

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ISA ABUBAKA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

No. 2:25-cv-01889-RSL

ISA ABUBAKA’S REPLY TO
RETURN MEMORANDUM

I. INTRODUCTION

Petitioner Isa Abubaka seeks release from his indefinite immigration detention at the Northwest Immigration Processing Center (NWIPC) and to prevent his removal to an unknown country without due process required by law. Dkt. 1. There is no dispute that Isa Abubaka has been re-detained for eight months since February 2025—two months past the “presumptively reasonable” detention period under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

The government’s response provides little evidence to support its optimistic assertion that Mr. Abubaka’s removal is reasonably foreseeable. In support, the government submits the declaration of ICE Supervisory Detention and Deportation Officer Brett Booth. But most of Officer Booth’s statements are vague, conclusory, and non-specific to Mr. Abubaka. At most, Officer Booth provides some information that the repatriation rates for certain pre-1995 Vietnamese citizens may have increased but there is no concrete information in the declaration that supports the government’s claim

1 that Mr. Abubaka has a “significant likelihood of removal in the reasonably foreseeable
2 future.” *Id.*

3 The government’s other contention that the class litigation in *Department of*
4 *Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025) and the Supreme
5 Court’s stay of a class-wide preliminary injunction in that case prevents this Court from
6 providing an order barring Mr. Abubaka’s removal to a third country without due
7 process is also unpersuasive.¹ The government argues that “[b]ecause Abubaka is
8 bound as a member of the non-opt out class of individuals governed by the *D.V.D.*
9 nationwide preliminary injunction, which the Supreme Court has now stayed finding
10 that the government is likely to prevail on the merits of its appeal, this Court should
11 dismiss the action.” *Id.* at 12.

12 Notwithstanding that the Supreme Court stayed the nationwide preliminary
13 injunction with no discussion of the merits, this same argument made against a TRO
14 was rejected by another court in this district in *Nguyen v. Scott*, No. 2:25-CV-01398, --
15 F.3d --, 2025 WL 2419288, at *14 (W.D. Wash. Aug. 21, 2025). And just recently, this
16 Court relied upon *Nguyen* and its reasoning to grant a TRO prohibiting the government
17 from removing petitioner to a third country without notice and a meaningful
18 opportunity to respond. *See Baltodano v. Bondi et al.*, Case No. C25-1958RSL, 2025
19 WL 2987766, at *20–21 (W.D. Wash. Oct. 23, 2025) (citing *Nguyen* and finding
20

21 ¹ The district court in *D.V.D.* granted a preliminary injunction that established
22 procedures DHS and ICE were required to follow before removing a noncitizen to a
23 third country, including written notice and an opportunity to raise a fear-based claim for
24 protection under the Convention Against Torture treaty before removal. *D.V.D. v. U.S.*
25 *Dep’t of Homeland Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass.
26 May 25, 2025), *reconsideration denied sub nom.* No. CV25-10676-BEM, 2025 WL
1495517 (D. Mass. May 26, 2025). On June 23, 2025, the United States Supreme Court
stayed the district court’s preliminary injunction pending appeal in the First Circuit,
with no member of the majority offering analysis. *Dep’t of Homeland Sec. v. D.V.D.*, --
U.S. ___, 145 S. Ct. 2153 (2025).

1 “petitioner is likely to succeed on merits of his claim that he is entitled to ‘legally
2 required multistep procedures set out in 8 U.S.C. § 1231(b) and required due process’
3 before ICE can remove him to a third country.”).

4 Because the government has failed to meet its burden of showing a likelihood of
5 Mr. Abubaka’s removal to Vietnam in the reasonably foreseeable future, the petition
6 should be granted.

