

THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HA THU THI NGUYEN,

Petitioner,

vs.

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; CAMMILLA
WAMSLEY, Seattle Field Office
Director, United States Citizenship and
Immigration Services; BRUCE SCOTT,
Warden of Immigration Detention
Facility; and the United States
Immigration and Customs Enforcement,

Respondents.

No. CV25-1833-JNW

**PETITIONER'S RESPONSE
MEMORANDUM**

I. INTRODUCTION AND FACTUAL BACKGROUND

Ms. Nguyen emigrated from Vietnam when she was 19 years old and was granted lawful permanent resident status in 1990. Dkt. 13-1 at 4. Following convictions for theft, she was detained by Immigration and Customs Enforcement (ICE) and ordered removed in 2005. After 91 days in ICE custody, Ms. Nguyen was released on an order of supervision on October 19, 2005. Dkt. 13-4 at 3. Since then, she has reported to ICE as required by her conditions of supervision.

Between 2006 and 2016, Ms. Nguyen was convicted of multiple theft offenses, but ICE did not seek to revoke her release and she continued on supervision with no additional conditions until August 12, 2025. That day, Ms. Nguyen was re-arrested by

1 ICE and then served with a “notice of revocation of release” stating she will be detained
2 indefinitely “based on a review of your file and the acquisition of a travel document as
3 mandated by the current administration.” Dkt. 13-5 at 2. However, no travel documents
4 are included in the records submitted by the Government. Instead, its Return states
5 “ICE anticipates it will receive her travel document shortly, and [Ms. Nguyen] will be
6 removed to Vietnam in the reasonably foreseeable future.” Dkt. 11 at 2.

7 **II. THE COURT SHOULD ORDER MS. NGUYEN RELEASED ON**
8 **CONDITIONS BECAUSE THE GOVERNMENT HAS OFFERED NO**
9 **CREDIBLE EVIDENCE THAT HER REMOVAL IS SIGNIFICANTLY**
10 **LIKELY IN THE REASONABLY FORESEEABLE FUTURE.**

11 **A. The applicable law**

12 In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court held that the
13 Government does not have unrestricted authority to indefinitely detain people who have
14 been ordered deported. Because indefinite detention of a non-citizen in immigration
15 custody raises “a serious constitutional problem,” *id.* at 690, it is “presumptively
16 reasonable” to detain an individual following a removal order for six months. *Id.* at 701.
17 After that, if removal is not “significantly likely in the reasonably foreseeable future,”
18 the Government must release the Petitioner. *Id.*

19 Ms. Nguyen bears an initial burden of showing that there is no significant
20 likelihood of removal in the reasonably foreseeable future. To meet that initial burden,
21 however, all she must show is that the presumptively reasonable six-month period has
22 expired. *See Nguyen v. Scott*, No. CV25-1398-TMC, -- F.Supp.3d --, 2025 WL
23 2419288, at *13 (W.D. Wash. Aug. 21, 2025). The burden then shifts to the
24 Government to establish that, based on “changed circumstances,” there is in fact “a
25 significant likelihood that the [noncitizen] may be removed in the reasonably
26 foreseeable future.” 8 C.F.R. § 241.13(i)(2); *see also Hernandez-Escalante v. Noem, et*
al., No. CV25-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (“These

1 regulations clearly indicate, upon revocation of supervised release, it is the
2 [Government’s] burden to show a significant likelihood that the [non-citizen] may be
3 removed.”) (collecting cases).

4 **B. Ms. Nguyen’s period of detention**

5 In its Return, the Government argues that Ms. Nguyen’s detention is not
6 indefinite because she has been in ICE custody a few days short of six months and it is
7 “working to effectuate Nguyen’s removal to Vietnam.” Dkt. 11 at 2.

8 The Government acknowledges that the 90-day “removal period” in her case has
9 long expired and she was initially detained by ICE for 91 days in 2005 before being
10 released on supervision. *Id.* at 1, 3. Ms. Nguyen was re-detained by ICE on August 12,
11 2025, resulting in an additional 81 days in custody as of the filing of this response. Her
12 total detention time as of the filing of this Response is therefore 172 days.

