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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 TAI TRUONG,

13 Petitioner,

14 v.

15 KRISTI NOEM, Secretary of the
16 Department of Homeland Security,
17 PAMELA JO BONDI, Attorney General,
18 TODD M. LYONS, Acting Director,
19 Immigration and Customs Enforcement,
20 JESUS ROCHA, Acting Field Office
21 Director, San Diego Field Office,
22 CHRISTOPHER LAROSE, Warden at
23 Otay Mesa Detention Center,

24 Respondents.

CIVIL CASE NO.: 25-cv-3189-JES

**Traverse in
Support of
Petition for Writ of
Habeas Corpus**

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1 INTRODUCTION

2 Two weeks after this Court granted Mr. Truong’s first habeas petition on
3 regulatory grounds, the government re-detained him—purportedly to execute his
4 removal to Laos. But despite telling this Court that it would remove him “no later
5 than” October 22 (Dkt. 1, Exh. D), then November 1 (Dkt. 1, Exh. B at ¶ 12), then
6 November 6 (Dkt. 1, Exh. E), the government missed all three of these deadlines.
7 Mr. Truong then filed a second habeas petition and motion for a temporary
8 restraining order arguing that the government’s repeated failures to remove him
9 meant that his removal was not significantly likely in the reasonably foreseeable
10 future under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

11 The government now admits that Mr. Truong’s travel document expired on
12 November 6. Dkt. 7 at 2. But it does not explain why his confirmed flight on
13 November 4 “could not be completed as scheduled” before that. Dkt. 7-1 at ¶ 12.
14 Nor it does not explain why his travel document expired after 51 days, when other
15 Laotian travel documents are valid for 90 days. Nor does it show that Laos
16 actually re-issues travel documents that have expired. Nor does the government
17 claim that it received “a response from the Laotian Embassy the week of
18 November 24, 2025,” as it “expect[ed]” to. Dkt. 7-1 at ¶ 15.

19 In other words, the government’s explanations do not add up. ICE has had
20 opportunities to remove Mr. Truong when it had him in custody with a valid
21 travel document and he was scheduled for a flight, yet it did not do so. And as the
22 government admits, this Court should measure the reasonableness of Mr.
23 Truong’s detention by what will “assur[e] [his] presence at the moment of
24 removal,” which Mr. Truong’s past compliance and an ankle monitor easily do.
25 Dkt. 7 at 5 (quoting *Zadvydas*, 533 U.S. at 699). Because the government’s
26 repeated failures to effectuate Mr. Truong’s removal do not show that his removal
27 is significantly likely in the reasonably foreseeable future, this Court should grant
28 his immediate release.

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2 **ARGUMENT**

3 **I. This Court has jurisdiction to consider Mr. Truong’s *Zadvydas* claim.**

4 As a preliminary matter, the government claims that this Court lacks
5 jurisdiction because “Petitioner’s claims necessarily arise ‘from the decision or
6 action by the Attorney General to . . . execute removal orders,’ over which
7 Congress has explicitly foreclosed district court jurisdiction.” Dkt. 7 at 3 (quoting
8 8 U.S.C. § 1252(g)). But Mr. Truong does not challenge whether the government
9 may “execute” his removal under 8 U.S.C § 1252(g)—only whether it may detain
10 him up to the date it does so. *See* Dkt. 1 at 2 (asking this Court to “order him
11 released”). This is precisely the relief the petitioners sought in *Zadvydas* itself,
12 where the Supreme Court held that § 1252(g) did not present a jurisdictional bar
13 to “obtaining review of continued custody after a deportation order had become
14 final.” 533 U.S. at 687 (emphasis omitted). Thus, this Court may quickly dispense
15 with the government’s jurisdictional argument.

16 **II. The government’s explanations for why Mr. Truong’s removal is
17 significantly likely in the reasonably foreseeable future do not add up.**

18 In its return, the government does not dispute that Mr. Truong’s detention
19 “exceed[s] the six months of presumptive reasonableness” necessary to effectuate
20 a removal under *Zadvydas*. Dkt. 7 at 6. Instead, the crux of the government’s
21 argument is that Mr. Truong has not shown “good reason to believe that there is
22 no significant likelihood of removal in the reasonably foreseeable future.” *Id.*
(quoting *Zadvydas*, 533 U.S. at 701).

