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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Dong Van Nguyen,

Petitioner,

v.

Gregory J. Archambeault, et al.,

Respondents.

No. CV-25-04107-PHX-SHD (ASB)

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Respondents Gregory J. Archambeault, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement (ICE), David R. Rivas, San Luis Regional Detention Center, United States Department of Homeland Security (DHS), and ICE, through undersigned counsel, respond to the Petition for Writ of Habeas Corpus, as directed under this Court's Order to Show Cause dated November 4, 2025. Doc. 5. Petitioner Dong Van Nguyen, a three-time convicted criminal, is a Vietnamese citizen subject to final order of removal. Petitioner has not been unconstitutionally detained, he cannot establish that his removal is not likely to occur in the reasonably foreseeable future, and Respondents have no intention of removing him to a country other than Vietnam. Therefore, Respondents respectfully request this Court dismiss the habeas petition.

I. FACTUAL BACKGROUND.

Petitioner Dong Van Nguyen (Petitioner) is a citizen and national of Vietnam, born on [redacted], in Da Nane, Vietnam. *See* Declaration of Jose Ruiz, Deportation Officer, attached as Exhibit A, at ¶ 4. He entered the United States on February 25, 1992, in San Francisco, California as a refugee. *Id.* at ¶ 5. His immigration status was changed to lawful permanent resident in 1994. *Id.* at ¶ 6. On October 28, 1997, Petitioner was convicted in the Superior Court of California, County of San Diego, for burglary, and he was sentenced to one-year confinement. *Id.* at ¶ 7. On January 11, 1999, the former Immigration and Naturalization Service (INS) began removal proceedings against Petitioner under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (INA),an alien that at any time after admission has been convicted of an aggravated felony as defined under INA § 101(a)(43)(G), a theft offense for which the term of imprisonment is at least one year. *Id.* at ¶ 8.

On July 27, 1999, an immigration judge (IJ) ordered Petitioner removed to Vietnam. *Id.* at ¶ 9. Petitioner waived appeal. *Id.* On January 10, 2000, INS released Petitioner from custody on an order of supervision. *Id.* at ¶ 10. On March 1, 2008, Petitioner was convicted in the Superior Court of California, County of San Diego, of a felon in possession of a firearm. *Id.* at ¶ 11. Further, as recently as December 5, 2022, Petitioner was convicted in the United States District Court for the Southern District of California, for violating 21 U.S.C. § 856(a)(1), maintaining a drug involved premises, and 18 U.C.S. § 371, conspiracy to violate 18 U.S.C. § 1955, operating an illegal gambling business, where he was sentenced to 36 months imprisonment for each offense. *Id.* at ¶ 12.

Petitioner was out of immigration custody until ICE detained him on June 24, 2025, to effectuate removal to Vietnam. *Id.* at ¶ 13. On September 6, 2025, San Diego Enforcement and Removal Operations (ERO) submitted a travel document (TD) request to the Detention and Deportation Officer (DDO) assigned to Vietnam cases within ERO Headquarters, Removal and International Operations (RIO) for assistance obtaining a TD. *Id.* at ¶ 14. The request remains pending. *Id.* On October 30, 2025, a request to translate

Petitioner's Vietnamese identity documents was submitted to RIO with a second request for a TD, which also remains pending. *Id.* at ¶ 15. On November 7, 2025, ICE provided Petitioner with notice that his order of supervision was revoked and provided him with an informal interview to contest its revocation. *Id.* at ¶ 16; *see also* the Notice of Revocation of Release and Informal Interview, attached as Exhibit B. Petitioner refused to sign the notice of revocation or provide documents or statements during his informal interview. *Id.*

Petitioner seeks a court order in his Petition and Motion for Temporary Restraining Order (TRO) directing ICE to immediately release him from immigration detention, restore the status quo by reinstating his prior order of supervision, and enjoin Respondents from removing him to a country other than Vietnam. Docs 1-2. This Court issued an Order to Show Cause directing Respondents to show cause why the Petition should not be granted. Doc. 5. Respondents therefore respond to the underlying merits of the Petition.

