ADAM GORDON
United States Attorney
KIM A. C. GREGG
Assistant U.S. Attorney
California Bar No. 318764
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8437
Email: Kim.Gregg@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HOANG KIET LAM, Petitioner, v. KRISTI NOEM, et al., Respondents.	Case No.: 25-cv-3470-JO-VET **RESPONSE IN OPPOSITION TO PETITIONER'S HABEAS PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER**

I. INTRODUCTION

The Vietnamese government has issued a travel document for Petitioner, and he will be scheduled for removal to Vietnam no later than next month. Thus, Petitioner's claim that there is no significant likelihood of removal in the reasonably foreseeable future under *Zadvydas* is without merit. As more fully set forth below, Respondents ask the Court to deny Petitioner's habeas petition and request for interim relief.[1]

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Vietnam, who entered the United States in 1985, and was later convicted for theft and robbery and placed in removal proceedings. *See* Declaration of Ryan Robert Dale Smith ("Smith Decl.") at ¶¶ 4–7. An Immigration

[1] For purposes of judicial efficiency, given the petition and motion for temporary restraining order assert the same claims and seek the same relief, Respondents respectfully respond to both herein.

Judge ordered him removed to Vietnam on June 1, 2011. *See id.* at ¶ 7. Immigration and Customs Enforcement (ICE) subsequently released Petitioner from custody on an Order of Supervision on August 31, 2011, because the government was unable to obtain his travel document at that time. *See id.*

ICE has been routinely obtaining travel documents from Vietnam and able to arrange travel itineraries to execute final orders of removal for Vietnamese immigrants like Petitioner this year. *See id.* at ¶¶ 11–13. On August 22, 2025, ICE re-detained Petitioner because it determined that it could execute his order of removal. *Id.* at ¶ 8. Petitioner was not provided a Notice of Revocation of Release or an informal interview. *See id.* at ¶ 9.

Since Petitioner's re-detention, ICE has worked diligently to effectuate his removal to Vietnam. *See id.* at ¶ 11. On November 19, 2025, ICE received a travel document for Petitioner. *See id.* at ¶ 14. ICE had scheduled Petitioner for removal to Vietnam on December 14, 2025, but taken off that scheduled flight due to the pending habeas petition. *See id.* at ¶ 16. He will be rescheduled on charter transportation for removal to Vietnam no later than January 31, 2026. *See id.* Based on the declaring officer's review of Petitioner's case and assuming his compliance with removal efforts, "there is a significant likelihood of his removal in the reasonably foreseeable future." *Id.* at ¶ 17.

III. ARGUMENT

"Section 241(a) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered removed from the United States." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022). The INA provides that an alien ordered removed must be detained for 90 days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period under subsection (a)(1)).

Section 1231(a)(6) "authorizes further detention if the Government fails to remove the alien during those 90 days." *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). The statute, however, is limited to "a period reasonably necessary to bring about the alien's removal from the United States" and "does not permit indefinite detention." *Id.* at 689. The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 701. Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

As an initial matter, Petitioner raises two distinct issues: (1) the agency's reason for revoking his release and his return to custody; and (2) whether his current detention is unconstitutionally prolonged under the *Zadvydas* standard. The regulatory standard for revocation—which is not the same as the constitutional standard—provides that "The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. 241.13(i)(2). As discussed below, however, this regulation does not govern whether detention is constitutional or not for purposes of a habeas claim.

Rather, the constitutionality of Petitioner's post-final order detention is governed by the Supreme Court's directives in *Zadvydas*. In that regard, even assuming Petitioner has been detained past the six-month presumptively reasonable period, the Supreme Court emphasized that this "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." *Zadvydas*, 533 U.S. at 701. No such showing can be made here.

There can be no dispute that there is a significant likelihood that Petitioner will be removed to Vietnam in the reasonably foreseeable future because ICE has obtained a travel document for Petitioner and scheduled his removal to Vietnam for charter

transportation no later than next month. *See* Smith Decl. at ¶¶ 14, 16. Because *Zadvydas* instructs that "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," the Constitution's due process protections do not entitle Petitioner to release here. *Zadvydas*, 533 U.S. at 701.

