

1 TIMOTHY COURCHAIINE
2 United States Attorney
3 District of Arizona
4 LINDSEY E. GILMAN
5 Assistant United States Attorney
6 Arizona State Bar No. 034003
7 Two Renaissance Square
8 40 North Central Avenue, Suite 1800
9 Phoenix, Arizona 85004-4449
10 Telephone: (602) 514-7500
11 Fax: (602) 514-7760
12 Email: lindsey.gilman@usdoj.gov
13 *Attorneys for Respondents*

14 **IN THE UNITED STATES DISTRICT COURT**

15 **FOR THE DISTRICT OF ARIZONA**

16 Truong Tuyen Nguyen,

17 Petitioner,

18 v.

19 Jesus Rocha, et al.,

20 Respondents.

No. CV-25-04161-PHX-DJH (JFM)

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

21 Respondents Immigration and Customs Enforcement (ICE) San Diego Field Office
22 Director Jesus Rocha; San Luis Regional Detention Center Warden David R. Rivas; the
23 United States Department of Homeland Security (DHS); and the United States
24 Immigrations and Customs Enforcement (ICE), through undersigned counsel, respond to
25 the Petition for Writ of Habeas Corpus, as directed under this Court's Order to Show Cause
26 issued on November 10, 2025. Doc. 5. Petitioner Truong Tuyen Nguyen is a Vietnamese
27 citizen subject to a final order of removal. Petitioner has not been unconstitutionally
28 detained, and he cannot establish that his removal to Vietnam is not significantly likely to
occur in the reasonably foreseeable future as ICE is actively working on preparing a travel
document request with the Vietnamese Government. Therefore, Respondents respectfully
request this Court dismiss the habeas petition.

1 **I. FACTUAL AND PROCEDURAL BACKGROUND.**

2 Petitioner Truong Tuyen Nguyen is a native and citizen of the Socialist Republic of
3 Vietnam (Vietnam), born on [REDACTED] in Vietnam. *See* Declaration of Marco
4 Miranda, Supervisory Detention and Deportation Officer, attached as Exhibit A, at ¶ 6. He
5 entered the United States on August 9, 1983, in New York as a Refugee. *Id.* at ¶ 7. On
6 September 27, 1984, the Petitioner's status was adjusted to that of an immigrant (Lawful
7 Permanent Resident) retroactive to his entry date. *Id.* at ¶ 8. On October 13, 1992, the
8 Petitioner was convicted of First-Degree Burglary in California Superior Court and
9 placed on three years of probation. *Id.* at ¶ 9. On March 2, 1993, the Petitioner was
10 convicted of Possession of Burglary Tools and Second-Degree Burglary. *Id.* at ¶ 10.

11 The former Immigration and Naturalization Service (INS) placed Petitioner into
12 removal proceedings under the Immigration and Nationality Act (INA) § 240, 8 U.S.C. §
13 1229a, via the filing of a Notice to Appear and ordered the Petitioner to appear before an
14 immigration judge (IJ) on November 18, 1993. *Id.* at ¶ 11. The Notice to Appear charged
15 Petitioner with removability under INA § 237(a)(2)(A)(ii) for having been convicted of
16 two crimes involving moral turpitude not arising out of a single scheme of criminal
17 misconduct. *Id.* at ¶ 12. On September 10, 1999, the IJ ordered Petitioner removed to
18 Vietnam. Petitioner filed an appeal, and the Board of Immigration Appeals (BIA)
19 dismissed the appeal on December 3, 1999. *Id.* at ¶ 13. On February 18, 2000, the BIA
20 remanded the Petitioner's case back to the IJ. *Id.* On May 1, 2000, the IJ ordered Petitioner
21 removed to Vietnam. *Id.* On September 14, 2000, INS released Petitioner from custody on
22 an order of supervision. *Id.* at ¶ 14.