II. ARGUMENT.

A. Standard Governing Detention of Aliens Ordered Removal.

The detention, release, and removal of aliens subject to a final order of removal is governed by § 241 of the INA, 8 U.S.C. § 1231. Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the United States after an order of removal becomes final. During this "removal period," detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been removed and remains in the United States, his detention may be continued, or he may be released under the supervision of the Attorney General. INA § 241, 8 U.S.C. §§ 1231(a)(3) and (6). Under this section, ICE may detain an alien for a "reasonable time" necessary to effectuate the alien's deportation. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite detention is not authorized. *Id.*

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court defined six months as a presumptively reasonable period of detention. *Zadvydas* places the burden on the alien to show, after a detention period of six months, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If the alien makes that showing, the Government must then introduce evidence to

refute that assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40 (9th Cir. 2002). The Court must "ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Zadvydas*, 533 U.S. at 699.

B. Petitioner's Detention Is Statutorily Authorized and Constitutional.

Petitioner became subject to a final order of removal on July 27, 1999, and thus his detention is governed by 8 U.S.C. § 1231 and *Zadvydas*. *See* 8 U.S.C. 1231(a)(1)(B); *Zadvydas*, 533 U.S. at 688-89. While he has remained in the United States since, he remains subject to removal pursuant to a final order of removal to Vietnam. His ICE detention on June 24, 2025, was proper to effectuate his removal to Vietnam, and as explained below, an alien is not entitled to release after six months detention. Ex. A at ¶ 13; *Id.* at 701.

C. Petitioner Has Not Met His Burden to Establish There Is No Significant Likelihood of Removal in the Reasonably Foreseeable Future.

Petitioner has the burden to show that his removal is not likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Only then does the burden shift to the Government to show that removal is significantly likely in the reasonably foreseeable future. *Id.* Petitioner has not met his burden to show that his removal is unlikely in the reasonably foreseeable future and, even if he could, the Government can overcome that with evidence showing that removal is likely.

In *Zadvydas*, the Supreme Court designated six months as a presumptively reasonable period of time to allow the government to remove an alien detained under 8 U.S.C. § 1231(a)(6), but an alien is not entitled to release after six months detention. *Id.* at 701 ("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.") (emphasis added). The passage of time alone is insufficient to establish that no significant likelihood of removal exists in the reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002). In *Lema,* where the petitioner had been detained for more than a year, the district court held that the passage of time was only the first step in the analysis, and that the petitioner must then provide good reason to believe that no significant likelihood of removal exists in the reasonably foreseeable future. *Id.*

Petitioner argues that his detention is unlawful under *Zadvydas* because his removal is not "reasonably foreseeable." Petitioner may only be granted release from detention if he can show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Courts have held that Petitioners have met this bar when no country would agree to accept the alien or when the alien's home country had no repatriation treaty with the United States, *Id.* at 686, when the government "concede[d] that it [was] no longer even involved in repatriation negotiations" with the alien's home country, *Clark v. Suarez Martinez*, 543 U.S. 371, 386 (2005), and when the alien had been detained for five years and had "won relief at every administrative level." *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). The Supreme Court clarified that its holding in *Zadvydas* was concerned with detention that is "indefinite and potentially permanent," and for aliens whose removal is "no longer practically attainable." *See Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (internal quotations omitted). The mere fact that an alien's detention "lacks a certain end date" does not render their detention unlawfully indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

Here, Petitioner asserts that Vietnam is not accepting pre-1995 emigrants "at greater rates that would make removal significantly likely in the reasonably foreseeable future." Doc. 2 at 14. He also claims that Respondents "intent to complete a travel document request" does not indicate that he will be removed in the foreseeable future or constitute a changed circumstance. *Id.* Generously assuming Petitioner has met his burden showing that his removal is not likely in the reasonably foreseeable future, the Government rebuts

that presumption with evidence showing that Respondents have done more than formulated an "intent" to remove him. Instead, Petitioner's removal is practically attainable, and his detention is not "potentially permanent." *Demore*, 538 U.S. at 528.

First, Petitioner's concerns about removals to Vietnam are misplaced. As Respondents have established in other filings in similar cases, ICE routinely obtains travel documents for Vietnamese citizens, including those who immigrated to the United States prior to 1995. *See* Declaration of Fernando Valenzuela, Assistant Field Office Director, Enforcement and Removal Operations, attached as Exhibit C, at ¶ 17. In fiscal year 2025, ICE has removed at least 587 Vietnamese citizens to Vietnam. *Id.* at ¶ 18. Of those 587 removed, 324 were Vietnamese citizens who immigrated to the United States before July 12, 1995, like the Petitioner. *Id.* ICE routinely has flights to Vietnam. *Id.* at ¶ 19. Once ICE receives a travel document for Petitioner, his removal can be effectuated promptly like the 587 or so before him. *Id.* at ¶ 20. Additionally, in a recent habeas petition before this District, the petitioner there made a similar argument—that is, that the petitioner was not significantly likely to be removed to Vietnam as a pre-1995 emigrant. That petition was ultimately dismissed as moot, because the petitioner was successfully removed to Vietnam a mere two months after he filed his habeas petition. *See Long Phi Do v. Rivas, et al.*, 2:25-cv-01885-KLM (ASB) Docs. 23-24.

