

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VU THANH TRAN,

Petitioner,

v.

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; WARDEN of
Immigration Detention Facility; and the
United States Immigration and Customs
Enforcement,

Respondents.

No. CV25-1897-JLR

**VU THANH TRAN'S REPLY TO
FEDERAL RESPONDENTS'
RETURN MEMORANDUM AND
MOTION TO DISMISS**

Noted: November 3, 2025

I. INTRODUCTION

Vu Thanh Tran immigrated to the United States from Vietnam with his family as a young child in 1984. He has lived almost his entire life in the United States, and his immediate family—including his parents and his siblings—reside in the United States. Most of his family are U.S. citizens. In addition to his immediate family, Mr. Tran's common-in-law wife and their almost two-year old daughter also reside here. He has no immediate family left in Vietnam other than extended relations. Dkt. 1 at 5–6, 26–27.

Following a marijuana conviction in federal court, Mr. Tran was ordered removed in absentia on June 28, 2007. Dkt. 13 at 1; Dkt. 14-2. Over 18 years later, and only after Mr. Tran filed this habeas petition, ICE states it has requested a travel

1 document for his removal to Vietnam. But because the six-month grace period for
2 removal—which began at the start of the removal period in 2007—has ended, and the
3 government has provided no evidence demonstrating that Mr. Tran’s removal will
4 likely occur in the reasonably foreseeable future, this petition should be granted and Mr.
5 Tran released. There is “nothing in the current record to suggest that releasing Mr. Tran
6 would impede the government’s ability to remove him to Vietnam if the necessary
7 travel document is obtained.” *Hoac v. Becerra*, No. CV25-01740-DC-JDP, 2025 WL
8 1993771, at *6 (E.D. Cal. July 16, 2025).

9 Furthermore, Mr. Tran’s re-detention violated his due process right to maintain
10 his liberty, absent a hearing before a neutral decisionmaker.

11 Lastly, Mr. Tran’s claim pertaining to third-country removal is ripe for
12 determination.

13 **II. ARGUMENT**

14 **A. The court should order Mr. Tran released on conditions because the**
15 **government has offered no credible evidence that his removal is**
16 **significantly likely in the reasonably foreseeable future.**

17 **1. The *Zadvydas* grace period ended six months after the entry of**
18 **Mr. Tran’s removal order and three months after his 90-day**
19 **removal period, both of which occurred in December 2007.**

20 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that the
21 government does not have unrestricted authority to indefinitely detain people who have
22 been ordered deported. Because indefinite detention of a non-citizen in immigration
23 custody raises “a serious constitutional problem,” *id.* at 690, the Court ruled that it is
24 “presumptively reasonable” under the Immigration and Nationality Act to detain an
25 individual for six months following a removal order. *Id.* at 701. After that time, if
26 removal is not “significantly likely in the reasonably foreseeable future,” the
government must release the petitioner. *Id.*

1 Mr. Tran bears an initial burden of showing “that there is good reason to believe
2 that there is no significant likelihood of removal in the reasonably foreseeable future.”
3 *Nguyen v. Scott*, No. CV25-1398-TMC, -- F.Supp.3d --, 2025 WL 2419288, at *13
4 (W.D. Wash. Aug. 21, 2025) (cleaned up). The burden then shifts to the government to
5 “introduce evidence to refute that assertion.” *Id.* (internal quotation marks omitted). *See*
6 *also Hernandez-Escalante v. Noem*, et al., No. CV25-00182-MJT, 2025 WL 2206113,
7 at *3 (E.D. Tex. Aug. 2, 2025) (“These regulations [8 C.F.R. § 241.13]) clearly
8 indicate, upon revocation of an order of supervision, it is the [government’s] burden to
9 show a significant likelihood that the [non-citizen] may be removed.”) (collecting
10 cases).

