Loc Minh Nguyen, declare:

1. I came to the United States in December of 1979. I fled the communist regime in Vietnam and became a refugee. I got a green card. A family sponsored me from North Carolina. I came with my mom and dad. I was born in 1974, so I was around 5.

[1] Mr. Nguyen is filing this motion for appointment of counsel with the assistance of the Federal Defenders of San Diego, Inc. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Katie Hurrelbrink in Support of Appointment Motion attaches case examples.

2. The government put me in removal proceedings when I got convicted for a felony theft offense, around 1994. I got 180 days for that offense, and the government released me OR while I fought my immigration case.

3. Within a year, I had another theft arrest. I missed my court date in immigration court because I was locked up.

4. I got released from jail and lived free in the community for some time. Eventually, I was detained for immigration proceedings, and the IJ ordered me removed on January 10, 2001.

5. I was detained for about 16 months. I was then released because ICE could not remove me. I never refused to do anything that ICE asked me to do during that time.

6. I had some additional convictions after that. When I got a conviction, ICE would usually take me back to immigration detention. I would do 90 days or less in ICE custody.

7. ICE arrested me on June 4, 2025.

8. No one told me why I was being detained, and I did not get a chance to explain why I shouldn't be detained. No one told me what had changed to make my removal more likely.

9. I do not have any savings. I cannot make money while in immigration detention. I do not think that I can afford a lawyer.

10. I have no legal education or training. I also cannot use the internet without restriction, so I cannot look up ICE's and Vietnam's latest policies toward people like me.

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I declare under penalty of perjury that the foregoing is true and correct, executed on 09/23/2025, in San Diego, California.

LOC MINH NGUYEN
Declarant

Exhibit B

Katie Hurrelbrink
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
katie_hurrelbrink@fd.org
Attorneys for Mr. Nguyen

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOC MINH NGUYEN,

Petitioner,

v.

WARDEN, Otay Mesa Detention Facility; FIELD OFFICE DIRECTOR, San Francisco Field Office, United States Immigration and Customs Enforcement; DIRECTOR, United States Immigration and Customs Enforcement; SECRETARY, United States Department of Homeland Security; and UNITED STATES ATTORNEY GENERAL,

Respondents.

CIVIL CASE NO.: 25-CV-2441-AGS

Third Declaration of Loc Minh Nguyen

I, Loc Minh Nguyen, declare:

1. It is now October 22, 2025. I have been detained for over four-and-a-half months. I still have not received an informal interview. No one has given me the chance to explain why I should not be re-detained. No one has told me what changed to make my removal significantly likely. No one has told me that I was re-detained for a violation.

2. In fact, I have never met with ICE officers since I have been here. I asked on a tablet who my deportation officer was. They told me that it was DO Lara-Ramirez. I have not heard anything else about my case. ICE has never asked me to fill out travel document forms.

I declare under penalty of perjury that the foregoing is true and correct, executed on 10/22/2025, in San Diego, California.

LOC MINH NGUYEN
Declarant

Katie Hurrelbrink
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
katie_hurrelbrink@fd.org
Attorneys for Mr. Nguyen

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOC MINH NGUYEN,

Petitioner,

v.

WARDEN, Otay Mesa Detention Facility; FIELD OFFICE DIRECTOR, San Francisco Field Office, United States Immigration and Customs Enforcement; DIRECTOR, United States Immigration and Customs Enforcement; SECRETARY, United States Department of Homeland Security; and UNITED STATES ATTORNEY GENERAL,

Respondents.

CIVIL CASE NO.: 25-CV-2441-AGS

Second Declaration of Katie Hurrelbrink

I, Katie Hurrelbrink, declare:

1. Attached is a true and correct copy of Assistant United States Attorney Janet Cabral's written consent to this amended petition.

I declare under penalty of perjury that the foregoing is true and correct, executed on October 24, 2025, in San Diego, California.

