

THE HONORABLE S. KATE VAUGHAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANH VAN NGUYEN,

Petitioner,

VS.

PAMELA BONDI, *et al.*,

Respondents.

No. CV25-2674-SKV

REPLY TO FEDERAL RESPONDENTS' RETURN MEMORANDUM

I. INTRODUCTION

Respondents confirm that Danh Nguyen has been re-retained in ICE detention since June 30, 2025 (204 days as of the filing of this response) and that he was initially detained for removal proceedings in February 2008 and later released on an Order of Supervision on April 29, 2009, because ICE could not secure a travel document.

Respondents do not dispute that the presumptively reasonable detention period under *Zadvydas v. Davis*, 533 U.S. 678 (2001), has expired but argue that his alleged failure to assist with his travel document application defeats his *Zadvydas* claim. The sole factual support for this argument is the declaration of Deportation Officer Yaraeles K. Melendez Diaz. But the vague and conclusory statements in that declaration lack the probative value to negate Mr. Nguyen's claim, given it lacks even basic details or corroborating evidence showing what information Mr. Nguyen allegedly failed to provide or what documents he declined to sign. As Assistant Federal Public Defender Gregory Murphy's declaration reveals, Mr. Nguyen appears to be significantly

REPLY TO FEDERAL RESPONDENTS' RETURN
MEMORANDUM
(*Danh Van Nguyen v. Bondi, et al.*, CV25-2674-SKV) - 1

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1 cognitively impaired and there is no indication that any efforts were made to determine
 2 whether he understood what ICE agents were asking of him. *See* Murphy Decl., ¶ 4.
 3 More fundamentally, the declaration does not say how Mr. Nguyen’s alleged non-
 4 cooperation, even if true, hindered Respondents’ efforts to obtain a travel document
 5 here.

6 Respondents also offer little in the way of response to the due process violations
 7 alleged in Mr. Nguyen’s petition. Foremost, Respondents ignore the fact that ICE
 8 revoked Mr. Nguyen’s order of supervision and arrested him without a hearing.
 9 Respondents’ assertion that Mr. Nguyen’s claim can only be brought through habeas
 10 and not under the APA further lack merit given that the “APA and habeas review may
 11 coexist.” *R.I.L.-R v. Johnson*, 80 F.Supp.3d 164, 185 (D.D.C. 2015). Finally, as
 12 numerous courts in this district have held, Mr. Nguyen’s claims regarding potential
 13 removal to a third country are ripe.

14 **II. ARGUMENT**

15 **A. The presumptive grace period for Mr. Nguyen’s detention has ended,** 16 **and there is good reason to believe that there is no significant likelihood** 17 **of his removal in the reasonably foreseeable future.**

18 Mr. Nguyen has lived in the United States since March 1995 when he was
 19 admitted as a lawful permanent resident as a teenager. Dkt. 13, ¶ 3. On information and
 20 belief, he has no proof of Vietnamese citizenship, no family or connections in Vietnam
 21 or a place to live there. On February 14, 2008, he was issued a Notice to Appear
 22 charging him with removal based on his convictions for two crimes of moral turpitude
 23 and a domestic violence/protection order violation. An immigration judge ordered his
 24 removal on March 17, 2008. Dkt. 12 at 7, Dkt. 13, ¶ 5. Mr. Nguyen was released on an
 25 Order of Supervision (OSUP) on April 29, 2009, “due to [the government’s] inability to
 26 obtain travel documents to Vietnam.”¹ Dkt. 12 at 7.

¹ Respondents do not say whether Mr. Nguyen was released on bond before April 2009.

1 According to Respondents, Mr. Nguyen was convicted of gross misdemeanor
 2 theft and sentenced to 364 days imprisonment with 184 days suspended in 2019.
 3 Dkt. 13, ¶ 4. In February 2021, he was arrested but not convicted of misdemeanor
 4 malicious mischief. *Id.* ICE apparently did not seek to revoke his supervision or to
 5 change the conditions of supervision after either incident. Nor did ICE ask Mr. Nguyen
 6 to fill out paperwork to request travel documents from Vietnam before he was taken
 7 into custody on June 30, 2025. It was not until after ICE re-detained Mr. Nguyen that
 8 ICE revoked his OSUP, alleging a “significant likelihood of removal in the foreseeable
 9 future” and that he posed a “threat to public safety.”² *Id.*, ¶¶ 6, 7.

