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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Tai Quoc Dang,

Petitioner,

vs.

David R. Rivas, Warden, et al.,

Respondents.

No. 2:25-cv-3673-PHX-SPL (JFM)

Reply in Support of Petition for a Writ of Habeas Corpus and Motion for a Preliminary Injunction and a Temporary Restraining Order

Respondents have no evidence that Mr. Dang's removal to Vietnam is imminent. In response to Mr. Dang's discovery request, respondents failed to produce any responses from representatives of the Vietnamese government, as Mr. Dang requested (Dkt. #4 at 2) and this Court ordered (Dkt. #7 at 3). All evidence indicates that the Vietnamese government is ignoring ICE's requests for travel documents. This Court should grant Mr. Dang's request for a preliminary injunction and his petition, and order him released from immigration detention on an order of supervision.

Argument in Reply

1. Mr. Dang has met his burden to show that his removal is not likely in the reasonably foreseeable future.

Under 8 U.S.C. § 1231(a)(2), an alien who has been ordered removed must be detained during the so-called "removal period." This 90-day window of time allows the government to ensure that the alien will be present at the time of removal. As relevant here, the removal period

for Mr. Dang began on August 12, 2023, when the time for appealing his removal order expired. *See* 8 U.S.C. § 1231(a)(1)(B)(i). Once the removal period expires and the alien remains in the United States, detention is no longer mandatory, and the alien may be released under an order of supervision. 8 U.S.C. § 1231(a)(6). But if the alien is detained after the removal period expires, that detention cannot be indefinite. The post-removal-order detention statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

The Supreme Court has articulated a test for determining when an alien's detention after a removal order has issued exceeds the bounds of reasonableness. After six months of detention, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink. This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

Mr. Dang was released from a California state prison on parole on June 6, 2023, and taken into ICE custody. (Dkt. #10-1 at 3 ¶ 8) Three months later, on September 15, 2023, he was released from ICE custody on an order of supervision "due to an inability to repatriate" Mr. Dang to Vietnam. (Dkt. #10-1 at 3 ¶ 10) He was arrested again on or about July 30, 2025, according to a post on Twitter to the account for the San Diego ICE Field Office. ICE requested travel documents from the Vietnamese Consulate in San Francisco on August 12, 2025. (Dkt. #10-1 at 3–4 ¶ 13) To date, the Vietnamese Consulate has not responded to ICE's requests. He has now spent a total of 180 days in immigration detention.

On remand from *Zadvydas*, the Ninth Circuit said that the "presumptively reasonable detention period" authorized by § 1231(a)(6) was "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Mr. Dang's removal period began on August 12, 2023, when his removal order became final. The presumptively-reasonable detention period thus ended six months later, on February 12, 2024. In all that time—while he was in detention and after he was released on an order of supervision—ICE was unable to obtain travel documents to facilitate Mr. Dang's return to Vietnam. Mr. Dang has thus met his burden to show that there is "good reason to believe" he will not soon be returned to Vietnam.

The government disagrees, asserting that Mr. Dang "has been detained for less than three months," a period of time it measures from the date of Mr. Dang's recent arrest. (Dkt. #10 at 5) This assertion rests on an incorrect reading of *Zadvydas*. Courts "broadly agree that the six-month period under *Zadvydas* does not reset when the government detains an alien under 8 U.S.C. § 1231(a), releases him from detention, and then re-detains him again." *Diaz-Ortega v. Lund*, No. 1:19-cv-670-P, 2019 LW 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019) (quoting *Sied v. Nielsen*, No. 17-cv-6785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018)).

2. The government has failed to rebut the presumption that Mr. Dang's detention in immigration custody is unreasonable, because it has produced no evidence to show that his removal is likely in the reasonably foreseeable future.

Because Mr. Dang has been detained for more than the presumptively reasonable period of time necessary to allow for his removal, the burden shifts to the government to produce evidence that his removal *is* likely. It has made no effort to do so. In particular, it has produced no responses from the Vietnamese Consulate regarding its requests for travel documents for Mr. Dang, despite being ordered to do so by this Court. Indeed, in 2023 ICE apparently determined that it was not possible to return Mr. Dang to Vietnam. The government has not explained why ICE came to that conclusion. And ICE has been met with radio silence for the last two months after it sent a second request for travel documents to the Vietnamese Consulate.

Instead of concrete evidence, the government relies on inchoate hopes and beliefs. It says that "ICE routinely obtains travel documents for Vietnamese citizens, including those who immigrated to the United States prior to 1995." (Dkt. #10-1 at 4 ¶ 14) It says that it removed 587 people to Vietnam in fiscal year 2025, as recently as last month, and that "ICE routinely has flights to Vietnam." (Dkt. #10-1 at 4 ¶¶ 15–17) These assertions do nothing to rebut Mr. Dang's showing that his removal is not likely in the reasonably foreseeable future, because they say nothing about ICE's efforts (or lack thereof) to obtain travel documents for *him*. *Cf. Senor v. Barr*, 401 F. Supp. 3d 420, 431 (W.D.N.Y. 2019) ("The government observes that many other individuals have been removed to Haiti. Docket Item 11-1 at 5. That might well be true, but it sheds little light on why *Senor's* removal has been delayed and what that means for *Senor's* prospects for removal occurring in the reasonably foreseeable future."). On the contrary—the fact that the government has recently succeeded in removing *other people* to Vietnam "may underscore the problems it has had attempting to remove" Mr. Dang. *Id.* (quoting *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002)).