11 **a. The presumptively reasonable period ends six months**
12 **after the final order of deportation and does not depend**
13 **on six months of detention.**

14 Here, the government argues that Mr. Tran’s detention is “presumptively
15 reasonable” under *Zadvydas* because ICE has detained him for approximately “five
16 months in aggregate since his order of removal became administratively final” in 2007
17 and thus his detention “has not exceeded the six-month timeframe[.]” Dkt. 13 at 7; Dkt.
18 15 (Rodriguez Decl.) at ¶¶ 11–13 (stating Mr. Tran was initially detained after his final
19 removal order for three months in 2009 and re-detained for approximately two months
20 since August 21, 2025). But the *Zadvydas* grace period does not require six months of
21 detention. It lasts only for “six months after a final order of removal—that is, three
22 months after the statutory removal period has ended.” *Kim HO Ma v. Ashcroft*, 257
23 F.3d 1095, 1102 n.5 (9th Cir. 2001). As the Ninth Circuit has recognized, the six-month
24 grace period is pegged to the start of the removal period. *See Ma*, 257 F.3d at 1102 n.5
25 (“[I]n *Zadvydas*, the Supreme Court read the statute to permit a ‘presumptively
26 reasonable’ detention period of *six months* after a final order of removal—that is, *three*
months after the statutory removal period has ended.”); *Rodriguez v. Hayes*, 591 F.3d

1 1105, 1115 (9th Cir. 2010), *overruled in other part by Jennings v. Rodriguez*, 583 U.S.
2 281 (2018) (“The [*Zadvydas*] Court determined that for six months following the
3 beginning of the removal period an alien's detention was presumptively authorized.”). It
4 is not calculated based on the length of detention. *See Bailey v. Lynch*, No. CV 16-2600
5 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (where order of removal became
6 effective upon his release from underlying conviction to ICE authorities, after which he
7 was held only “briefly” before being released on an order of supervision, the *Zadvydas*
8 Court’s presumptively reasonable period ended “long before he was taken back into
9 custody[.]”)

10 The government’s view also conflicts with *Zadvydas*’s reasoning. *Zadvydas*
11 established the six-month grace period to allow ICE to effectuate the removal before a
12 court’s involvement. 533 U.S. at 700–01. That was why the Court chose to expand the
13 grace period beyond the 90-day statutory removal period: because Congress likely did
14 not “believe[] that all reasonably foreseeable removals could be accomplished in that
15 time.” *Id.* at 701. But in Mr. Tran’s case, ICE has had over six months to remove him.
16 The final removal order was issued over eighteen years ago, during which ICE has had
17 no success removing him. That Mr. Tran was on release for most of that time makes no
18 difference. ICE could have arranged for his removal whether he was in a prison cell or
19 on the street. ICE also had many opportunities during his regular check-ins to enlist Mr.
20 Tran’s help in applying for travel documents. Having been given much more than six
21 months to try to remove Mr. Tran, there is no principled reason to give ICE an
22 additional grace period.

23 Here, Mr. Tran’s order of removal was entered on June 28, 2007. Dkt. 14-2.
24 Thus, his 90-day removal period began then. 8 U.S.C. § 1231 (a)(1)(B). On these facts,
25 the *Zadvydas* grace period ended six months after the entry of Mr. Tran’s removal order
26

1 and three months after his 90-day removal period, both of which occurred in December
2 of 2007. The threshold requirement is met.

3 **b. Even if the six month presumptively reasonable period**
4 **were based on the length of detention, the presumption**
5 **can be rebutted.**

6 But even if the grace period has not passed, dismissal is inappropriate. The six-
7 month grace period is only “presumptively reasonable.” *Zadvydas*, 533 U.S. at 701
8 (emphasis added). Several courts have concluded that an immigrant may rebut that
9 presumption with sufficiently compelling evidence that his removal is not foreseeable.
10 *See Trinh v. Homan*, 466 F.Supp.3d 1077, 1092 (C.D. Cal. 2020) (collecting cases).
11 Here, ICE released Mr. Tran in 2009 on supervision because it recognized that it could
12 not remove him. And ICE has made no significant progress in removing Mr. Tran in the
13 18 years after the final removal order was issued.