As to Petitioner's claim that the agency failed to comply with its regulations, the record reflects that "Petitioner was not provided a Notice of Revocation of Release" and "was not provided an informal interview." Smith Decl. at ¶ 9. In Respondent's view, however, Petitioner has not established prejudice nor a constitutional violation that warrants release in this case. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("The mere failure of an agency to follow its regulations is not a violation of due process."); *United States v. Tatoyan*, 474 F.3d 1174, 1178 (9th Cir. 2007) (holding that "[c]ompliance with . . . internal [customs] agency regulations is not mandated by the Constitution") (internal quotation marks omitted)).

For example, in *Ahmad v. Whitaker*, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, No. C18-27-JLR-BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful because, he contended, the federal regulations prohibited re-detention without, among other things, an opportunity to be heard. *Id.* at *5. In rejecting his claim, the court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations given that ICE had procured a travel document and scheduled [petitioner's] removal." *Id.*

The same is true in this case. ICE has obtained Petitioner's travel document and had scheduled his removal for December 14, 2025. *See* Smith Decl. at ¶¶ 14, 16.

Similarly, in *Doe v. Smith*, the court held that even if an ICE detained petitioner had not received a timely interview following her return to custody, there was "no

apparent reason why a violation of the regulation, even assuming it occurred, should result in release." *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "it is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order. . . . Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

So too here. At the time of his re-detention, Petitioner knew he was subject to a final order of removal and had no right to remain in the United States. *See* ECF No. 1-2 at ¶ 3. He does not challenge the validity of his removal order or offer any indication that he intends to do so. And as illustrated in ICE's declaration, when it re-detained Petitioner in August 2025, ICE had an evidentiary basis to determine that they could obtain a travel document for Petitioner and that there is a significant likelihood that he would be removed to Vietnam in the reasonably foreseeable future. *See* Smith Decl. at ¶¶ 8, 11–13 (detailing ICE's success in obtaining travel documents for immigrants like Petitioner throughout this year). Indeed, ICE has obtained Petitioner's travel document and can execute his removal promptly.

Thus, any challenge Petitioner would have made during an informal interview after his re-detention would have failed. Because Petitioner cannot show prejudice under these circumstances, the alleged violation of agency regulations does not warrant release here. *See, e.g.*, *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) ("While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation 'when, in the opinion of the revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.'") (emphasis in original) (citing 8 C.F.R. §§ 241.4(*l*)(2)(i), (iv)); *Carnation Co. v. Sec'y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) ("[V]iolations of procedural regulations

should be upheld if there is no significant possibility that the violation affected the ultimate outcome of the agency's action." (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS' failure to follow regulations requiring that an arrested alien be advised of his right to speak to his consul was not prejudicial and thus not a ground for challenging the conviction); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by failing to inquire into the alien's background, any error was harmless because there was no showing that the petitioner was qualified for relief from deportation).

In sum, whatever procedural deficiencies may have occurred, they do not warrant Petitioner's release, and indeed, could be cured by means well short of release. Again, Petitioner does not challenge the enforceability of his removal order, nor could he. ICE has obtained Petitioner's travel document, is entitled to promptly execute Petitioner's removal order, and expects to do no later than next month. *See* Smith Decl. at ¶¶ 8, 16.

With Petitioner's imminent removal, no purpose would be served by this Court ordering his release—other than frustrating "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. *See also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208–09 (9th Cir. 2022) ("The risk of a detainee absconding . . . inevitably escalates as the time for removal becomes more imminent."); *Rojas-Espinoza v. Bondi*, --- F.4th ---, No. 24-7536, 2025 WL 3289117, at *8 (9th Cir. Nov. 25, 2025) ("'There is *always* a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings . . . and permits and prolongs a continuing violation of United States law.'") (emphasis in original, brackets omitted, quoting *Nken v. Holder*, 556 U.S. 418, 436 (2009)).[2]

[2] For example, in a similar case before Judge Bencivengo, the petitioner was ordered released and thereafter provided written notice of his removal and ordered to report to ICE on a certain date for execution of his removal, but the petitioner did not show up.

Based on the foregoing, Petitioner cannot show entitlement to habeas relief.

IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court deny the habeas petition and motion for temporary restraining order.

DATED: December 12, 2025

ADAM GORDON
United States Attorney

s/ Kim A. C. Gregg
KIM A. C. GREGG
Assistant United States Attorney

Attorneys for Respondents

See Cabrera-Trillo v. Noem et al., Case No. 25-cv-02865-CAB-MSB, ECF Nos. 18, 19. (Dec. 12, 2025).