13 The Government does not concede “that Petitioner’s detention should be
14 measured in the aggregate,” dkt. 11 at 7, but any contention to the contrary would
15 misconstrue *Zadvydas*. As the Ninth Circuit has recognized, the six-month grace period
16 is pegged to the start of the removal period. *See Ma v. Ashcroft*, 257 F.3d 1095, 1102
17 n.5 (“[I]n *Zadvydas*, 121 S.Ct. at 2505, the Supreme Court read the statute to permit a
18 ‘presumptively reasonable’ detention period of *six months* after a final order of
19 removal—that is, *three months* after the statutory removal period has ended.”);
20 *Rodriguez v. Hayes*, 591 F.3d 1105, 1115 (9th Cir. 2010), *overruled in other part by*
21 *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (“The [*Zadvydas*] Court determined that
22 for six months following the beginning of the removal period [a non-citizen’s]
23 detention was presumptively authorized.”). Accordingly, the grace period is not
24 calculated based on the length of detention. *See also Bailey v. Lynch*, No. 16-2600-JLL,
25 2016 WL 5791407 (D.N.J. Oct. 3, 2016), at *2. And, having had two decades to remove
26 Ms. Nguyen, there is no principled reason to give ICE an additional grace period.

1 Alternatively, if the Court decides that Ms. Nguyen’s petition was premature, the
2 Court can enter an order now for her release on November 8, 2025 (the 180th day of
3 detention) or continue the noting date to that date.

4 **C. The Government has failed to meet its burden of establishing that**
5 **Ms. Nguyen’s removal is likely in the reasonably foreseeable future.**

6 While the Government maintains that “Petitioner’s removal will likely occur in
7 the reasonably foreseeable future,” dkt. 11 at 8, that assertion is unsubstantiated and
8 should not be credited. It has been twenty years since an order or removal was entered
9 against Ms. Nguyen, and “Vietnam has long refused to accept for deportation
10 Vietnamese nationals who came to the United States as refugees before 1995.” *Nguyen*,
11 2025 WL 2419288, at *6 (citing *Trinh v. Homan*, 466 F.Supp.3d 1077, 1083 (C.D. Cal.
12 2020)).

13 The Government states that there is now “increased cooperation” with Vietnam.
14 Dkt. 11 at 1, 2, 6, 8, 9. But, as the Court noted in *Nguyen* and is also true here, the
15 Government has provided no information about Vietnam’s criteria for approving
16 repatriation or whether Vietnam has accepted the travel documents the Government has
17 submitted. *Nguyen*, 2025 WL 2419288, at *14. All that appears in the record is a
18 statement from Deportation Officer Cristhian De Castro that Vietnam “has agreed” to
19 issue travel documents generally “in less than 30 days.” Dkt. 12 at 4, ¶ 15. But De
20 Castro further states that the Government submitted a travel document request to the
21 Vietnamese government for Ms. Nguyen on September 30, 2025. Dkt. 12 at 3, ¶ 13.
22 That request and accompanying documentation is not part of the record, but the 32 days
23 that have already elapsed since the request was purportedly submitted demonstrate that
24 the representations about processing requests in less than 30 days are unreliable.

25 This is because, according to testimony Judge Cartwright credited in *Nguyen*,
26 “the process for procuring travel documents from Vietnam for pre-1995 immigrants

1 continues to be uncertain and protracted.” *Nguyen*, 2025 WL 2419288, at *15. In fact,
2 “[t]he process [for requesting travel documents] is highly dependent on the
3 individualized facts of each case, including whether the individual has any family
4 remaining in Vietnam, whether their Vietnamese identity can be verified, their criminal
5 records, and the manner in which they left Vietnam and came to the United States,
6 among many other factors.” *Id.* In this case, Ms. Nguyen does not have a passport,
7 Vietnamese birth certificate, or identification documents from Vietnam. Her entire
8 family, apart from an elderly aunt, all reside in the U.S., including her parents, sister,
9 husband, and daughter. And she has no place to live in Vietnam, nor any means of
10 supporting herself there.

11 While the Government and Vietnam have a memorandum of understanding
12 (MOU) that sets forth Vietnam’s criteria for repatriation, the Government has not
13 provided a copy of the MOU to the Court or disclosed the criteria. *See id.* at *14 (“The
14 Court does not know what factors the Vietnamese government considers in deciding to
15 repatriate a pre-1995 immigrant.... This information has been redacted from the
16 publicly available version of the 2020 MOU, and Respondents have not offered it.”).
17 Moreover, Respondents cannot meet their burden by offering evidence of some
18 increased deportations to Vietnam. *Id.* at *16; *see also Hoac v. Becerra*, No. CV25-
19 1740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025) (“Respondents’
20 contention that Petitioner’s removal is reasonably foreseeable because removals to
21 Vietnam are in fact occurring is unpersuasive.”); *Nguyen v. Hyde*, No. CV25-11470-
22 MJJ, 2025 WL 1725791, *4 (D. Mass. June 20, 2025) (generalized evidence of
23 removals to Vietnam insufficient).

