

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THACH WANA,

Petitioner,

v.

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

Respondents.

No. CV25-2321-RSL

PETITIONER'S RESPONSE TO  
RESPONDENT'S RETURN

Noted on Motion Calendar:  
December 9, 2025

**I. MR. WANA'S CONTINUED DETENTION VIOLATES *ZADVYDAS*.**

Mr. Wana came to the United States in 1990 under the Amerasian Immigration Act, 8 U.S.C.A § 1154(f). A primary purpose of the Act was to give preferential immigration status to children born in Vietnam with American fathers who served there during the Vietnam War. There is widespread and lasting prejudice in Vietnam against Amerasians, where they are commonly called "'children of the dust'—as insignificant as a speck to be brushed aside." David Lamb, *Children of the Vietnam War*, *Smithsonian Magazine*, June 2009<sup>1</sup>; *see also* Carina Kimlan Hinton, *Vietnamese Amerasians Today*, *disCRITICS*, Sept. 9, 2025 ("Discrimination against Vietnamese Amerasians was often institutionalized or carried out under the table. They were also denied citizenship, legal and social rights, adequate healthcare, as well as many

<sup>1</sup> Available at <https://www.smithsonianmag.com/travel/children-of-the-vietnam-war-131207347/>.

1 economic opportunities for upward mobility.”)<sup>2</sup> Mr. Wana’s status as an Amerasian  
2 makes it especially incumbent on Respondents to show there is a significant likelihood  
3 of his removal to Vietnam in the reasonably foreseeable future, which they fail to do.

4 Instead, Respondents contend that Mr. Wana has not met his initial burden of  
5 showing his detention is indefinite under *Zadvydas v. Davis*, 533 U.S. 678 (2001).  
6 Dkt. 8 at 5. This argument appears to be premised on the fact that Mr. Wana has been in  
7 ICE detention since August 5, for 127 days as of this filing, and a contention that his  
8 continued detention is lawful and he is precluded from petitioning for release until 180  
9 days of detention have elapsed. Respondents are wrong.

10 As Judge Robart and other courts have concluded, the “*Zadvydas* grace period  
11 end[s] six months following the entry of the order of [petitioner’s] removal.” *Tran v.*  
12 *Bondi*, No. CV25-1897-JLR, 2025 WL 3140462 at \* 3 (W.D. Wash. Nov. 10, 2025).  
13 While the Government disagrees with this conclusion (dkt. 8 at 6), it offers no  
14 explanation or authority for why it is incorrect. *See also Tadros v. Noem*, No. CV25-  
15 4108-EP, 2025 WL 1678501, at \*3 (D.N.J. June 13, 2025) (finding that “six-month  
16 detention period under *Zadvydas*” period began upon affirmance of removal order,  
17 rejecting argument that petitioner could not obtain habeas relief because he had not yet  
18 been in detention for six months); *Farez-Espinoza v. Chertoff*, 600 F.Supp.2d 488, 500  
19 (S.D.N.Y. 2009) (concluding that presumptively reasonable six-month period expired  
20 six months after entry of removal order, even though petitioner was not in custody for  
21 any of that period); *Bailey v. Lynch*, No. CV16-2600-JLL, 2016 WL 5791407, at \*2  
22 (D.N.J. Oct. 3, 2016) (where order of removal became effective upon petitioner’s  
23 release from underlying conviction to ICE authorities, after which he was held only  
24

25 \_\_\_\_\_  
26 <sup>2</sup> Available at <https://diacritics.org/2025/09/vietnamese-amerasians-today-jimmy-miller/>.

1 “briefly” before being released on an order of supervision, the *Zachvydas* presumptively  
2 reasonable period ended “long before he was taken back into custody[.]”).

3 The Government also notes that “[a]t least one court in this District has . . .  
4 looked to the aggregate time in detention.” Dkt. 8 at 6, citing *Nguyen v. Scott*, 2025 WL  
5 2419288, at \*13 (W.D. Wash. Aug. 21, 2025). But the fact that in some cases courts  
6 rely on aggregate time does not mean that such time is the sole measure of the removal  
7 grace period. The Court can look to facts and findings unrelated to the grace period as  
8 well to conclude that a petitioner has made a showing of indefinite detention. *Abubaka*  
9 *v. Bondi*, No. CV25-1889-RSL, 2025 WL 3204369, at \*4 (W.D. Wash. Nov. 17, 2025)  
10 (concluding that “the process for procuring travel documents from Vietnam for pre-  
11 1995 immigrants continues to be uncertain and protracted” and there is “good reason to  
12 believe that there is no significant likelihood of removal in the reasonably foreseeable  
13 future’ given the ‘uncertain and protracted’ process for procuring travel documents for  
14 pre-1995 Vietnamese immigrants”) (quoting *Zachvydas*, 533 U.S. at 701, and *Nguyen*,  
15 2025 WL 2419288, at \*15).

