

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Lung Van Do,)	
)	
Petitioner,)	REPLY IN SUPPORT OF
)	PETITION FOR HABEAS
v.)	CORPUS
)	Case No. 3:25-CV-00634-LS
Warden, Camp East Montana, et al.)	
)	
Respondents.)	
)	

I. There is No Significant Likelihood of Removal in the Reasonably Foreseeable Future

ICE has had over 16 years to remove Petitioner from the United States. Despite having had ample time to obtain a travel document, ICE apparently took no steps whatsoever to effectuate Mr. Do’s deportation from February 2010 until December 2025, almost 16 years. The 6-month period of presumptively valid detention ended long ago, in May 2010. ICE may only detain Mr. Do if it can show a “significant likelihood of removal in the reasonably foreseeable future.” ICE has made no such showing here. ICE submitted a travel document request to Vietnam on December 9, 2025 and said that such requests take an average of 30 days. Opp. to Petition for Habeas Corpus, ECF 5 at 2. However, ICE’s promises have not come true. Over 30 days have passed, Mr. Do is still detained, and ICE has not shared news of receiving any response to its request from the Vietnamese government. Moreover, ICE has not even attempted to show that it can deport people like Mr. Do who were born in the waning days of the Vietnam war and who fled the country without registering their births with the Vietnamese government.

Contrary to ICE’s assertions, the government of Vietnam conducts extensive vetting of requests for travel documents. Attached is an expert declaration from attorney Tin Thanh

Nguyen, who has specialized in handling Vietnamese deportation cases for almost 20 years. Ex. 14 – Declaration of Tin Thanh Nguyen at 2. The process for Vietnam to issue a travel document often takes “many months to complete” because it involves vetting by multiple government agencies. *Id.* at 3. Local police conduct interviews and site-visits with the person’s relatives in Vietnam, something that will be impossible for Mr. Do because he has no relatives there. *Id.* The vetting process is particularly challenging for people like Mr. Do who arrived in the U.S. before 1995, because they often do not have any relatives in Vietnam or any documentation from Vietnam. *Id.* at 4. As a result, it can take “many months to get any answer from Viet Nam about whether it will issue a travel document.” *Id.* at 5.

Other courts have given weight to the extraordinarily long time that Vietnam takes to issue travel documents, “Petitioner has submitted evidence that, while the government of Vietnam no longer prohibits the return of individuals who, like Mr. Wana, entered the United States before 1995, obtaining travel documents for those individuals “can take many months.”” *Wana v. Bondi*, No. 2:25-CV-02321, 2025 WL 3628634, at *3 (W.D. Wash. Dec. 15, 2025).

The following facts provide ample reason for the Court to find no significant likelihood of removal in the reasonably foreseeable future:

- 1) ICE has been unable to deport Mr. Do for 16 years;
- 2) Mr. Do fled Vietnam at just three months old in the final, chaotic days of the Vietnam war, when the government was collapsing;
- 3) Mr. Do never registered his birth with the Vietnamese authorities, and he has no documents from Vietnam;
- 4) ICE has never alleged that Mr. Do failed to cooperate in seeking a travel document;

- 5) ICE has already requested a travel document, and no response has been forthcoming within the 30 days that ICE says is normal; and
- 6) Vietnam conducts extensive vetting of travel document requests which often takes many months to complete and involves steps that will be impossible as to Mr. Do, such as verification with relatives and review of documents from Vietnam.

Petitioner is not arguing that ICE may not remove him. ICE is certainly within its rights to keep seeking a travel document for him. However, ICE must obtain a travel document first before detaining him. Mr. Do complied with his order of supervision for 15 years by obeying the law and checking-in regularly with ICE. All the signs indicate that Mr. Do will continue to comply with the terms of supervision if he is released again.