10 Respondents do not dispute that Mr. Nguyen has been re-detained past
 11 *Zadvydas*’ six-month presumptively reasonable period. Instead, they argue that
 12 Mr. Nguyen’s “own refusal to cooperate in obtaining a travel document extends the
 13 reasonable timeframe by which ICE can detain him.” Dkt. 12 at 15. In support,
 14 Respondents rely solely on Officer’s Diaz’s declaration. Although the officer relays that
 15 when Mr. Nguyen was first re-detained, he told ICE that “he had no foreign identity
 16 documents,” Dkt. 13, ¶ 7, Diaz further avers that Mr. Nguyen “refused to sign any
 17 document nor provide any information for travel document application” at his ICE
 18 interview on September 15, 2025. *Id.*, ¶ 9. But neither the document that Mr. Nguyen
 19 supposedly declined to sign nor any other documentation related to the September 15
 20 interview are part of the record—documents which are in Respondents’ possession and
 21 control. Nor does Officer Diaz identify what information Mr. Nguyen refused to
 22 provide. Respondents’ bare allegation of noncooperation simply lacks the probative
 23

24 ² To the extent that Respondents suggest that detention is required here because
 25 Mr. Nguyen is dangerous, the Court in *Zadvydas* plainly rejected the argument that ICE
 26 can detain someone it deems dangerous indefinitely and held that detention must cease
 when there is no significant likelihood of removal in the reasonably foreseeable future.
 533 U.S. at 684–91.

1 value needed for this Court to find that Mr. Nguyen failed to cooperate, much less to
2 defeat his *Zadvydas* claim. *See, e.g., Kebe v. Gurule*, No. CV-16-1116-PHX-JAT
3 (JFM), 2016 WL 6404170 (D. Ariz. Sept. 29, 2016) (finding no failure to cooperate
4 where “Respondent argues that Petitioner is refusing to produce information, but fail to
5 identify what information has not been provided.”); *Lawrikow v. Kollus*, No. CV-08-
6 1403-PHX-GMS (LOA), 2009 WL 2905549, at *8 (D. Ariz. July 27, 2009) (concluding
7 the record “does not contain substantial evidence in support of ICE’s finding that
8 Petitioner failed to cooperate” where “although the record showed petitioner was served
9 with a “Notice of Failure to Comply” the “notice does not identify the information
10 which Petitioner failed to provide or otherwise describe Petitioner’s lack of
11 cooperation.”).

12 It is noteworthy that Mr. Nguyen appears to be significantly cognitively
13 impaired, which raises whether his alleged noncooperation was volitional. *See* Murphy
14 Decl., ¶ 4. More pertinently, Officer Diaz’s declaration makes clear that it is
15 Respondents’ own delays in seeking a travel document from Vietnam that demonstrate
16 deportation is not likely to occur in the reasonably foreseeable future. Again, although
17 Mr. Nguyen has been detained since June, Respondents did not even make the
18 preliminary step of seeking translation of the application materials so they could be sent
19 to the Vietnamese officials until October 28, 2025. Dkt. 13, ¶ 11. According to Officer
20 Diaz, the last action taken by ICE related to the travel document request was made on
21 December 31, when the completed travel document request was sent internally to
22 “AAR for processing.” *Id.*, ¶ 12. But Respondents concede they have yet to submit the
23 request to the Vietnamese consulate and they provide no information or estimate as to
24 when a request will be submitted. *See* Dkt. 12 at 16 (“ICE has been able to complete a
25 travel document request for Petitioner which is now currently under review by DHS.”).

Even if Mr. Nguyen’s “alleged noncooperation were true, it does not rise to the level of dooming his *Zadvydas* claim.” *Ghasedi v. Wamsley*, No. 2:25-cv-01984-RSM-BAT, 2025 WL 3699706, at *6 (W.D. Wash. Dec. 1, 2025). Respondents make no showing that Mr. Nguyen’s alleged noncooperation affected ICE’s ability to request a travel document. Rather, any delay in submitting a request for a travel document was caused by Respondents’ own delay in seeking those documents. *See, e.g.*, Dkt. 13, ¶ 11 (ICE did not move forward with an “electronic travel document translation document request” until October 28 and not until November 2, 2025, was a “travel document request [] sent to Vietnam RIO for review”). Because there is no showing or even a suggestion that Mr. Nguyen “control[led] the clock” here, Respondents’ allegation of noncooperation does not defeat his *Zadvydas* claim. *See Lema v. I.N.S.*, 341 F.3d 853, 856 (9th Cir. 2003) (“We held that a ‘detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock.’”).

B. Respondents fail to meet their burden of showing that Mr. Nguyen’s removal is substantially likely in the reasonably foreseeable future.

Because Mr. Nguyen has made a preliminary showing of indefinite detention, the burden shifts to Respondents to show that removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. Respondents’ generalized representations that Mr. Nguyen’s removal from the United States is “substantially likely” in the “reasonably foreseeable future” is insufficient to meet that burden. *Id.* As this Court recently noted, “Courts in this circuit have regularly refused to find Respondents’ burden met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur.” *Eshaghpour v. Bondi*, No. C25-2322-SKV, 2026 WL 100603, at *4 (W.D. Wash. Jan. 14, 2026) (internal quotation marks and citation omitted).