7 **II. ARGUMENT**

8 **A. Mr. Abubaka has met his burden under *Zadvydas*.**

9 Mr. Abubaka has met his burden to show a good reason to believe that “there is
10 no significant likelihood of removal in the reasonably foreseeable future.” *Nadarajah v.*
11 *Gonzales*, 443 F.3d 1069, 1082 (9th Cir. 2006) (holding that given “the failure of the
12 government to rebut [petitioner’s] showing that there is no significant likelihood of
13 removal in the reasonably foreseeable future, the government’s continued detention
14 violates federal law, as construed by the Supreme Court.”); *see also Zadvydas*, 553 U.S.
15 at 701 (after the presumptively reasonable period of detention of six months, “once the
16 alien provides good reason to believe that there is no significant likelihood of removal
17 in the reasonably foreseeable future, the Government must respond with evidence
18 sufficient to rebut that showing.”).

19 Mr. Abubaka’s final removal order was issued almost a decade ago on
20 August 26, 2016. *EOIR | Automated Case Information*, Dep’t of Justice,
21 <https://acis.eoir.justice.gov/en/> [<https://perma.cc/2EQW-6XSB>] (enter Mr. Abubaka’s
22 A-Number in “Enter youre A-Number,” select “Vietnam” in “Nationality,” click
23 “Submit”) (last visited Oct. 28, 2025). Mr. Abubaka has been most recently re-detained
24 in ICE custody since February 2025. Officer Booth acknowledges that ICE did not
25 “initiate[] a travel document request with the Government of Vietnam by having
26 Petitioner fill out all of the requisite forms” until July 28, 2025. Dkt. 12 at 3, ¶ 17.

1 While Officer Booth does not explain what “initiat[ing] a travel document request”
2 means, he concedes that the request has not yet been sent to the Vietnamese
3 government because ICE still needs to have certain documents translated, which he
4 expects to be returned on October 24. *Id.* at 3, ¶ 17. Officer Booth is silent as to what
5 documents ICE has in its possession and what additional documents might be needed.²

6 In *Nguyen*, the petitioner like Mr. Abubaka, was a pre-1995 refugee from
7 Vietnam. As here, the court did “not know what factors the Vietnamese government
8 considers in deciding to repatriate a pre-1995 immigrant” since the government offered
9 no information other than one item—the self-declaration form attached to the publicly
10 available version of the 2020 Memorandum of Understanding (MOU) entered between
11 the United States and Vietnam regarding pre-1995 immigrants. That form “asks for a
12 permanent address before leaving Vietnam, any relatives in Vietnam, any other
13 relatives abroad, and with whom and where a repatriated Vietnamese citizen will live.”
14 2025 WL 2419288, at *14. The court concluded that Nguyen had met his burden under
15 *Zadvydas* given that (1) he “is not just an immigrant from Vietnam who happened to
16 arrive in the United States before 1995; he is a refugee who fled Vietnam after the fall
17 of Saigon” as a five-year-old child; (2) “the process for procuring travel documents
18 from Vietnam for pre-1995 immigrants continues to be uncertain and protracted” and
19 (3) petitioner was without known connections in Vietnam. *Id.* at *14–15. The court also
20 credited a declaration from an experienced immigration attorney submitted by
21 petitioner. The attorney affiant explained that obtaining travel documents from Vietnam
22 “is highly dependent on the individualized facts of each case, including whether the
23 individual has any family remaining in Vietnam, whether their Vietnamese identity can
24 be verified, their criminal records, and the manner in which they left Vietnam and came
25

26 ² The documents attached to Respondents’ Response as exhibits A–D appear to relate to Mr. Abubaka’s removal order.

1 to the United States, among many other factors.” *Id.* at *15 (citing Dkt. 28 at ¶ 8). *See*
2 *also id.* (“This testimony is consistent with the information sought by Vietnam under
3 the 2020 MOU and the questions asked of Petitioner by his deportation officer, none of
4 which suggest a significant likelihood that Vietnam will accept him.”).