16 **II. THE GOVERNMENT HAS PLAINLY FAILED TO MEET ITS BURDEN**  
17 **OF SHOWING THAT MR. WANA’S REMOVAL IS SUBSTANTIALLY**  
18 **LIKELY IN THE REASONABLY FORESEEABLE FUTURE.**

19 In seeking to meet its burden of establishing that Mr. Wana’s removal is  
20 substantially likely in the reasonably foreseeable future, the Government relies almost  
21 entirely on representations that are unsupported, irrelevant, or inconsistent.

22 Mr. Wana’s petition set forth facts regarding removals to Vietnam and the  
23 Memorandum of Understanding (MOU) between it and the United States, and its  
24 implementation as it pertains to individuals like Mr. Wana who left Vietnam before  
25 1995. Dkt. 1 at 6–8. Multiple courts have noted these facts, too, in concluding that the  
26 Government had not met its burden as to such detainees. *See, e.g., Nguyen*, 2025 WL  
2419288, at \*14.

1 In response, Respondents assert:

2 Previous memoranda of understanding regarding removal of Vietnamese  
3 citizens based on their entry date is no longer in effect. The date of entry  
4 is no longer relevant regarding whether travel documents can be obtained  
from the government of Vietnam.

5 Dkt. 9 at ¶ 15 (declaration of ICE Deportation Officer Jiarong Du) .

6 This statement, however, is too vague to be meaningful. To begin, Respondents  
7 indicate that there have been multiple “memoranda of understanding,” but their  
8 submissions in other cases have referred to only one. *See, e.g., Nguyen*, 2025 WL  
9 2419288, at \*6. And if there are multiple MOUs, none have been fully disclosed, most  
10 conspicuously the one the Government now claims to be relying on. Even if the  
11 statement about date of entry no longer being relevant were accepted at face value,  
12 Respondents tell the Court nothing about what criteria are relevant. Here, just as in  
13 *Nguyen* and *Abubaka*, “[t]he Government has not provided any evidence of Vietnam’s  
14 eligibility criteria or why it believes Petitioner now meets it.” *Abubaka*, 2025 WL  
15 3204369, at \*5 (quoting *Nguyen*, 2025 WL 2419288, at \*18).

16 As noted, Mr. Wana has mixed parentage, which has historically rendered him a  
17 pariah in the eyes of the Vietnamese government. In addition, he does not have “a  
18 Vietnamese birth certificate or any other documentation verifying Vietnamese identity”  
19 (*Abubaka* at \*4); he “has no known family or connections in Vietnam” (*id.*); he has no  
20 place to live there; and he has no financial resources to support himself in Vietnam.  
21 Under these circumstances, with insufficient evidence about Vietnam’s criteria for  
22 accepting removals, there is reason to believe Vietnam may never admit him.

23 While Respondents state that there were 569 removals of Vietnamese citizens to  
24 Vietnam in fiscal year 2025, this tells the Court little. Dkt. 9 at ¶ 18. Respondents say  
25 nothing about how many of these removals involve detainees who arrived before 1995;  
26 they do not disclose the total number of detainees involved; and they say nothing about

1 how many individuals were *not* removed despite requests to Vietnam for travel  
2 documents. While the Government also avers that Vietnam has not “formally” denied  
3 any requests for travel documents since February (dkt. 9 at ¶ 17), it does not disclose  
4 how many document requests have been submitted and actually *approved*, rather than  
5 consigned to indefinite administrative limbo or effectively, if not “formally,” denied.  
6 Offering such carefully worded and incomplete information, coupled with vague  
7 assurances, is insufficient to meet Respondents’ burden.

8 This is especially true given evidence that contradicts Respondents’ claims. They  
9 inform the Court that from the time a travel request is submitted to the Vietnamese  
10 government it will “typically” issue travel documents “within 1-3 months.” Dkt. 9 at ¶  
11 19. Previously, however, they have repeatedly assured courts that Vietnam issues travel  
12 documents, *if approved*, “within 30 days or less” of receiving a document request. *See*,  
13 *e.g. Huynh v. Bondi*, No. CV25-2093-KKE (W.D. Wash.), dkt. 8 at ¶ 14 (November 4,  
14 2025, declaration of DHS Officer Brett Booth). And, according to a declaration by  
15 Assistant Federal Public Defender Katie Hurrelbrink, at least as of October 30, 2025,  
16 many Vietnamese immigrants “have remained in ICE detention for months without  
17 receiving a travel document,” and she has “never seen Vietnam respond to a travel  
18 document request within 30 days.” Ex. 1 at ¶¶ 5, 7 (submitted in *Ha Nguyen v. Bondi*,  
19 CV25-1833-JNW).