23 Petitioner was out of immigration custody until ICE detained him on May 16, 2025,
24 for removal to Vietnam. *Id.* at ¶ 15. On November 10, 2025, Petitioner refused to fill out a
25 Self-Declaration Form that provides necessary information to ICE in order to apply for a
26 travel document. *Id.* at ¶ 16. On November 10, 2025, Petitioner was served with an I-229
27 (Warning for Failure to Depart). *Id.* at ¶ 17. To effectuate Petitioner's removal to Vietnam,
28 ERO must acquire a travel document and schedule a flight for Petitioner. *Id.* at ¶ 18. Since

1 Petitioner was re-detained, ERO has worked expeditiously to effectuate Petitioner's
2 removal to Vietnam. *Id.* These removal efforts remain ongoing. *Id.*

3 ICE routinely obtains travel documents for Vietnamese citizens, including those
4 who immigrated to the United States prior to 1995. *Id.* at ¶ 19. In fiscal year 2025, ICE has
5 removed at least 587 Vietnamese citizens to Vietnam. *Id.* at ¶ 20. Of those 587 removed,
6 324 were Vietnamese citizens who immigrated to the United States before July 12, 1995,
7 like the Petitioner. *Id.* at ¶ 20. ICE routinely has flights to Vietnam. *Id.* at ¶ 21. Once ICE
8 receives a travel document for Petitioner, his removal can be effectuated promptly. *Id.* at ¶
9 22. As an alien who has been ordered removed based on removability under INA §
10 237(a)(2), 8 U.S.C. § 1227(a)(2), Petitioner is currently detained pursuant to INA §
11 241(a)(6), 8 U.S.C. § 1231(a)(6). *Id.* at ¶ 23. On November 14, 2025, ICE provided
12 Petitioner with notice that his order of supervision was revoked and provided him with an
13 informal interview to contest its revocation. *Id.* at ¶ 24. Petitioner refused to sign the notice
14 of revocation or provide documents or statements during his informal interview. *Id.*

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

21 **II. ARGUMENT.**

22 **A. Standard Governing Detention of Aliens Ordered Removal.**

23 The detention, release, and removal of aliens subject to a final order of removal is
24 governed by § 241 of the INA, 8 U.S.C. § 1231. Pursuant to INA § 241(a), the Attorney
25 General has 90 days to remove an alien from the United States after an order of removal
26 becomes final. During this "removal period," detention of the alien is mandatory. *Id.* After
27 the 90-day period, if the alien has not been removed and remains in the United States, his
28 detention may be continued, or he may be released under the supervision of the Attorney

1 General. INA § 241, 8 U.S.C. §§ 1231(a)(3) and (6). Under this section, ICE may detain
2 an alien for a “reasonable time” necessary to effectuate the alien’s deportation. INA §
3 241(a), 8 U.S.C. § 1231(a). However, indefinite detention is not authorized. *Id.*

4 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court defined six months
5 as a presumptively reasonable period of detention. *Zadvydas* places the burden on the alien
6 to show, after a detention period of six months, that there is “good reason to believe that
7 there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at
8 701. If the alien makes that showing, the Government must then introduce evidence to
9 refute that assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832,
10 839-40 (9th Cir. 2002). The Court must “ask whether the detention in question exceeds a
11 period reasonably necessary to secure removal. It should measure reasonableness primarily
12 in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment
13 of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued
14 detention unreasonable and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

15 **B. Petitioner’s Detention Does Not Violate His Due Process Rights.**

16 Petitioner became subject to a final order of removal on May 1, 2000, and thus his
17 detention is governed by 8 U.S.C. § 1231 and *Zadvydas*. *See* 8 U.S.C. 1231(a)(1)(B);
18 *Zadvydas*, 533 U.S. at 688-89. While he has remained in the United States since, he remains
19 subject to removal pursuant to a final order of removal to Vietnam. His ICE detention on
20 May 16, 2025, was proper to effectuate his removal to Vietnam. Aliens are not
21 automatically entitled to release after the six-month presumptive period expires. *Zadvydas*,
22 533 U.S. at 701. Petitioner’s detention is authorized under 8 U.S.C. § 1231(a)(6). *Id.* at 701
23 (“This 6-month presumption, of course, *does not mean that every alien not removed must*
24 *be released after six months.* To the contrary, an alien may be held in confinement until it
25 has been determined that there is no significant likelihood of removal in the reasonably
26 foreseeable future.”)