5 Similarly, the government provides no information that Vietnam will accept
6 Mr. Abubaka. Like the petitioner in *Nguyen*, Mr. Abubaka fled Vietnam as a refugee
7 with his family as a young child in 1989. His parents and his siblings live in the United
8 States. His mother Saroh Les is a naturalized U.S. citizen and his father, Sos Abubaka,
9 remains a refugee. Mr. Abubaka has no known family or connections in Vietnam, and
10 the government has provided no information that he has a Vietnamese birth certificate
11 or any other documentation verifying his Vietnamese identity. Under these
12 circumstances, Mr. Abubaka has met his burden of showing that his removal to
13 Vietnam is not reasonably foreseeable.

14 **B. The government has not met its burden under *Zadvydas*.**

15 The burden thus shifts to the government to “respond with evidence sufficient to
16 rebut that showing.” 553 U.S. at 70. But other than documents that appear to relate to
17 petitioner’s final removal order, the government offers only Officer Booth’s
18 declaration. But, again, most of Officer Booth’s declaration is not specific to
19 Mr. Abubaka. “At most, they establish that the government has increased repatriation
20 rates for *some* Vietnamese citizens.” *Nguyen*, 2025 WL 2419288, at *16 (emphasis
21 added). And the statements specific to Mr. Abubaka do not show a reasonably
22 likelihood of removal.

23 For example, Officer Booth provides no information about Vietnam’s eligibility
24 criteria for obtaining a travel document or whether Mr. Abubaka can meet that criteria.
25 He does not say whether Mr. Abubaka has a passport or a Vietnamese birth certificate.
26 Nor does he say whether Mr. Abubaka, having fled Vietnam as a young child, has any

1 remaining family or connections in Vietnam. Officer Booth states that “I am aware
2 of . . . the *general protocol* regarding arrangements for the removal of aliens with a
3 final order of removal to Vietnam, including but not limited to, Vietnamese citizens
4 who entered the United States prior to July 12, 1995.” Dkt. 12 at 3, ¶ 18 (emphasis
5 added). But he neither provides any details concerning the specifics of that protocol or
6 states whether Mr. Abubaka can meet the criteria for obtaining a travel document from
7 Vietnam. *See, e.g., Kamyab v. Bondi*, No. C25-389RSL, 2025 WL 2917522, at *3
8 (W.D. Wash. Oct. 14, 2025) (this Court noting that for Iran to issue a travel document,
9 “Iran requires ‘original documents’ to move the process forward” such as an original
10 passport or original birth certificate but that the “Government has been ‘unclear’ as to
11 whether it is in possession of any original documents that could satisfactorily prove to
12 Iranian authorities that petitioner is an Iranian national.”). And while Officer Booth
13 attests that Vietnam “has not taken more than 30 days to issue a travel document
14 pursuant to any of our requests since mid-February 2025”, Dkt. 12 at 3, ¶ 21, that
15 statement is meaningless here, given that no request has been sent to Vietnam and the
16 government has provided no “substantive indication regarding how or when it expect[s]
17 to obtain the necessary travel document from the [Vietnamese] government.” *Singh v.*
18 *Gonzales*, 448 F.Supp.2d 1214, 1220 (W.D. Wash. 2006). *See also Tran v. Scott*, No.
19 2:25-cv-01886-TMC-BAT, 2025 WL 2898638, at *4 (W.D. Wash. Oct. 12, 2025)
20 (concluding “government’s representations” failed to rebut petitioner’s showing given
21 “Respondents provided no data on the number of requests they have recently submitted
22 to Vietnam, how many requests Vietnam has granted, or how many in either category
23 have concerned pre-1995 Vietnamese immigrants like Tran.”). Nor has the government
24 provided the underlying documents that might support the assertions made in Officer
25 Booth’s declaration. *See id.*

1 On this record, there is insufficient evidence to support the government's
2 assertion that Vietnam will repatriate Mr. Abubaka in the reasonably foreseeable future.
3 He has no permanent address in Vietnam, no known relatives in Vietnam, or any other
4 known connections in Vietnam. He also has no identifying information from Vietnam
5 such as a birth certificate. And given that Vietnam has refused to repatriate him for the
6 past nine years, there is "good reason to believe that there is no significant likelihood"
7 that Vietnam will accept him now. *Zadvydas*, 553 U.S. at 701. Because removal to
8 Vietnam is not reasonably foreseeable, Mr. Abubaka's continued detention violates
9 *Zadvydas*, warranting his release on an order of supervision.