20 The accompanying declaration of immigration specialist Tin Thanh Nguyen,  
21 which was filed in *Nguyen v. Scott*, also casts doubt on Respondents’ representations.  
22 Ex. 2. Tin Nguyen explains that, as of July 31, 2025, he had “yet to see Vietnam issue a  
23 travel document within 30 days or less” for a pre-1995 arrival. *Id.* at ¶ 12. Rather, in his  
24 experience, “it can take many months to get any answer from Vietnam about whether it  
25 will issue a travel document.” *Id.* The reasons for the indefinite and often prolonged  
26 delays in getting an answer were summarized by Judge Cartwright in *Nguyen*, where

1 she found that “[t]he process [for requesting travel documents] is highly dependent on  
2 the individualized facts of each case, including whether the individual has any family  
3 remaining in Vietnam, whether their Vietnamese identity can be verified, their criminal  
4 records, and the manner in which they left Vietnam and came to the United States,  
5 among many other factors.” 2025 WL 2419288 at \*15 (quoting Tin Nguyen’s  
6 declaration).

7 Respondents’ dilatory actions in this case also belie their claim that removal is  
8 likely in the reasonably foreseeable future. Although Mr. Wana was detained on  
9 August 5, ICE did not seek approval from “supervisory channels” to submit a travel  
10 document request until November 2, and more than a month later approval by ICE’s  
11 ERO headquarters division “remains pending.” Dkt. 9 at ¶¶ 13–14. In other words,  
12 more than four months after Mr. Wana was arrested by ICE, DHS still hasn’t even  
13 submitted a travel request to Vietnam for him.

14 In both *Abubaka* and *Nguyen*, the courts assumed facts in Respondents’ favor  
15 that cannot be assumed here, yet they found that Respondents had not met their burden.  
16 Specifically, the courts assumed “a complete travel document request [has been]  
17 submitted to the Government of Vietnam,” but observed that, “this Court does not know  
18 if Vietnam has acknowledged or otherwise responded to the request and does not know  
19 how long Petitioner may have to wait for travel documents—if Vietnam even decides to  
20 provide them.” *Abubaka*, 2025 WL 3204369, at \*5 (cleaned up, quoting *Nguyen*, 2025  
21 WL 2419288, at \*18).

22 Making matters even more uncertain and indefinite, since Mr. Wana has no  
23 documentation of Vietnamese citizenship, the Vietnamese government will need to  
24 interview him to determine if it will recognize his citizenship. Dkt. 9 at ¶ 19.  
25 Respondents do not indicate how long that part of the process is likely to take or how  
26 many detainees who have no proof of citizenship have been approved for removal.

1 In short, Respondents have failed to show that Mr. Wana is likely to be removed  
2 to Vietnam at all, let alone within the reasonably foreseeable future. The Court should  
3 therefore find that his continued detention has been unconstitutionally prolonged.

4 **III. MR. WANA'S DUE PROCESS RIGHTS WERE VIOLATED BY HIS RE-**  
5 **DETENTION.**

6 Respondents suggest that Mr. Wana's due process claims depend on showing he  
7 was promised "ongoing, limitless, indefinite freedom from detention while he remained  
8 in the United States." Dkt. 8 at 9. That characterization of Mr. Wana's claims is a straw  
9 man, because the Due Process Clause and controlling authority in the immigration  
10 detention context guarantee him certain rights and procedural protections before the  
11 Government can lawfully re-detain him. See dkt. 1 at 9-14. Because ICE flouted those  
12 protections, the Court should order Mr. Wana's immediate release.

13 Specifically, Respondents ignore their having summarily revoked Mr. Wana's  
14 order of supervision and arrested him without a hearing. Dkt. 9 at ¶ 9. Instead, they  
15 largely rely on generalities about how "Congress may make rules as to aliens that would  
16 be unacceptable if applied to citizens" (dkt. 8 at 8) and "the heightened Government  
17 interest in the immigration detention context." *Id.* at 9.

