

THE HONORABLE KYMBERLY K. EVANSON
THE HONORABLE THERESA L. FRICKE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THO VAN HUYNH,

Petitioner,

v.

PAMELA BONDI, Attorney General of
the United States, *et al.*,

Respondents.

No. CV25-02093-KKE-TLF

**PETITIONER'S REPLY
MEMORANDUM**

Noted on Motion Calendar:
November 7, 2025

I. INTRODUCTION AND FACTUAL BACKGROUND

Petitioner Tho Van Huynh is detained at the Northwest ICE Processing Center (NWIPC). He came to the United States in 1978 when he was a teenager as a refugee from Vietnam and became a lawful permanent resident in 1981.

The Government maintains that he was re-detained on August 18 because he violated conditions of ICE supervision on two occasions. First, the Government alleges that he missed an ICE reporting date on December 12, 2024. Dkt. 7 (Gov't Return) at 5; Dkt. 8 (Declaration of ICE Supervisor Brett Booth) at 3, ¶ 10. However, the Government did not seek to revoke his supervision or change the conditions of supervision at that time. Instead he was continued on supervision, given a new check-in date of September 11, 2025, and reported to ICE as required on that day.

The Government also alleges that he violated supervision by refusing to complete a travel document application. *Id.* at ¶ 11. However, the September 11 proof of service for the notice of revocation ICE has served on him contains a notation from

1 ICE Officer Colin Vincent that Mr. Huynh “stated he is willing to cooperate with any
2 travel document requirements.” Dkt. 8-5 at 6. Mr. Huynh’s English language abilities
3 are very limited and he had no opportunity to consult with an attorney when he was
4 initially asked about travel documents. In any event, the record indicates that he is in
5 fact willing to cooperate with ICE in obtaining travel documents.

6 Mr. Huynh was initially detained by ICE for 93 days from January 27, 2016, to
7 April 28, 2016, before his release pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001).
8 He was re-detained by ICE on September 11 and has been in custody for an additional
9 58 days as of the filing of this Reply, for a total of 151 days.

10 The presumptive six-month grace period for detention under *Zadvydas* is not
11 calculated based on the length of detention, but is instead measured from the start of the
12 removal period. In this case, that period commenced with entry of a removal order on
13 January 11, 1996, and has long since expired. Dkt. 8-2. Even if a full 180 days of ICE
14 detention were required before Mr. Huynh should be released, that will elapse in 29
15 days on December 6, 2025, and the Court can set the noting date for this Petition for
16 Friday, December 5, 2025, or enter an order that he be released if he has not been
17 removed by December 6, 2025.

18 **II. THE COURT SHOULD ORDER MR. HUYNH RELEASED ON**
19 **CONDITIONS BECAUSE THE GOVERNMENT HAS OFFERED NO**
20 **CREDIBLE EVIDENCE THAT HIS REMOVAL IS SIGNIFICANTLY**
21 **LIKELY IN THE REASONABLY FORESEEABLE FUTURE.**

22 **A. The applicable law**

23 In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court held that the
24 Government does not have unrestricted authority to indefinitely detain people who have
25 been ordered deported. Because indefinite detention of a non-citizen in immigration
26 custody raises “a serious constitutional problem,” *id.* at 690, it is “presumptively
reasonable” to detain an individual following a removal order for six months. *Id.* at 701.

1 After that, if removal is not “significantly likely in the reasonably foreseeable future,”
2 the Government must release the Petitioner. *Id.*

3 Mr. Huynh bears an initial burden of showing that there is no significant
4 likelihood of removal in the reasonably foreseeable future. To meet that initial burden,
5 however, all he must show is that the presumptively reasonable six-month period has
6 expired. *See Nguyen v. Scott*, No. CV25-1398-TMC, -- F.Supp.3d --, 2025 WL
7 2419288, at *13 (W.D. Wash. Aug. 21, 2025). The burden then shifts to the
8 Government to establish that, based on “changed circumstances,” there is “a significant
9 likelihood that the [noncitizen] may be removed in the reasonably foreseeable future,” 8
10 C.F.R. § 241.13(i)(2); *see also, e.g., Hernandez-Escalante v. Noem, et al.*, No. CV25-
11 182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (“These regulations
12 clearly indicate, upon revocation of supervised release, it is the [Government’s] burden
13 to show a significant likelihood that the [non-citizen] may be removed.”) (collecting
14 cases).

15 **B. Mr. Huynh’s period of detention**

16 The Government acknowledges that the 90-day “removal period” in
17 Mr. Huynh’s case has long expired. As the Ninth Circuit has recognized, the six-month
18 grace period is pegged to the start of the removal period. *See Ma v. Ashcroft*, 257 F.3d
19 1095, 1102 n.5 (“[I]n *Zadvydas*, the Supreme Court read the statute to permit a
20 ‘presumptively reasonable’ detention period of *six months* after a final order of
21 removal—that is, *three months* after the statutory removal period has ended.”);
22 *Rodriguez v. Hayes*, 591 F.3d 1105, 1115 (9th Cir. 2010), *overruled in other part by*
23 *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (“The [*Zadvydas*] Court determined that
24 for six months following the beginning of the removal period [a non-citizen’s]
25 detention was presumptively authorized.”). Accordingly, the grace period should not be
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1 calculated based on the length of detention. *See also, e.g., Bailey v. Lynch*, No. 16-
2 2600-JLL, 2016 WL 5791407 (D.N.J. Oct. 3, 2016), at *2.