10 **C. Due Process precludes Mr. Abubaka's removal to a third country**
11 **without adequate notice and an opportunity to be heard.**

12 The government asserts that "it is unnecessary for the Court to issue an order
13 precluding ICE from removing Abubaka to a third country now because Respondents
14 have no plans to do so and will not consider doing so unless and until Vietnam refuses
15 to issue a travel document." That same argument was readily rejected in *Nguyen*. In
16 *Nguyen*, the government similarly represented that it was seeking only to remove the
17 petitioner to his home country of Vietnam and stipulated that it would not attempt to
18 remove him to any other country unless Vietnam rejected him. 2025 WL 2419288, at
19 *27. The court was unpersuaded, explaining that "the Ninth Circuit has found such
20 voluntary promises insufficient" to eliminate the potential irreparable injury that
21 petitioner could face if the promise was withdrawn, particularly given the underlying
22 allegations that third party removals were being conducted rapidly and without an
23 opportunity for process. *Id.* at *27–28. *See also Louangmility v. Noem, et al.*, No. 25-
24 cv-2502-JES-MSB, 2025 WL 2881578, *4 (S.D. Cal. Oct. 9, 2025) (citing to *Nguyen*,
25 2025 WL 2419288, at *27) (agreeing with petitioner's claim that ICE should be
26 prevented from removing him to a third country without adequate notice and an

1 opportunity to be heard and rejecting government’s argument that the claim was not
2 ripe because ICE was not seeking to remove him to a third country).

3 The government also argues that this Court may not issue the relief sought by
4 Mr. Abubaka on his due process claim because he is a member of the plaintiff class
5 bound by the Supreme Court’s stay in *D.V.D. v. Dep’t of Homeland Sec.*, *supra*.
6 Specifically, the government argues that “this Court should avoid providing Abubaka
7 with relief that eventually may conflict with the relief, if any, ultimately provided to the
8 *D.V.D.* class.” Dkt. 11 at 9. This argument similarly has been rejected by the courts
9 including this Court in *Baltodano*, 2025 WL 2987766, at *2.

10 As the court explained in *Nguyen*, the Supreme Court in *D.V.D.* provided no
11 reasoning for its entry of the stay and whether it came to that determination based on
12 the merits or the procedural posture of the case. *See Nguyen*, 2025 WL 2419288, at *22
13 (citing *Merrill v. Milligan*, -- U.S. ___, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J.,
14 concurring)) (“The Court’s stay order is not a decision on the merits.”); *see also Cruz-*
15 *Medina v. Noem*, -- F.Supp.3d --, 2025 WL 2841488 (D. Md. Oct. 7, 2025) (rejecting
16 government’s argument that the stay order in *D.V.D.* means that petitioner cannot
17 prevail, stating “[a]ll this Court can do is apply existing precedent and due process
18 standards, and, under those standards, the Court can discern no rational basis for
19 stripping Mr. Cruz Medina of the opportunity to appear before an immigration
20 judge”); *Santamaria Orellana v. Maker*, No. 25-1788-TDC, 2025 WL 2841886
21 (D. Maryland Oct. 7, 2025) (citing to *Nguyen*, 2025 WL 2419288, at *22) (“This Court
22 agrees that based on the presently available guidance from the Supreme Court, there is
23 an insufficient basis upon which to reach a conclusion on which aspects of *D.V.D.* the
24 Supreme Court has rejected, whether they relate to the class certification, the due
25 process claim, or otherwise.”).