14 The six-month grace period poses no barrier to granting this *Zadvydas* petition.
15 *See Trinh*, 466 F.Supp.3d at 1092 (“At no point did the *Zadvydas* Court preclude a
16 noncitizen from challenging their detention before the end of the presumptively
17 reasonable six-month period.”); *Munoz-Saucedo v. Pittman*, No. 25-2258, -- F.Supp.3d
18 --, 2025 WL 1750346, at *5 (D. N.J. June 24, 2025) (“Although the Supreme Court
19 established a six-month period of presumptively reasonable detention, it did not
20 preclude a detainee from challenging the reasonableness of his detention before such
21 time.”); *Medina v. Noem*, No. 25-cv-1768-ABA, -- F.Supp.3d --, 2025 WL 2306274 (D.
22 Md. Aug. 11, 2025) (“The Supreme Court clearly did not envision that courts would
23 entirely step aside and permit six months of detention even when there was no
24 likelihood that a person would be removed in the reasonably foreseeable future.”).

25 The extensive period during which the government failed to remove Mr. Tran
26 suffices to rebut the presumption of reasonableness so that the burden shifts to the
government even if the six-month period has not elapsed.

1 **2. The government has failed to meet its burden of showing that**
2 **Mr. Tran will be removed in the reasonably foreseeable future.**

3 Despite acknowledging that it “does not yet have a specific date of anticipated
4 removal,” the government contends it has met its burden of showing Mr. Tran’s
5 removal is reasonably foreseeable. Dkt. 13 at 7. But the government provides no
6 individualized evidence supporting this assertion. *See Nguyen v. Hyde*, No. CV25-
7 11470-MJJ, 2025 WL 1725791, *4 (D. Mass. June 20, 2025) (generalized evidence of
8 removals to Vietnam is insufficient).

9 As the government concedes, ICE did not send its request for travel documents
10 to Vietnam until October 18, 2025, *after* Mr. Tran’s habeas petition was filed. Dkt. 1
11 (filed October 1, 2025). *See, e.g., Nguyen*, 2025 WL 2419288, at *14 (finding petitioner
12 met its burden, stating “[t]o start, Petitioner has shown that ICE did not even request
13 that ICE did not even request that Vietnam issue him a travel document until after he
14 filed a habeas petition.”). Further, the government provides no substantiation for its
15 claim that “ICE anticipates receiving travel documents expeditiously because the
16 government of Vietnam has agreed to issue travel documents within 30 days.” Dkt. 13
17 at 7. Rather, it has been 18 years since an order of removal was entered against Mr.
18 Tran, and “Vietnam has long refused to accept for deportation Vietnamese nationals
19 who came to the United States as refugees before 1995.” *Nguyen*, 2025 WL 2419288, at
20 *6 (citing *Trinh v. Homan*, 466 F.Supp.3d 1077, 1083 (C.D. Cal. 2020)). *See also Hoac*
21 *v. Becerra*, No. CV25-1740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16,
22 2025) (“Respondents’ contention that Petitioner’s removal is reasonably foreseeable
23 because removals to Vietnam are in fact occurring is unpersuasive.”).

24 While the government optimistically asserts that “[t]here is no reason to believe
25 that” Vietnam will refuse to accept Mr. Tran, dkt. 13 at 7, it has provided no
26 information about Vietnam’s criteria for approving repatriation, whether Mr. Tran

1 meets that criteria,¹ or whether Vietnam has even responded to ICE’s request for travel
2 documents. Neither the request nor the accompanying documentation is part of the
3 record. Yet, “[t]he process [for requesting travel documents] is highly dependent on the
4 individualized facts of each case, including whether the individual has any family
5 remaining in Vietnam, whether their Vietnamese identity can be verified, their criminal
6 records, and the manner in which they left Vietnam and came to the United States
7 among other factors.” *Id.* The court in *Nguyen* also found noteworthy that, as here,
8 Nguyen was “not just an immigrant from Vietnam who happened to arrive in the United
9 States before 1995; he is a refugee who fled Vietnam after the fall of Saigon” as a
10 young child. *Id.* at *14. Here, it appears highly unlikely that Mr. Tran will meet
11 Vietnam’s criteria for repatriation. He has no permanent address in Vietnam, nor does
12 he have a passport or a Vietnamese birth certificate. His immediate family, including
13 his parents and siblings, lives in the United States. So too does his common-in-law wife
14 and his young daughter.