3 Having had more than two decades to remove Mr. Huynh, there is no principled
4 reason to give ICE an additional grace period.

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

7 The Government maintains that “Petitioner’s removal will likely occur in the
8 reasonably foreseeable future,” dkt. 7 at 8, ll. 13–14. It appears from the available
9 record that he has already spent 151 days in ICE custody. Moreover, ICE has not yet
10 completed “the remainder” of the documentation it is required to submit. Dkt. 8 at 4,
11 ¶ 16. Although the burden is on the Government to establish that Mr. Huynh’s removal
12 is “significantly likely in the reasonably foreseeable future,” it offers no information
13 about what “remainder” of documentation is needed and how long it will take to obtain
14 or complete; or how long the subsequent “review” by the Office of Enforcement and
15 Removal Operations typically takes. *See id.*

16 Further, while the Government claims that “Vietnam is currently issuing travel
17 documents within 30 days less,” *id.* at ¶ 14, the facts are otherwise. This is because,
18 according to testimony Judge Cartwright credited in *Nguyen*, “the process for procuring
19 travel documents from Vietnam for pre-1995 immigrants continues to be uncertain and
20 protracted.” 2025 WL 2419288, at *15. In fact, “[t]he process [for requesting travel
21 documents] is highly dependent on the individualized facts of each case, including
22 whether the individual has any family remaining in Vietnam, whether their Vietnamese
23 identity can be verified, their criminal records, and the manner in which they left
24 Vietnam and came to the United States, among many other factors.” *Id.*; *see also* Ex. 1,
25 Order, *Bui v. Archambeault*, No. CV25-3774-PHX-KML (D. Ariz. Oct. 28, 2025),
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1 Dkt. 11 at 5, ll. 8–9 (as of October 28, Vietnam had not responded to travel request
2 submitted on August 5, 2025).

3 The accompanying declaration of Assistant Federal Public Defender Katie
4 Hurrelbrink, which was submitted in the *Nguyen v. Bondi* case, states that many
5 Vietnamese immigrants “have been in detention for months without receiving a travel
6 document,” and she has “never seen Vietnam respond to a travel document request
7 within 30 days.” Ex. 2, Declaration, *Nguyen v. Bondi*, No. CV25-1833-JNW (W.D.
8 Wash. Oct. 30, 2025), at 3, ¶¶ 5, 7. Likewise, the accompanying declaration of
9 immigration specialist Tin Thanh Nguyen, which was filed in *Nguyen v. Scott*, further
10 belies the Government’s representations. Tin Nguyen explains that, this year alone, he
11 has worked on or assisted with nearly a hundred cases of pre-1995 immigrants “for
12 whom ICE has requested travel documents from Vietnam.” Ex. 3 at 4, ¶ 12. Across
13 these cases, Mr. Nguyen has “yet to see Vietnam issue a travel document within 30
14 days or less” for a pre-1995 arrival. *Id.* Rather, in his experience, “it can take many
15 months to get any answer from Vietnam about whether it will issue a travel document.”
16 *Id.*

17 While the Government and Vietnam have a memorandum of understanding
18 (MOU) that sets forth Vietnam’s criteria for repatriation, the Government has not
19 provided a copy of the MOU to the Court or disclosed the criteria. *See Nguyen v. Scott*,
20 2025 WL 2419288, at *14 (“The Court does not know what factors the Vietnamese
21 government considers in deciding to repatriate a pre-1995 immigrant.... This
22 information has been redacted from the publicly available version of the 2020 MOU,
23 and Respondents have not offered it.”). Facts that likely weigh against Vietnam
24 approving a travel request for Mr. Huynh include his lack of a passport, Vietnamese
25 birth certificate, or identification documents from Vietnam. He also has no place to live
26 in Vietnam, nor any means of supporting himself there.

1 Finally, Respondents cannot meet their burden by offering evidence of some
2 increased deportations to Vietnam. *See, e.g., Hoac v. Becerra*, No. CV25-1740-DC-
3 JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025) (“Respondents’ contention that
4 Petitioner’s removal is reasonably foreseeable because removals to Vietnam are in fact
5 occurring is unpersuasive.”); *Nguyen v. Hyde*, No. CV25-11470-MJJ, 2025 WL
6 1725791, *4 (D. Mass. June 20, 2025) (generalized evidence of removals to Vietnam
7 insufficient).

8 Given these facts, and the lack of credible evidence to the contrary, the
9 Government has not met its burden of showing that Mr. Huynh’s removal from the
10 United States is “substantially likely” in the “reasonably foreseeable future,” and the
11 Court should order his release on conditions.