23 But the government’s own actions have shown this. Time and again, the
24 government has failed to meet its own deadlines to remove Mr. Truong—even
25 when it had ample opportunity to do so. And the expiration of Mr. Truong’s travel
26 document—and the government’s failure to obtain a new one by the time it said it
27 would—provide further evidence that removal is not significantly likely in the

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1 reasonably foreseeable future. In short, the government’s explanations do not add
2 up, for at least three reasons.

3 *First*, the government provides no explanation for its failure to remove
4 Mr. Truong when he was in custody, had a valid travel document, and was
5 scheduled for a flight. Though the government claimed it would remove
6 Mr. Truong “no later than” October 22, it did not schedule him for the flight that
7 departed for Laos on that date. Dkt. 1, Exh. D. Nevertheless, two days later, on
8 October 24, 2025, the government took him into custody. It claimed that Mr.
9 Truong had been “nominated for an upcoming charter flight to Laos” and that he
10 “will be removed to Laos by November 1, 2025.” Dkt. 1, Exh. B at ¶ 12. But the
11 government did not remove Mr. Truong by that date. Then the government admits
12 that Mr. Truong was “scheduled for a charter flight to remove him to Laos on
13 November 4, 2025,” but again, he was not removed by that date. Dkt. 7-1 at ¶ 12.

14 The government provides no explanation for why it missed its October 22
15 and November 1 deadlines. As for missing its November 4 deadline, all it says is
16 that “the removal could not be completed as scheduled.” Dkt. 7-1 at ¶ 12. The
17 government’s failure to provide this Court *any* reasons for why it did not remove
18 Mr. Truong when he was 1) in custody, 2) with a valid travel document, and 3)
19 scheduled for chartered flight is perplexing. The only reasonable inference is that
20 either the government is not prioritizing Mr. Truong’s removal or else it cannot
21 remove him for undisclosed reasons. Either way, this creates “good reason to
22 believe that his removal is not significantly likely in the reasonably foreseeable
23 future.” *Zadvydas*, 533 U.S. at 701.

24 *Second*, the government admits that Mr. Truong’s travel document expired
25 on November 6. Dkt. 7 at 2. This makes the government’s failure to execute Mr.
26 Truong’s removal order on November 4 that much more befuddling, since it knew
27 his travel document would expire two days later—yet it chose not to remove him
28 when it had the chance.

1 Mr. Truong’s purported travel document itself also seems questionable. The
2 government claims that it obtained Mr. Truong’s travel document on September
3 16 and that it expired on November 6—51 days later. Dkt. 7-1 at ¶¶ 8, 13. But in
4 at least three other cases in this district, the government obtained travel documents
5 for Laotian nationals that were valid for 90 days, as evidenced by the declarations
6 attached to this traverse. *See* Exhibit F (declarations from DO Jason Cole, DO
7 Humberto Martinez, and DO Alexis Boada, all stating that the travel document
8 issued for a Laotian national was valid for 90 days). The government does not
9 explain why Mr. Truong’s travel document would expire 39 days before the
10 typical Laotian travel document. Again, the government’s explanation of events
11 does not add up.

12 *Third*, the government’s attempt to obtain a new travel document does not
13 show that removal is foreseeable. To begin, it presents no evidence that Laos will
14 actually re-issue a travel document that has expired. Additionally, the government
15 “anticipate[d] a response from the Laotian Embassy during the week of November
16 24, 2025,” yet to date, it does not appear to have received one. Dkt. 7-1 at ¶ 15. So
17 there is no reason to believe the government *will* obtain a new travel document
18 given that 1) it has not shown Laos re-issues travel documents after they expire,
19 and 2) it has not received one in the time period it claimed it would.

20 Under *Zadvydas*, there is no dispute that the six-month period of removal
21 has elapsed. 533 U.S. at 701. And given: 1) the government’s repeated failures to
22 remove Mr. Truong when it had a chance to do so; 2) the subsequent expiration of
23 his travel document; and 3) the government’s failure to obtain a new travel
24 document within the promised time frame, the government has not shown “good
25 reason to believe that there is no significant likelihood of removal in the
26 reasonably foreseeable future.” *Id.* Accordingly, this Court should order Mr.
27 Truong released.