The government adds, "Once ICE receives a travel document for [Mr. Dang], his removal can be effectuated promptly." (Dkt. #10-1 at 4 ¶ 19) This is of course true—a necessary requisite for removing Mr. Dang is obtaining the travel documents. But this statement, coupled with the fact that Mr. Dang remains in detention, simply underscores the fact that *ICE does not have travel documents for Mr. Dang.* And it says nothing about whether those documents are forthcoming.

The government correctly observes (Dkt. #10 at 5–6) that the allegations in his habeas petition regarding his Vietnamese citizenship being cancelled in 2014 (*see* Dkt. #1 at 4–5 ¶ 15) are identical to the allegations in the petition in *Long Phi Do v. Rivas*, No. 2:25-cv-1885-PHX-KML (ASB) (D. Ariz. filed May 31, 2025) (Dkt. #1 at 5 ¶ 14). The government says that "just two months" after the petitioner in *Do* filed his petition, "ICE successfully repatriated Mr. Do to Vietnam and the petition was dismissed as moot." (Dkt. #10) That is indeed what a detention officer told the court in a sworn declaration. *See* Declaration of David J. Ramirez at 2 ¶ 6, *Do v.*

Rivas, No. 2:25-cv-1885-PHX-KML (ASB) (D. Ariz. filed Aug. 12, 2025) (Dkt. #23-1). But the government was never ordered to produce discovery in that case, including correspondence with the Vietnamese government regarding Mr. Do's travel documents. And in any event, regardless of whether the Vietnamese government has cancelled Mr. Do's citizenship, or Mr. Dang's, the fact that ICE was able to return Mr. Do to Vietnam sheds no light on its ability to do the same thing for Mr. Dang.

3. Just because the government does not now plan to remove Mr. Dang to a third country does not mean it will never try to do so.

The second claim in Mr. Dang's petition alleges that his detention is illegal to the extent that it is meant to facilitate his removal to a country *other than* Vietnam because he has not received notice of the country to which he will be removed and not been provided an opportunity to request relief from removal to that country. (Dkt. #1 at 7 ¶¶ 24–26) The government responds that it is not seeking to remove Mr. Dang to any country other than Vietnam. (Dkt. #10 at 6) But it recently removed at least one Vietnamese national to the African kingdom of Eswatini. *See* Rachel Savage, *Eswatini confirms arrival of 10 more people as part of US deportation deal*, *The Guardian* (Oct. 6, 2025). The government has given this Court no reason not intervene to ensure that Mr. Dang receives the process due to him in the event the government tries to remove him to Eswatini (or to any other country besides Vietnam). *See generally* 8 U.S.C. § 1231(b)(2)(E)(vii) (allowing, as a last resort, removal to "another country whose government will accept the alien into that country"). It thus has conceded that this Court should grant relief on Ground Two. *See United States v. Castillo-Marin*, 684 F.3d 914, 919 (9th Cir. 2012) (holding that the government conceded an argument by failing to make an argument that was available to it when it filed its brief).

4. The government has not shown that Mr. Dang is not entitled to a preliminary injunction.

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Planned*

Parenthood Great Northwest v. Labrador, 122 F.4th 825, 843–44 (9th Cir. 2024) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)). Mr. Dang explained in his preliminary injunction motion why he meets all four of these requirements. (Dkt. #3)

The government disputes Mr. Dang's assertions, but its reasons are unpersuasive. First, because it has made no effort to show why Mr. Dang's removal is likely in the reasonably foreseeable future, Mr. Dang is likely to succeed on his *Zadvydas* claim. And the government has conceded that he should prevail on his third-country-removal claim. The only reason the government offers for saying that Mr. Dang's detention is not causing irreparable harm is that his detention is not illegal. (Dkt. #10 at 8) Mr. Dang has shown that it is illegal, and so the government has not undermined his showing of irreparable harm. The government agrees that the third and fourth factors merge when the government is a party. (Dkt. #10 at 9) But its argument that "the public interest lies in the Executive's ability to enforce U.S. immigration laws" (Dkt. #10 at 9) ignores another aspect of *Zadvydas*. In *Zadvydas* the Court observed that the "plenary power" that Congress has "to create immigration law" "is subject to important constitutional limitations." 533 U.S. at 695 (citing *INS v. Chadha*, 462 U.S. 919, 942–43 (1983)). The statute that purportedly authorizes Mr. Dang's detention here, 8 U.S.C. § 1231, contains "no clear indication of congressional intent to grant the Attorney General the power to hold indefinitely in confinement an alien ordered removed." *Id.* at 697. The public has no interest in continuing to imprison a person like Mr. Dang, whom the government cannot remove from the United States because it does not have the proper documentation. The Supreme Court has already said that such imprisonment is unauthorized by statute. The public has no interest in seeing its government act unlawfully.

Conclusion

This Court should grant Mr. Dang's petition and order him released from custody on an order of supervision.

Respectfully submitted: October 17, 2025.

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