12 Finally, the Government does not suggest that Mr. Huynh’s detention is
13 warranted because he poses a flight risk or poses a danger to the community. His sole
14 conviction, while serious, was in 1987, and ICE never sought to revoke or modify the
15 conditions of his supervision until it re-detained him without notice. The notice of
16 revocation states that the revocation is for a missed check-in in 2024, but this seems
17 pretextual since ICE gave him a new report date of September 11, 2025, and he
18 reported on that date. ICE also claims he failed to complete travel documents but, as
19 noted earlier, ICE records indicate he is willing to complete the documents. Dkt. 8-5
20 at 6.

21 Mr. Huynh’s re-arrest is instead attributable to policy changes rather than an
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 re-arrested 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 \[https://perma.cc/MGG8-H7TJ\]](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 \[https://perma.cc/Y9Z2-AKW7\]](https://perma.cc/Y9Z2-AKW7).

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

25 ⁴ *Nguyen v. Scott*, 2025 WL 2419288, at *1 (granting preliminary injunction to
26 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 detention); *E.A. T.-B. v. Wamsley*,

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

3 III. CONCLUSION

4 The Government has not met its burden of establishing that Mr. Huynh will be
5 removed to Vietnam in the reasonably foreseeable future and “nothing in the current
6 record suggest[s] that releasing Petitioner would impede Respondents’ ability to
7 remove him to Vietnam if the necessary travel document is obtained.” *Hoac v. Becerra*,

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9 No. CV25-1192-KKE, 2025 WL 2402130, at *1 (W.D. Wash. Aug. 19, 2025) (re-arrest
10 violated due process); *Calderon v. Kaiser*, No. CV25-06695-AMO, 2025 WL 2430609,
11 at *3 (N.D. Cal. Aug. 22, 2025) (same); *Arias Gudino v. Lowe*, -- F.Supp.3d --, 2025
12 WL 1162488 (M.D. Pa. Apr. 21, 2025) (same); *Arzate v. Andrews*, No. CV25-942-
13 KES-SKO (HC), 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025); *Lopez Benitez v.*
14 *Francis*, No. CV25-5937-DEH, 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025)
15 (same); *Ceesay v. Kurzdorfer*, -- F.Supp.3d --, 2025 WL 1284720 (W.D.N.Y. May 2,
16 2025) (same); *Chipantiza-Sisalema v. Francis*, No. CV25-5528, 2025 WL 1927931
17 (S.D.N.Y. July 13, 2025) (same); *Domingo v. Kaiser*, No. CV25-05893-RFL, 2025 WL
18 1940179 (N.D. Cal. July 14, 2025) (same); *Dos Santos v. Noem*, No. CV25-12052,
19 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (same); *Garcia v. Andrews*, No. CV25-
20 1884-TLN-SCR, 2025 WL 1927596 (E.D. Cal. July 14, 2025) (same); *Gomes v. Hyde*,
21 CV25-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) (Respondents
22 violated Administrative Procedures Act); *Guillermo M. R. v. Kaiser*, 2025 WL 1983677
23 (N.D. Cal. July 17, 2025) (Respondents violated due process); *Maldonado v. Olson, et*
24 *al.*, No. CV25-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *M’Bagoyi v.*
25 *Barr*, 423 F.Supp.3d 99 (M.D. Penn. 2019); *Maklad v. Murray*, No. CV25-00946-JLT-
26 *SAB*, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025); *Martinez v. Hyde*, No. CV25-11613,
2025 WL 2084238 (D. Mass. July 24, 2025); *Mata Velasquez v. Kurzdorfer*, No. CV25-
493-LJV, 2025 WL 1953796 (W.D.N.Y. July 16, 2025); *Morales Jimenez v. Bostock*,
No. CV25-00570-MTK (D. Or. May 13, 2025); *OJM v. Bostock*, No. CV25-00944-AB
(D. Or. July 14, 2025); *Ortega v. Kaiser*, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025);
Pablo Sequen v. Kaiser, -- F.Supp.3d --, 2025 WL 2203419 (N.D. Cal. Aug. 1, 2025);
Pinchi v. Noem, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Ramirez-Clavijo v.*
Kaiser, No. CV25-6248-BLF, 2025 WL 2097467 (N.D. Cal. July 25, 2025); *Rosado v.*
Figueroa, No. CV25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Singh v.*
Andrews, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Valdez v. Joyce*, No. CV25-
4627-GBD, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (granted habeas on due
process grounds); *Y-Z-L-H v. Bostock*, -- F. Supp. --, 2025 WL 1898025 (D. Or. July 7,
2025) (re-arrest violates APA).

1 No. CV25-1740-DC-JDP, 2025 WL 1993771, at *6 (E.D. Cal. July 16, 2025).

2 Accordingly, the Court should order his release.

3 DATED this 7th day of November 2025.

4 Respectfully submitted,

5 *s/ Colin Fieman*

6 Attorney for Tho Van Huynh

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