15 Moreover, the attached declaration of Assistant Federal Public Defender Katie
16 Hurrelbrink, which was filed in *Ha Thu Thi Nguyen v. Bondi, et. al.*,² refutes the
17 government’s generalized statement that it anticipates receiving travel documents
18 “expeditiously.” Dkt. 13 at 7. AFPD Hurrelbrink states that many Vietnamese
19 immigrants “have been in detention for months without receiving a travel document”
20 and she has “never seen Vietnam respond to a travel document request within 30 days.”

21 _____
22 ¹ While the government and Vietnam have a memorandum of understanding
23 (MOU) that sets forth Vietnam’s criteria for repatriation, the government has not
24 provided a copy of the MOU to the Court or disclosed the criteria. *See Nguyen*, 2025
25 WL 2419288, at *14 (“The Court does not know what factors the Vietnamese
26 government considers in deciding to repatriate a pre-1995 immigrant This
information has been redacted from the publicly available version of the 2020 MOU,
and Respondents have not offered it.”).

² *Ha Thu Thi Nguyen v. Bondi et. al.*, 25-cv-01833-JNW, dkt. 15-1.

1 Ex. 1 at ¶¶ 5, 7. The declaration of immigration specialist Tin Thanh Nguyen, also filed
2 in *Ha Thu Thi Nguyen* (and favorably credited by the court in *Nguyen v. Scott*, 2025
3 WL 2419288, at *15) further belies the government’s representations. Tin Thanh
4 Nguyen explains that, this year alone, he has worked on or assisted with nearly a
5 hundred cases of pre-1995 immigrants “for whom ICE has requested travel documents
6 from Vietnam.” Ex. 2 at ¶ 12. Across these cases, Mr. Nguyen has “yet to see Vietnam
7 issue a travel document within 30 days or less” for a pre-1995 arrival. *Id.* Rather, in his
8 experience, “it can take many months to get any answer from Vietnam about whether it
9 will issue a travel document.” *Id.*

10 On this record, there is insufficient evidence to support the government’s
11 assertion that Vietnam will repatriate Mr. Tran in the reasonably foreseeable future.

12 **B. Mr. Tran’s re-detention was illegal because it was arbitrary and did**
13 **not comport with due process.**

14 The government also argues that a notice given at the time Mr. Tran was
15 detained and an informal interview was all the process to which he is entitled. The
16 government is wrong. “[T]he government’s discretion to incarcerate non-citizens is
17 always constrained by the requirements of due process.” *Hernandez v. Sessions*, 872
18 F.3d 976, 981 (9th Cir. 2017). While the Supreme Court instructed in *Zadvydas* that a
19 removable noncitizen may be released from custody on conditions of supervision and
20 returned to custody if those conditions are violated, 533 U.S. at 700, no conditions of
21 supervision were violated here.

22 Thus, when the government seeks to re-detain, it may only do so “upon review at
23 a hearing before a neutral arbiter, regardless of whether government agents otherwise
24 have statutory authority to re-detain.” *Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL,
25 2025 WL 1983677, at *5 (N.D. Cal. July 17, 2025) (citing *Morrissey v. Brewer*, 408
26 U.S. 471, 482, 489 (1972), and *Young v. Harper*, 520 U.S. 143, 148 (1997)). As

1 numerous courts have held in a variety of immigration detention contexts, a procedural
2 due process analysis does not permit the government to return an individual to custody
3 following a decision to release him, absent pre-deprivation notice and a hearing before
4 a neutral arbiter. *See, e.g., id.* at *7 (“The fact that Petitioner is subject to discretionary
5 conditions of release likewise does not mean he lacks a protectable liberty interest and
6 can be re-detained without process.”); *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE,
7 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025); *Ledesma Gonzalez v. Bostock*,
8 No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025);
9 *Azarte v. Andrews*, No. 1:25-cv-00942-KES-SKO, 2025 WL 2230521, at *6 (E.D. Cal.
10 Aug. 4, 2025) (string citing cases); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1195-97
11 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.
12 2018); *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, at *2-5
13 (E.D. Cal. July 14, 2025).