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1 **III. Alternatives to detention and Mr. Truong’s past compliance ensure**
2 **that he can be removed if the government obtains a travel document.**

3 If any doubt remained that Mr. Truong’s continued detention is
4 unreasonable under *Zadvydas*, the government’s own admissions would dispel it.
5 In its return, the government admits that under *Zadvydas*, courts should measure
6 the reasonableness of a noncitizen’s detention “primarily in terms of the statute’s
7 basic purpose, namely, *assuring the alien’s presence at the moment of removal.*”
8 Dkt. 7 at 5 (quoting *Zadvydas*, 533 U.S. at 699) (emphasis government’s). Thus,
9 if it is possible to “assure [Mr. Truong’s] presence at the moment of removal”
10 *without* detaining him, his detention is not reasonable.

11 Here, Mr. Truong was released on October 10, after this Court granted his
12 first habeas petition. He was then told to appear on October 24 and voluntarily did
13 so, even though he believed he would be taken into custody and deported.
14 Additionally, Mr. Truong was previously released on an ankle monitor and would
15 likely be placed on an ankle monitor again if this Court granted his habeas
16 petition. Thus, if the government were to obtain a new travel document and
17 schedule for Mr. Truong for a future flight, his past compliance and placement on
18 an ankle monitor would satisfy “the statute’s basic purpose, namely assuring [his]
19 presence at the moment of removal”—just as it did last time. For this additional
20 reason, his continued detention is not reasonable under *Zadvydas*.

21 Given the government’s demonstrated failure to remove Mr. Truong when
22 it says it will, Mr. Truong also requests that this Court enjoin the government
23 from re-detaining him unless it can show at a pre-deprivation hearing that it has
24 obtained a valid travel document and confirmed Mr. Truong on a specific flight to
25 Laos. In other cases, district courts have ordered similar relief under the three-part
26 procedural due process framework of *Mathews v. Eldridge*, 424 U.S. 319, 335

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1 (1976).¹ Under this framework, Mr. Truong similarly has a substantial interest in
2 avoiding repeated re-detentions, the risk of an erroneous deprivation of his liberty
3 is high, and the government’s interest in detaining him before it obtains a new
4 travel document and a scheduled flight is low. Thus, due process requires this
5 safeguard—particularly in light of the government’s history of detaining Mr.
6 Truong and failing to remove him.

7
8 **Conclusion**

9 For these reasons, this Court should 1) grant the petition or a temporary
10 restraining order, 2) order that Mr. Truong be immediately released, and 3) enjoin
11 the government from re-detaining him until it can prove that it has a valid travel
12 document and a scheduled flight for Mr. Truong.

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14 Respectfully submitted,

15 Dated: December 1, 2025

s/ Kara Hartzler

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23 ¹ See, e.g., *Phouvieng K. v. Andrews*, No. 1:25-CV-01512-KES-SAB, 2025 WL
24 3265504, at *9 (E.D. Cal. Nov. 24, 2025) (enjoining respondents from re-
25 detaining petitioner absent a pre-deprivation hearing); *Yang v. Kaiser*, No. 2:25-
26 CV-02205-DAD-AC (HC), 2025 WL 2791778, at *7–10 (E.D. Cal. Aug. 20,
27 2025) (same); *Khan v. Noem*, No. 1:25-CV-01411-EPG-HC, 2025 WL 3089352,
28 at *6 (E.D. Cal. Nov. 5, 2025) (same); *Oazi v. Albarran*, No. 2:25-CV-02791-
TLN-CSK, 2025 WL 3033713, at *4 (E.D. Cal. Oct. 10, 2025) (same); *Ramirez
Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4–6 (N.D. Cal.
Aug. 21, 2025) (same); *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL
1853763, at *1 (N.D. Cal. July 4, 2025) (same); *Diaz v. Kaiser*, No. 3:25-cv-
05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) (same); *Ortega v.
Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (same).