18 These points are both true and irrelevant. As stated in *Perera v. Jennings*,  
19 No. CV21-4136-BLF, 2021 WL 2400981, at \*5 (N.D. Cal. June 11, 2021), "the interest  
20 at stake is not whether the Government may detain [a noncitizen after releasing him],  
21 but whether they may do so without providing him an individualized bond hearing."  
22 Moreover, "the Government's interest in detaining petitioner without a hearing is  
23 'low.'" *Carballo v. Andrews*, No. CV25-978-KES-EPG, 2025 WL 2381464, \*8 (E.D.  
24 Cal. Aug. 15, 2025) (cleaned up).

25 Although it has not tried to do so here, the Government also could not justify  
26 Mr. Wana's detention by claiming it could have met its burden at a re-detention

1 hearing. First, the remedy for failing to hold a hearing is release. *E.A.T.-B. v. Wamsley*,  
2 No. CV25-1192-KKE, 2025 WL 2402130, at \*5 (W.D. Wash. Aug. 19, 2025) (granting  
3 petition and ordering that petitioner be released immediately and not re-detained until  
4 an immigration court hearing is held with adequate notice); *see also, e.g., Ledesma*  
5 *Gonzalez v. Bastock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, at \*9 (W.D.  
6 Wash. Oct. 7, 2025) (same). Second, if that were not already dispositive, the  
7 Government would be required to prove by clear and convincing evidence at a re-  
8 detention hearing that Mr. Wana is a flight risk or danger to the community. *See* dkt. 1  
9 at 12-13. The Government has offered no facts to suggest either thing might be true, nor  
10 could it.

11 **IV. AS NUMEROUS COURTS HAVE HELD, MR. WANA'S CLAIMS**  
12 **REGARDING REMOVAL TO A THIRD COUNTRY ARE RIPE,**  
13 **CONTRARY TO THE GOVERNMENT'S CONTENTION, WHICH IS**  
14 **UNSUPPORTED BY ANY ON-POINT AUTHORITY.**

15 The Government asserts, without citation to any authority, that this Court should  
16 deny Mr. Wana's request for an order precluding ICE from removing him to a third  
17 country because ICE has no current plan to remove him to any country other than  
18 Vietnam. Dkt. 8 at 10. A similar argument was rejected in *Nguyen*, 2025 WL 2419288,  
19 at \*13.

20 There, the Government also represented that it was seeking only to remove the  
21 petitioner to his home country of Vietnam and stipulated that it would not attempt to  
22 remove him to any other country unless Vietnam rejected him. 2025 WL 2419288,  
23 at \*27. The court was unpersuaded, explaining that "the Ninth Circuit has found such  
24 voluntary promises insufficient" to eliminate the potential irreparable injury that  
25 petitioner could face if the promise was withdrawn, particularly given the underlying  
26 allegations that third party removals were being conducted rapidly and without an  
opportunity for due process. *Id.* at \*27-28.

1 And the court in *Louangmilith v. Noem, et al.*, No. CV25-2502-JES-MSB, 2025  
2 WL 2881578 (S.D. Cal. Oct. 9, 2025), rejected the Government's exact argument here  
3 that "this situation is not ripe for adjudication because ICE is not seeking to remove  
4 Petitioner to a third country." *Id.* at \*4. Despite the Government's representations, the  
5 court, citing to *Nguyen*, stated it was "more persuaded by Petitioner's arguments" that  
6 "by the time [the claims] are ripe by the Government's argument, it will be too late for  
7 the individuals to meaningfully challenge the removal." *Id.* (granting petition on claim  
8 that ICE should be prevented from removing petitioner to a third county without due  
9 process). See also *Hambarsonpour v. Bondi*, No. CV25-1802-RSM, 2025 WL 3251155,  
10 at \*5 (W.D. Wash. Nov. 21, 2025) (rejecting Government's ripeness argument).

11 In addition, the events cited in Mr. Wana's petition, dkt. 1 at 18–21, demonstrate  
12 that the Government has undertaken rapid third-country removals without the process  
13 required by its own regulations, further showing that such an action against him is  
14 sufficiently likely to render the matter ripe.

15 Finally, since Respondents have provided no substantive response to Mr. Wana's  
16 petition on the issue of third-country removal, they have waived the issue. This Court  
17 should grant the relief Mr. Wana has requested regarding third-country removal. See  
18 *Abubaka*, 2025 WL 3204369, at \*7–8 (ruling in petitioner's favor on merits third-  
19 country removal as to both due process and punitive nature of removal).

20 **V. CONCLUSION**

21 The Court should grant Mr. Wana's petition on all grounds and grant the  
22 requested relief, including his immediate release.

23 DATED this 9th day of December 2025.

24 Respectfully submitted,

25 *s/ Colin Fleman*  
26 Attorney for Thach Wana