14 Mr. Tran’s detention was also arbitrary because the purported changed
15 circumstance for Vietnamese people with removal orders generally is not sufficiently
16 individualized to create a new likelihood that he will be removed. The notice the
17 government cites does not even claim to be particularized. *See* Dkt. 14-3 (Arenson
18 Decl.) at 2 (emphasis added) (stating in the conditional: “you *may* be subject to
19 removal”).

20 Here, the government has no legitimate interest in Mr. Tran’s continued
21 detention, that is not unconstitutionally punitive. *See Zadvydas*, 533 U.S. at 690
22 (“[G]overnment detention violates [the Due Process] Clause unless the detention is
23 ordered in a *criminal* proceeding with adequate procedural protections or, in certain
24 special and narrow nonpunitive circumstances, where a special justification, such as
25 harm-threatening mental illness, outweighs the individual’s constitutionally protected
26 interest in avoiding physical restraint.”) (citations omitted). The government should be

1 ordered to release Mr. Tran according to his order of supervision, dkt. 14-2, until it has
2 his travel documents in hand and is ready to remove him to Vietnam.

3 **C. As numerous courts have held, Mr. Tran’s claim—that ICE should**
4 **be prevented from removing him to a third country without due**
5 **process—is ripe, contrary to the government’s contention,**
6 **unsupported by any authority.**

7 The government also asserts, without citation to any legal authority, that Mr.
8 Tran lacks standing to request an order precluding ICE from removing him to a third
9 country because ICE has no current plan to remove him to any country other than
10 Vietnam. A similar argument was rejected in *Nguyen v. Scott*. There, the government
11 similarly represented that it was seeking only to remove the petitioner to his home
12 country of Vietnam and stipulated that it would not attempt to remove him to any other
13 country unless Vietnam rejected him. 2025 WL 2419288, at *27. The court was
14 unpersuaded, explaining that “the Ninth Circuit has found such voluntary promises
15 insufficient” to eliminate the potential irreparable injury that petitioner could face if the
16 promises were withdrawn, particularly given the underlying allegations that third-party
17 removals were being conducted rapidly and without an opportunity for process. *Id.* at
18 *27–28. *See also Tran v. Scott*, No. 2:25-CV-01886-TMC-BAT, 2025 WL 2898638, at
19 *4 (W.D. Wash. Oct. 12, 2025) (stating that in petitioner’s previous petition, ICE
20 represented that removal to Vietnam was “likely to occur within two months” but “[i]n
21 fact, ICE took no further steps to obtain a travel document for Petitioner or effectuate
22 her removal until after she filed this habeas action—while she has languished
23 needlessly in detention for five months”); *see also id.* (court pointing out in another
24 case that government had represented travel document was “in the mail,” yet counsel
25 from that case stated neither she nor her client had received it more than a month later).

26 Moreover, in *Louangmilith v. Noem, et al.*, No. 25-cv-2502-JES-MSB, 2025 WL
2881578 (S.D. Cal. Oct. 9, 2025), the court rejected the government’s exact argument

1 here that “this situation is not ripe for adjudication because ICE is not seeking to
2 remove Petitioner to a third country.” *Id.* at *4. Despite the government’s
3 representations, the court citing to *Nguyen v. Scott*, 2025 WL 2419288, at *27, stated it
4 was “more persuaded by Petitioner’s arguments” that “by the time [the claim] is ripe by
5 the government’s argument, it will be too late for the individuals to meaningfully
6 challenge the removal.” *Id.* (granting petition on claim that ICE should be prevented
7 from removing petitioner to a third country without due process).

8 In addition, the events cited in Mr. Tran’s petition, dkt. 1 at pp. 17–21,
9 demonstrate that the government has undertaken rapid third-country removals without
10 even the process required by its own regulations, further showing that such an action
11 against him is sufficiently likely to make the matter ripe.

12 **III. CONCLUSION**

13 Based on the foregoing, the Court should grant the petition in its entirety.

14 DATED this 3rd day of November 2025.

15 Respectfully submitted,

16
17 *s/ Rebecca Fish*
18 Assistant Federal Public Defender
19 Attorney for Vu Thanh Tran
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