Second, the process is in motion. On September 6, 2025, San Diego Enforcement and Removal Operations (ERO) submitted a TD request to the Detention and Deportation Officer (DDO) assigned to Vietnam cases within ERO Headquarters, Removal and International Operations (RIO) for assistance obtaining a TD. Ex. A at ¶ 14. The request remains pending. *Id.* On October 30, 2025, a request to translate Petitioner's Vietnamese identity documents was submitted to RIO with a second request for a TD, which also remains pending. *Id.* at ¶ 15.

Unlike in *Hoac v. Becerra*, 2025 WL 1993771 (E.D. Cal. 2025), on which Petitioner relies, ICE has made progress towards obtaining travel documents for Petitioner. Ex. A at ¶¶ 15-16. Moreover, Petitioner's detention is not unlawfully indefinite because its end is

in sight as addressed above. Additionally, ICE routinely obtains travel documents for Vietnamese citizens, including those who immigrated to the United States prior to 1995. *See* Ex. C at ¶ 17. Further, Petitioner has provided no compelling reason to believe that Vietnam will not decide soon whether to issue travel documents to him. Thus, Petitioner has failed to show that his detention is unconstitutionally indefinite under *Zadvydas*, so his request should be denied. *See Zadvydas*, 533 U.S. at 700–01.

D. Respondents Are Not Seeking Removal to a Third Country.

Petitioner asks this Court to enjoin Respondents from removing him to a third country without providing him several procedural protections. Respondents have no present intention of removing him to a third country—they intend to remove him to Vietnam. Ex. A at ¶¶ 14-15. Further, Petitioner has presented no support for the proposition that ICE intends to remove him to a country other than Vietnam. This Court has no jurisdiction to entertain an action when the petitioner lacks standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). A petitioner lacks standing when their suit is not grounded in an "actual or imminent" injury. *Id.* Although "an allegation of future injury may suffice" for standing purposes, the threatened injury must be "certainly impending," or there must be a "substantial risk that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409, 414 n.5 (2013)). Petitioner cannot show that he is at substantial risk of removal to a third country, so this Court has no jurisdiction to grant relief under this basis.

E. Petitioner's Order of Supervision Was Lawfully Revoked.

Petitioner also argues that his detention is unlawful because ICE revoked his order of supervision unlawfully. Respondents argue that any error was harmless, because the lapse in procedure was subsequently rectified and even if this court were to order Petitioner to be released on this basis, ICE could detain him again immediately. ICE's regulations permit it to revoke an order of supervision and detain the alien released under it if it "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). If an alien's order of supervision

is revoked for this reason, ICE must notify the alien "of the reasons for revocation" and "conduct an initial informal interview promptly after [the alien's] return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(i)(3).

Many of Petitioner's arguments that his order of supervision was unlawfully revoked are based on procedures promised in a different regulation, which are required only when the order of supervision is revoked under that regulation's authority. *See* Doc. 1 at ¶¶ 54-57 (citing 8 C.F.R. § 241.4). However, the regulation under which ICE revoked Petitioner's order of supervision grants only two procedural protections to an alien whose order of supervision is revoked: the alien is entitled to know "the reasons for revocation of his or her release," and the alien is entitled to "an initial informal interview promptly after his or her return to [ICE] custody" to respond to the reasons for revocation. 8 C.F.R. § 241.13(i)(3); *see also* Ex. B. ICE has provided Petitioner with the required notice and attempted to conduct the required informal interview, where Petitioner stated to refer to his attorney. *Id.* ICE has therefore provided Petitioner with all the procedural protections to which he is entitled. Because ICE complied with its regulations by providing Petitioner notice of the revocation and an informal interview under 8 C.F.R. § 241.13(i)(3), he cannot prevail on a habeas claim based on any improper revocation of his OSUP claim.

III. CONCLUSION.

For the foregoing reasons, Respondents respectfully request that this Court deny the Petition for Writ of Habeas Corpus, Doc. 1, and dismiss this case in its entirety.

Respectfully submitted on November 12, 2025.

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