/s/ Katie Hurrelbrink
KATIE HURRELBRINK
Declarant

From: Cabral, Janet (USACAS)
To: Katie Hurrelbrink; Dimbleby, Erin (USACAS)
Cc: Sanderson, Alyssa (USACAS)
Subject: RE: Activity in Case 3:25-cv-02441-AGS-MMP (HC) Nguyen v. Warden of the Otay Mesa Detention Facility et al Order on Motion to Appoint Counsel
Date: Wednesday, October 22, 2025 12:11:46 PM

Katie,
We have no objection to your proposed amendment. Thank you.
Best regards,
Janet

Janet A. Cabral
Assistant U.S. Attorney
Chief, Civil Division
Southern District of California
619-546-8715 (desk)
619-847-6782 (cell)

From: Katie Hurrelbrink <Katie_Hurrelbrink@fd.org>
Sent: Tuesday, October 21, 2025 4:31 PM
To: Cabral, Janet (USACAS) <Janet.Cabral@usdoj.gov>; Dimbleby, Erin (USACAS) <Erin.Dimbleby@usdoj.gov>
Subject: [EXTERNAL] FW: Activity in Case 3:25-cv-02441-AGS-MMP (HC) Nguyen v. Warden of the Otay Mesa Detention Facility et al Order on Motion to Appoint Counsel

Good evening, Janet and Erin,

I got a bounce-back from Daniel about being furloughed, without any caveat about still working on 2241s, so I wanted to direct this question to you as well just in case. If Daniel is still working on 2241s, then no need to respond.

Best,

Katie

From: Katie Hurrelbrink
Sent: Tuesday, October 21, 2025 4:29 PM
To: daniel.shin@usdoj.gov
Subject: FW: Activity in Case 3:25-cv-02441-AGS-MMP (HC) Nguyen v. Warden of the Otay Mesa Detention Facility et al Order on Motion to Appoint Counsel

Hi Daniel,

I would like to amend the petition to move our *Zadvydas* arguments into the main petition and to add a regulatory claim. The *Zadvydas* claim would be the same claim set forth in the appointment motion. The regulatory claim would be the same claim we've filed in other cases. I believe I could get an amended petition on file by Friday, a week before your response deadline. Do you consent to the amendment under Rule 15(a)(1)(2)?

Thanks for considering,

Katie

From: efile_information@casd.uscourts.gov <efile_information@casd.uscourts.gov>
Sent: Tuesday, October 21, 2025 4:13 PM
To: efile_information@casd.uscourts.gov
Subject: Activity in Case 3:25-cv-02441-AGS-MMP (HC) Nguyen v. Warden of the Otay Mesa Detention Facility et al Order on Motion to Appoint Counsel

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U.S. District Court

Southern District of California

Notice of Electronic Filing

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Case Name: (HC) Nguyen v. Warden of the Otay Mesa Detention Facility et al
Case Number: 3:25-cv-02441-AGS-MMP
Filer:
Document Number: 12

Docket Text:
ORDER Granting Motion to Appoint Counsel (ECF [6]). Respondents' return or answer due October 31, 2025. Petitioner's reply or traverse due November 7, 2025. Signed by District Judge Andrew G. Schopler on 10/21/2025 (All non-registered users served via U.S. Mail Service) (emp)

3:25-cv-02441-AGS-MMP Notice has been electronically mailed to:

U S Attorney CV (Terminated) Efile.dkt.civ@usdoj.gov

Katherine Marie Hurrelbrink katie_hurrelbrink@fd.org, angelica_hernandez@fd.org

Daniel D. Shin daniel.shin@usdoj.gov, CaseView.ECF@usdoj.gov, Thomas.Wilson@usdoj.gov, efile.dkt.civ@usdoj.gov, efile.dkt.gc1@usdoj.gov, ivette.moshe@usdoj.gov, marina.felix@usdoj.gov

3:25-cv-02441-AGS-MMP Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1106146653 [Date=10/21/2025] [FileNumber=19945864-0] [18b0b4e53835da8bb7620a3d7beaaf033deadc6116861a1722b7616d4886d16f8c3075baa2c3ba99edbcb56e4b3455b2e6eb1ef7ee5f62056b9377600b00626c]]