24 Contrary to the vague assertions and assurances offered by the Government, the
25 accompanying declaration of Assistant Federal Public Defender Katie Hurrelbrink
26 states that many Vietnamese immigrants “have been in detention for months without

1 receiving a travel document” and she has “never seen Vietnam respond to a travel
2 document request within 30 days.” Ex. 1 at ¶¶ 5, 7. The accompanying declaration of
3 immigration specialist Tin Thanh Nguyen, which was filed in the *Nguyen* case, further
4 belies the Government’s representations. Mr. Nguyen explains that, this year alone, he
5 has worked on or assisted with nearly a hundred cases of pre-1995 immigrants “for
6 whom ICE has requested travel documents from Vietnam.” Ex. 2 at ¶ 12. Across these
7 cases, Mr. Nguyen has “yet to see Vietnam issue a travel document within 30 days or
8 less” for a pre-1995 arrival. *Id.* Rather, in his experience, “it can take many months to
9 get any answer from Vietnam about whether it will issue a travel document.” *Id.*

10 Given these facts, and the lack of evidence to the contrary from the Government,
11 the Government has not met its burden of showing that Ms. Nguyen’s removal from the
12 United States is “substantially likely” in the “reasonably foreseeable future” and the
13 Court should order her release on conditions.

14 Finally, the Government does not suggest that Ms. Nguyen’s detention is
15 warranted because she poses a flight risk or poses a danger to the community. Nor
16 could it credibly do so, given that her most recent non-violent theft offense is almost a
17 decade old, the Government never sought to revoke her supervision or amend its
18 conditions at the time of the offenses, and the notice of revocation release states
19 (incorrectly) that she was re-detained because of “the acquisition of a travel document
20 as mandated by the current administration.”

21 Ms. Nguyen’s re-arrest is in fact attributable to policy changes rather than any
22 individualized change of circumstances. On January 20, 2025, President Trump directed
23 the Respondent Secretary of Homeland Security to “promptly take action to use all
24 other provisions of the immigration laws or any other federal law. . . to ensure the
25 efficient and expedited removal of aliens from the United States.” Executive Order
26 “Protecting the American People Against Invasion,” Exec. Order No. 14159, 90 Fed.

1 Reg. 8443–48 (Jan. 20, 2025), at Sec. 9. On May 5, 2025, Secretary Noem issued a
2 press release claiming, “Secretary Noem is fulfilling President Trump’s promise to
3 carry out mass deportations.” U.S. Dep’t of Homeland Security, *100 Days of Secretary*
4 *Noem: Making America Safe Again* (May 5, 2025).¹ News outlets have reported that
5 during a May 21, 2025, meeting at the White House with ICE officials, Stephen Miller,
6 White House Deputy Chief of Staff, and Respondent Noem “expressed their
7 frustrations with the current level of arrests to ICE leadership” and “reportedly
8 demanded that ICE triple daily arrest totals to 3,000 per day.” Victor Nava, *ICE shakes*
9 *up leadership amid push for 3,000 migrant arrests per day*, N.Y. Post (May 29, 2025).²
10 Miller himself repeated the call for “a minimum” of 3,000 immigration arrests a day on
11 Fox News on May 29, 2025. Fox News, *Stephen Miller reveals Trump admin’s ‘daily*
12 *goal’ for illegal migrant arrests*, at 00:20 (YouTube, May 29, 2025).³

13 Respondents have implemented the Administration’s demand to increase arrests
14 by detaining people who complied with their supervision requirements when they
15 appeared for their court hearings or periodic check-ins. Although Respondents have not
16 disclosed the number of people re-arrested pursuant to this change in policy, district
17 courts have ordered the release of people rearrested without cause at least 29 times
18 since May.⁴ Despite these dozens of orders, Respondents have not voluntarily released

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20 ¹ [https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-](https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-safe-again)
21 [safe-again](https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-safe-again) [<https://perma.cc/MGG8-H7TJ>].

22 ² [https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amid-push-for-](https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amid-push-for-3000-migrant-arrests-per-day)
23 [3000-migrant-arrests-per-day](https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amid-push-for-3000-migrant-arrests-per-day) [<https://perma.cc/Y9Z2-AKW7>].

24 ³ <https://www.youtube.com/watch?v=MJNXsOqFSZs>.

25 ⁴ *Nguyen v. Scott*, No. CV25-1398, 2025 WL 2419288, at *1 (W.D. Wash. Aug. 21,
26 2025) (granting preliminary injunction to Vietnamese refugee on *Zadvydas*/due process grounds); *Nguyen v. Hyde*, No. CV25-11470-MJJ, 2025 WL 1725791, *4 (D. Mass. June 20, 2025) (same; evidence of increased removals to Vietnam insufficient to justify

1 similarly situated respondents or abated the practice of arresting—without notice—
2 people who pose no risk of flight or danger, such as Ms. Nguyen.