ICE asserts that it may indefinitely detain someone with a final removal order as long as it is taking “affirmative steps” to obtain a travel document. Opp. to Petition for Habeas Corpus, ECF 5 at 5. That is not the legal standard and it never has been. The standard laid out by *Zadvydas* turns on the likely success of removal, not whether ICE is making even an iota of effort to effectuate removal. ICE could be taking “affirmative steps” that are futile and therefore not meet its burden to continue detaining someone. That appears to be the case here. According to ICE’s own words, a travel document should have been issued by now, but it has not been. ICE has offered no reason to believe a travel document is forthcoming.

Courts have routinely found no likelihood of removal in the near future when ICE lacks a travel document and the home country government has made no indication of when a travel document would be issued. The Western District of Washington ordered a petitioner’s release where no travel document had been procured for over eight months after the removal order

became final, and the government of Uzbekistan had not said if or when it would issue a travel document. *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006). The Southern District of New York ordered the release of a petitioner who had been detained for 232 days, where ICE had requested a travel document but there was no “evidence from Pakistani officials indicating that a travel document is imminent or forthcoming.” *Mahmood v. Nielsen*, 312 F. Supp. 3d 417, 425 (S.D.N.Y. 2018). Similarly, a judge in this district found no likelihood of removal where a person had been detained for three months past the presumptively allowed 6-month period, travel document requests had been submitted to the Bangladeshi consulate, but “the consulate stated that they could not issue travel documents because Petitioner’s background investigation was not complete.” *Khan v. Gonzales*, 481 F. Supp. 2d 638, 640 (W.D. Tex. 2006). Another district judge found no likelihood of removal where the person had cooperated in seeking travel documents but ICE had “provided no substantive indication regarding how or when it expects to obtain the necessary travel document from the Indian government.” *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006).

The Western District of Washington recently made a decision in a very similar case, where a Vietnamese person was unlikely to receive a travel document. The Court’s reasoning supports a similar decision here and is worth considering in full, despite its length:

Mr. Wana argues that his continuing detention is unreasonable because his removal is not reasonably foreseeable. The record supports this argument. Mr. Wana was apparently swept back into custody during an ICE surge in immigrant re-detentions. There is no indication that respondents made an individualized determination that Mr. Wana, as opposed to a generic Vietnamese immigrant, was likely to be removed in a reasonable period of time. Respondents made no effort to apply for or obtain travel documents prior to taking Mr. Wana into custody, and there is no indication that they have yet contacted the government of Vietnam to ascertain its willingness to accept Mr. Wana. Even if they were to do so today, travel documents would not be issued for months. Petitioner has submitted evidence that, while the government of Vietnam no longer prohibits the return of individuals who, like Mr. Wana, entered the United States before 1995, obtaining travel documents for those individuals “can take many months.” Dkt. 12-2 at ¶ 12. See

also Dkt. 1 at 6-7. Just as importantly, Mr. Wana has shown that he has a constellation of characteristics and circumstances that make it unlikely that he will be granted travel documents at all. When determining whether to issue travel documents for an individual who entered the United States before 1995, the government of Vietnam evaluates and investigates the facts of each case, including whether the individual has family remaining in Vietnam, verification of Vietnamese identity, a criminal history, and the manner in which the individual left Vietnam and arrived in the United States. Dkt. 12-2 at ¶ 8. Mr. Wana is of mixed parentage, has no documentation verifying his Vietnamese identity, has two criminal convictions, and has no family, connections, or resources to assist his return to Vietnam. Dkt. 12 at 4. Respondents' generic arguments about "Vietnamese citizens" unburdened by Mr. Wana's circumstances are not persuasive and do not raise an inference that Mr. Wana is likely to be removed in the reasonably foreseeable future.

Wana v. Bondi, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *3 (W.D. Wash. Dec. 15, 2025).

ICE has offered little reason to believe it will be able to deport Mr. Do in the near future.

Under the *Zadvydas* standard, the Court should order Mr. Do's release.