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

Petitioner has the burden to show that his removal is not likely in the reasonably

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

6 In *Zadvydas*, the Supreme Court designated six months as a presumptively
7 reasonable period of time to allow the government to remove an alien detained under 8
8 U.S.C. § 1231(a)(6), but an alien is not entitled to release after six months detention. *Id.* at
9 701 (“This 6-month presumption, of course, *does not mean that every alien not removed*
10 *must be released after six months.* To the contrary, an alien may be held in confinement
11 until it has been determined that there is no significant likelihood of removal in the
12 reasonably foreseeable future.”) (emphasis added). The passage of time alone is
13 insufficient to establish that no significant likelihood of removal exists in the reasonably
14 foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002). In
15 *Lema*, where the petitioner had been detained for more than a year, the district court held
16 that the passage of time was only the first step in the analysis, and that the petitioner must
17 then provide good reason to believe that no significant likelihood of removal exists in the
18 reasonably foreseeable future. *Id.*

19 Petitioner argues that his detention is unlawful under *Zadvydas* because his removal
20 is not “reasonably foreseeable.” Petitioner may only be granted release from detention if
21 he can show “good reason to believe that there is no significant likelihood of removal in
22 the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Courts have held that
23 Petitioners have met this bar when no country would agree to accept the alien or when the
24 alien’s home country had no repatriation treaty with the United States, *Id.* at 686, when the
25 government “concede[d] that it [was] no longer even involved in repatriation negotiations”
26 with the alien’s home country, *Clark v. Suarez Martinez*, 543 U.S. 371, 386 (2005), and
27 when the alien had been detained for five years and had “won relief at every administrative
28 level.” *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). The Supreme Court

1 clarified that its holding in *Zadvydas* was concerned with detention that is “indefinite and
2 potentially permanent,” and for aliens whose removal is “no longer practically attainable.”
3 *See Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (internal quotations omitted). The mere
4 fact that an alien’s detention “lacks a certain end date” does not render their detention
5 unlawfully indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

6 Here, Petitioner asserts that Vietnam is not accepting pre-1995 emigrants “at greater
7 rates that would make removal significantly likely in the reasonably foreseeable future.”
8 Doc. 2 at 16. He also claims that Respondents “intent to complete a travel document
9 request” does not indicate that he will be removed in the foreseeable future or constitute a
10 changed circumstance. *Id.* Generously assuming Petitioner has met his burden showing
11 that his removal is not likely in the reasonably foreseeable future, the Government rebuts
12 that presumption with evidence showing that Respondents have done more than formulated
13 an “intent” to remove him. Instead, Petitioner’s removal is practically attainable, and his
14 detention is not “potentially permanent.” *Demore*, 538 U.S. at 528.

15 Petitioner’s concerns about removals to Vietnam are misplaced. While Petitioner
16 has been detained since May 16, 2025, only slightly above the presumptively reasonable
17 six-month mark, Respondents have established in other filings in similar cases that ICE
18 routinely obtains travel documents for Vietnamese citizens, including those who
19 immigrated to the United States prior to 1995. *See* Declaration of Marco Miranda,
20 Supervisory Detention and Deportation Officer, attached as Exhibit A, at ¶ 19. In fiscal
21 year 2025, ICE has removed at least 587 Vietnamese citizens to Vietnam. *Id.* at ¶ 20. Of
22 those 587 removed, 324 were Vietnamese citizens who immigrated to the United States
23 before July 12, 1995, like the Petitioner. *Id.* ICE routinely has flights to Vietnam. *Id.* at ¶
24 21. Once ICE receives a travel document for Petitioner, his removal can be effectuated
25 promptly like the 587 or so before him. *Id.* at ¶ 22. Additionally, in a recent habeas petition
26 before this District, the petitioner there made a similar argument—that is, that the petitioner
27 was not significantly likely to be removed to Vietnam as a pre-1995 emigrant. That petition
28 was ultimately dismissed as moot, because the petitioner was successfully removed to

1 Vietnam a mere two months after he filed his habeas petition. *See Long Phi Do v. Rivas, et*
2 *al.*, 2:25-cv-01885-KLM (ASB) Docs. 23-24. Moreover, Petitioner's detention is not
3 unlawfully indefinite because its end is in sight given that ICE is engaging in ongoing
4 removal efforts. *See Ex. A at ¶ 18.* Additionally, ICE routinely obtains travel documents
5 for Vietnamese citizens, including those who immigrated to the United States prior to 1995.
6 *See Ex. A at ¶ 19.* Further, Petitioner has provided no compelling reason to believe that
7 Vietnam will not decide soon whether to issue travel documents to him. Thus, Petitioner
8 has failed to show that his detention is unconstitutionally indefinite under *Zadvydas*, so his
9 request should be denied. *See Zadvydas*, 533 U.S. at 700–01.