3 III. CONCLUSION

4 There is no evidence that Ms. Nguyen will be removed to Vietnam in the
5 reasonably foreseeable future and “nothing in the current record to suggest that
6 releasing Petitioner would impede Respondents’ ability to remove [her] to Vietnam if
7 the necessary travel document is obtained.” *Hoac v. Becerra*, No. CV25-01740-DC-

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9 detention); *E.A. T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, at *1
10 (W.D. Wash. Aug. 19, 2025) (re-arrest violated due process); *Calderon v. Kaiser*,
11 No. CV25-6695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025) (same);
12 *Arias Gudino v. Lowe*, -- F.Supp.3d --, 2025 WL 1162488 (M.D. Pa. Apr. 21, 2025)
13 (same); *Arzate v. Andrews*, No. CV25-942-KES-SKO (HC), 2025 WL 2230521 (E.D.
14 Cal. Aug. 4, 2025); *Lopez Benitez v. Francis*, No. CV25-5937-DEH, 2025 WL
15 2371588, at *1 (S.D.N.Y. Aug. 13, 2025) (same); *Ceesay v. Kurzdorfer*, -- F.Supp.3d --,
16 2025 WL 1284720 (W.D.N.Y. May 2, 2025) (same); *Chipantiza-Sisalema v. Francis*,
17 No. CV25-5528, 2025 WL 1927931 (S.D.N.Y. July 13, 2025) (same); *Domingo v.*
18 *Kaiser*, No. CV25-05893-RFL, 2025 WL 1940179 (N.D. Cal. July 14, 2025) (same);
19 *Dos Santos v. Noem*, No. CV25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
20 (same); *Garcia v. Andrews*, No. CV25-1884-TLN-SCR, 2025 WL 1927596 (E.D. Cal.
21 July 14, 2025) (same); *Gomes v. Hyde*, CV25-11571-JEK, 2025 WL 1869299, at *5 (D.
22 Mass. July 7, 2025) (Respondents violated Administrative Procedures Act); *Guillermo*
23 *M. R. v. Kaiser*, 2025 WL 1983677 (N.D. Cal. July 17, 2025) (Respondents violated
24 due process); *Maldonado v. Olson, et al.*, No. CV25-3142, 2025 WL 2374411
25 (D. Minn. Aug. 15, 2025) (same); *M’Bagoyi v. Barr*, 423 F.Supp.3d 99 (M.D. Penn.
26 2019); *Maklad v. Murray*, No. CV25-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal.
27 Aug. 8, 2025); *Martinez v. Hyde*, No. CV25-11613, 2025 WL 2084238 (D. Mass.
28 July 24, 2025); *Mata Velasquez v. Kurzdorfer*, CV25-493-LJV, 2025 WL 1953796
29 (W.D.N.Y. July 16, 2025); *Morales Jimenez v. Bostock*, CV25-00570-MTK (D. Or.
30 May 13, 2025); *OJM v. Bostock*, CV25-00944-AB (D. Or. July 14, 2025); *Ortega v.*
31 *Kaiser*, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025); *Pablo Sequen v. Kaiser*, --
32 F.Supp.3d --, 2025 WL 2203419 (N.D. Cal. Aug. 1, 2025); *Pinchi v. Noem*, 2025 WL
33 2084921 (N.D. Cal. July 24, 2025); *Ramirez-Clavijo v. Kaiser*, No. CV25-6248-BLF
34 2025 WL 2097467 (N.D. Cal. July 25, 2025); *Rosado v. Figueroa*, No. CV25-2157,
35 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Singh v. Andrews*, 2025 WL 1918679
36 (E.D. Cal. July 11, 2025); *Valdez v. Joyce*, CV25-4627-GBD, 2025 WL 1707737
37 (S.D.N.Y. June 18, 2025) (granted habeas on due process grounds); *Y-Z-L-H v. Bostock*,
38 -- F.Supp. --, 2025 WL 1898025 (D. Or. July 7, 2025) (re-arrest violates APA).

1 JDP, 2025 WL 1993771, at *6 (E.D. Cal. July 16, 2025). Accordingly, the Court should
2 order her release.

3 DATED this 31st day of October 2025.

4 Respectfully submitted,

5
6 *s/ Colin Fieman*
7 Attorney for Ha Thu Thi Nguyen
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