1 The *D.V.D.* litigation concerned an earlier version of the ICE guidance, and a
2 primary argument made by the government to the Supreme Court was an objection
3 based on the nationwide scale of the injunction rather than its merits. *See* Gov't
4 Application for a Stay, *D.H.S. v. D.V.D.*, No. 24A1153 (May 27, 2025), at 19,
5 [https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_](https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf)
6 [DHS_v._DVD_et_al-app_stay.pdf](https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf) [<https://perma.cc/8NTN-TQ5D>] (“First, under
7 8 U.S.C. 1252(f)(1), lower federal courts lack jurisdiction to issue *classwide*
8 *injunctions* that restrain the operation of third-country removals pursuant to 8 U.S.C.
9 1231(b)”) (emphasis added). In other words, it is likely that the unreasoned Supreme
10 Court order was not forbidding injunctive relief to Mr. Abubaka because he is one of
11 many people who has no right to relief, but rather forbidding *mass* relief because Mr.
12 Abubaka and others should have proceeded individually in cases just like this one. *See*
13 *Nguyen*, 2025 WL 2419288, at *21. *See also Sagastizado v. Noem*, No. 5:25-CV-00104,
14 – F.3d –, 2025 WL 2957002, *13 (S.D. Tex. Octo. 2, 2025) (“Notably, the class-wide
15 nature of the *D.V.D.* injunction alone could have justified the stay, and that justification
16 would not undermine the merits of an individual claim for relief.”).

17 Finally, the *Nguyen* court made clear that ICE’s current policy “contravenes
18 Ninth Circuit law,” rendering it “impossible to comply both with Ninth Circuit
19 precedent and the policy.” 2025 WL 2419288 at *19.³ The court explained that under
20 Ninth Circuit precedent, “[f]ailing to notify individuals who are subject to deportation
21 that they have the right to apply . . . for withholding of deportation to the country to
22 which they will be deported violates both INS regulations and the constitutional right to
23 due process.” *Id.* at *18 (citing to *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir.
24 1999) (in turn citing *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998))). Applying

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26 ³ Although the government does not set forth the policy, this Court discussed the ICE’s
current policy allowing the removal of aliens to third countries “without the need for
further procedures” under certain conditions in *Baltodano*, 2025 WL 2987766, at *2.

1 this binding precedent, the court concluded that “Petitioner is likely to succeed on his
2 claim that removal to a third country under ICE’s current policy, without meaningful
3 notice and reopening of his removal proceedings for a hearing, would violate due
4 process.” *Nguyen*, 2025 WL 2419288, at *19. And in *Baltodano*, this Court citing to the
5 court’s reasoning in *Nguyen*, concluded that “petitioner is likely to succeed on the
6 merits of his claim that he is entitled to ‘legally required multistep procedures set out in
7 8 U.S.C. § 1231(b) and required by due process’ before ICE can remove him to a third
8 country.” 2025 WL 2987766, at *3.

9 **III. CONCLUSION**

10 For the reasons presented above and in Mr. Abubaka’s habeas petition,
11 Mr. Abubaka respectfully requests that this Court (1) order Respondents to immediately
12 release Mr. Abubaka from custody and (2) order that they not remove or seek to remove
13 him to a third country without notice and meaningful opportunity to respond in
14 compliance with the statute and due process in reopened removal proceedings; (3) order
15 that Respondents may not remove Mr. Abubaka to any third country because
16 Respondents’ third country removal program seeks to impose unconstitutional
17 punishment on its subjects, and (4) order all other relief this Court deems just and
18 proper.

19 DATED this 28th day of October 2025.

20 Respectfully submitted,

21 s/ *Vicki W.W. Lai*
22 Assistant Federal Public Defender
23 Attorney for Isa Abubaka

24 I certify this reply contains 3,014 words in compliance with the Local Civil Rules.
25
26