II. ICE Offers No Excuse for Failing to Comply With its Own Regulations

ICE makes no substantive reply to Mr. Do's *Accardi* claim. Mr. Do explained in great detail how ICE failed to follow its own regulations when it revoked his order of supervision. Petition for Habeas Corpus, ECF 1 at 10-12. Courts faced with similar violations have found violations of Due Process. *See, e.g., Villanueva Herrera v. Tate*, No. 4:25-cv-3364, Slip Op. 30 (S.D. Tex. Sept. 26, 2025) ("[T]he government violated Villanueva's due process rights by re-detaining him without complying with its own regulations and the law."); *Grigorian v. Bondi*, No. 25-CV-22914, 2025 WL 2604573, at *9 (S.D. Fla. Sept. 9, 2025) ("The opportunity to contest detention through an informal interview is not some ticky-tacky procedural requirement; it strikes at the heart of what due process demands."); *Diaz v. Wofford*, No. 1:25-CV-01079, 2025 WL 2581575, at *9 (E.D. Cal. Sept. 5, 2025) (petitioner denied notice and opportunity to be heard likely to succeed on the merits of due process claim); *K.E.O. v. Woosley*, No. 4:25-CV-74, 2025 WL 2553394, at *6 (W.D. Ky. Sept. 4, 2025) ("K.E.O.'s re-detention on April 28,

2025, lacked the procedural protection afforded to her and thus violated her procedural due process rights.”); *Santamaria Orellana v. Baker*, No. CV 25-1788, 2025 WL 2444087, at *7 (D. Md. Aug. 25, 2025) (“Santamaria Orellana’s re-detention and revoked release violated regulations designed to provide due process.”).

III. Opposition to Briefing Extensions

Congress has directed courts to prioritize habeas corpus cases and expedite their consideration above all other cases. 28 U.S.C. § 1657 (“[T]he court shall expedite the consideration of any action brought under chapter 153.” (Chapter 153 includes habeas petitions under 28 U.S.C. § 2241)). Congress made this directive concrete by providing briefing procedures for habeas corpus cases, with deadlines measured in days, not weeks or months. 28 U.S.C. § 2243 (setting a default answer deadline of three days). ICE had several weeks to respond with evidence that it would be able to remove Mr. Do in the near future. It failed to do so. Rather, the evidence shows that ICE did not even request a travel document until several weeks after detaining Mr. Do. Under the streamlined procedures for habeas corpus cases, further briefing extensions are unwarranted. Every day of illegal detention is an irreparable harm. *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D.Cal.2018) (finding that petitioner suffered “potentially irreparable harm every day that he remains in custody without a hearing.”). Moreover, the importance of timeliness is built into the *Zadvydas* standard, under which ICE must show a “significant likelihood of removal in the *reasonably foreseeable future*.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (emphasis added). Since ICE has failed to meet its burden to justify Mr. Do’s detention, briefing extensions would not comport with congressional directives or the *Zadvydas* standard.

IV. Conclusion

The law authorizes detention “only for a period *reasonably necessary* to secure the alien’s removal.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). And when federal agencies exercise the weighty power to deprive someone of liberty, they must comply with Due Process by following their own regulations. Mr. Do’s detention is not reasonably necessary to secure his removal, and ICE violated its own regulations when it detained him. For both reasons, the Court should order Mr. Do’s release on reasonable conditions of supervision. Ordering Mr. Do’s release will not doom efforts to effectuate his deportation. ICE found him twice before, and they can easily find him once again after they get a travel document. Rather, his release will merely save public funds that should be focused on detaining people who can actually be deported.

Respectfully submitted,

/s/Mark Stevens

Mark Stevens, Virginia Bar # 86247
Clark Hill PLC
1001 Pennsylvania Ave. NW
Suite 1300 South
Washington, DC 20004
Telephone: 202-552-2358
Facsimile: 202-552-2379
Email: mstevens@clarkhill.com

Counsel for Petitioner

INDEX OF EXHIBITS

14. Declaration of Tun Thanh Nguyen