10 **D. Respondents Are Not Seeking Removal to a Third Country Presently.**

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

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

24 Petitioner also argues that his detention is unlawful because ICE revoked his order
25 of supervision unlawfully. Respondents argue that any error was harmless, because the
26 lapse in procedure was subsequently rectified and even if this court were to order Petitioner
27 to be released on this basis, ICE could detain him again immediately. ICE's regulations
28 permit it to revoke an order of supervision and detain the alien released under it if it

1 “determines that there is a significant likelihood that the alien may be removed in the
2 reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). If an alien’s order of supervision
3 is revoked for this reason, ICE must notify the alien “of the reasons for revocation” and
4 “conduct an initial informal interview promptly after [the alien’s] return to Service custody
5 to afford the alien an opportunity to respond to the reasons for revocation stated in the
6 notification.” 8 C.F.R. § 241.13(i)(3).

7 Many of Petitioner’s arguments that his order of supervision was unlawfully
8 revoked are based on procedures promised in a different regulation, which are required
9 only when the order of supervision is revoked under that regulation’s authority. *See* Doc.
10 1 at ¶¶ 60-63 (citing 8 C.F.R. § 241.4). However, the regulation under which ICE revoked
11 Petitioner’s order of supervision grants only two procedural protections to an alien whose
12 order of supervision is revoked: the alien is entitled to know “the reasons for revocation of
13 his or her release,” and the alien is entitled to “an initial informal interview promptly after
14 his or her return to [ICE] custody” to respond to the reasons for revocation. 8 C.F.R. §
15 241.13(i)(3); *see also* Ex. B. ICE has provided Petitioner with the required notice and
16 attempted to conduct the required informal interview, where Petitioner stated to refer to his
17 attorney. *Id.* ICE has therefore provided Petitioner with all the procedural protections to
18 which he is entitled. Because ICE complied with its regulations by providing Petitioner
19 notice of the revocation and an informal interview under 8 C.F.R. § 241.13(i)(3), he cannot
20 prevail on a habeas claim based on any improper revocation of his OSUP claim.

21 **III. PETITIONER BRINGS IMPROPER HABEAS CLAIMS.**

22 Petitioner claims that ICE failed to follow the *Accardi* doctrine, a “foundational
23 principle of administrative law.” Doc. 1 at 14. Petitioner claims that “courts must also
24 reverse agency action for violation of unpublished rules and instructions to agency
25 officials.” *See Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public
26 assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812
27 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS
28 agents for violating instructions on investigating tax fraud).

1 These allegations exceed the scope of habeas review. An individual may seek
2 habeas relief under 28 U.S.C. § 2241 if he is “in custody” under federal authority “in
3 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c).
4 But habeas relief is available to challenge only the legality or duration of confinement.
5 *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890,
6 891 (9th Cir. 1979); *Dep’t of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 117
7 (2020) (The writ of habeas corpus historically “provide[s] a means of contesting the
8 lawfulness of restraint and securing release.”). The Ninth Circuit squarely explained how
9 to decide whether a claim sounds in habeas jurisdiction: “[O]ur review of the history and
10 purpose of habeas leads us to conclude the relevant question is whether, based on the
11 allegations in the petition, release is legally required irrespective of the relief requested.”
12 *Pinson*, 69 F.4th at 1072; *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016)
13 (The key inquiry is whether success on the petitioner’s claim would “necessarily lead to
14 immediate or speedier release.”).

15 Notably, seeking judicial review under the APA is not properly sought through a
16 habeas petition. Doc. 1 at 13-14. *See Flores-Miramontes v. INS.*, 212 F.3d 1133, 1140 (9th
17 Cir. 2000) (“For purposes of immigration law, at least, “judicial review” refers to petitions
18 for review of agency actions, which are governed by the Administrative Procedure Act,
19 while habeas corpus refers to habeas petitions brought directly in district court to challenge
20 illegal confinement.”); *see also Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL
21 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over
22 Petitioner’s § 2241 habeas petition since it cannot be fairly read as attacking ‘the legality
23 or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

24 **IV. CONCLUSION.**

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

27
28 Respectfully submitted on November 17, 2025.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TIMOTHY COURCHAINED
United States Attorney
District of Arizona

s/ Lindsey E. Gilman
LINDSEY E. GILMAN
Assistant United States Attorney
Attorneys for Respondents