1 Although Mr. Nguyen has been in ICE custody for more than six months,
 2 Respondents concede that ICE has yet to even submit its request for a travel document
 3 to Vietnam. Dkt. 12 at 16 (“ICE has been able to complete a travel document request
 4 for Petitioner which is now currently under review by DHS”); *see also* Dkt. 13, ¶ 12
 5 (emphasis added) (confirming that no request has been sent to Vietnam: a “travel
 6 document request was sent to Vietnam RIO for review”³ on November 2, 2025, and on
 7 December 31, 2025, “the travel document request to Vietnam was forwarded to AAR for
 8 processing”). Officer Diaz also states that for individuals, like Mr. Nguyen, “without
 9 documentation of Vietnamese citizenship, the Vietnamese government will conduct an
 10 interview.” *Id.*, ¶ 17. But there is no information provided as to when Vietnam might
 11 schedule an interview with Mr. Nguyen or whether one has even been requested.
 12 Respondents also provide no “evidence of Vietnam’s eligibility criteria or why it
 13 believes Petitioner now meets it” after refusing to accept him for over 17 years. *Nguyen*
 14 *v. Scott*, 796 F.Supp.3d 703, 723, 726 (W.D. Wash. Aug. 21, 2025) (internal quotation
 15 marks omitted). Yet, such information is necessary for this Court to evaluate the
 16 likelihood of eventual deportation because the process for requesting travel documents
 17 depends on the individualized facts of each case. *Id.* at 726.

18 Instead, Respondents rely on the same “sweeping assertions regarding removal
 19 to Vietnam generally,” including almost identically worded “cursory explanations of
 20 significant foreign policy developments,” including that ‘previous memoranda of
 21

22 ³ The officer does not define what “RIO” means but it appears to be an internal unit
 23 located at ICE Headquarters in Washington, D.C. *See Tang v. Bondi*, No. 2:25-cv-
 24 01473-RAJ-TLf, Dkt. 14, at ¶¶ 1, 2 (W.D. Wash. Aug. 8, 2025) (declaration of
 25 Detention and Deportation for the Removal Management Division Officer Jessie
 26 Gonzalez) (defining the RIO unit as the “Removal and International operations unit”
 within ICE). According to the ICE Air Operations Handbook, “AAR” is an acronym for
 ICE’s “Assistant Attache for Removal.” *See* U.S. Immigr. and Customs Enf’t, Doc. No.
 ERO 11500.1, *ICE Air Operations Handbook* 31 (2015) [www.ice.gov/doclib/foia/](http://www.ice.gov/doclib/foia/policy/iceAirOpsHandbookEd1_09012015.pdf)
[policy/iceAirOpsHandbookEd1_09012015.pdf](https://perma.cc/75YR-U2PS) [https://perma.cc/75YR-U2PS].

1 understanding regarding removal of Vietnamese citizens based on their entry date [are]
 2 no longer in effect[,]” that the court found unpersuasive in *Bui v. Scott*, No. 2:25-cv-
 3 02268-TMC, 2025 WL 3706796 (W.D. Wash. Dec. 22, 2025). *See id.* at *4
 4 (“Considering these deficiencies, Respondents’ evidence is not persuasive enough to
 5 rebut Petitioner’s showing that his detention has become indefinite.”). Respondents’
 6 assertions that there may have been increased deportations of Vietnamese nationals also
 7 fail to rebut Mr. Ngyuen’s showing. *See* Dkt. 13, ¶ 16 (“As of September 11, 2025, for
 8 fiscal year 2025 there have been at least 569 removals of Vietnamese citizens to
 9 Vietnam.”). Courts in this district have repeatedly found that Respondents have failed
 10 to carry their burden based on the same or similar assertions. *See, e.g., Kuot v. Bondi*,
 11 No. 2:25-CV-02313-BAT, 2025 WL 3763930, at *3 (W.D. Wash. Dec. 30, 2025) (“The
 12 generalized statement that some citizens have been removed to Vietnam is insufficient
 13 to show Vietnam will issue a travel document in Petitioner’s case.”); *Do v. Scott*,
 14 No. C25-2187RSL, 2025 WL 3496909, at *5 (W.D. Wash. Dec. 5, 2025) (noting that
 15 there are increased deportations is not enough to establish a significant likelihood that
 16 any Vietnamese citizen, including Petitioner will be removed to Vietnam in the
 17 reasonably foreseeable future).

18 Respondents have also provided different time estimates of how long Vietnam
 19 takes to respond to travel requests once they are finally submitted. Here, Respondents
 20 maintain that “[t]he government of Vietnam has agreed to increase cooperation with the
 21 United States and generally seek to issue travel documents within 30 days of a request
 22 being made.” Dkt. 13, ¶ 14. But in other cases, Respondents have more vaguely
 23 represented that travel document requests are “typically” approved “within 1-3 months
 24 currently due to the high volume of requests.” *See, e.g., Nguyen v. Bondi*, No. 2:25-cv-
 25 02723-RAJ, Dkt. 11, ¶ 15 (W.D. Wash. Jan. 13, 2026) (Declaration of ICE Deportation
 26 Officer Brandon Curran) (stating that from the time that a request is made, “the

1 issuance of travel documents is typically within 1-3 months currently due to the high
 2 volume of requests.”); *Wana v. Bondi*, No. CV25-2321-RSL, Dkt. 9, ¶ 19 (W.D. Wash.
 3 Dec. 4, 2025) (declaration of ICE Deportation Officer Jiarong Du) (same). Thus,
 4 Respondents offers no credible assurances that ICE will obtain a travel document in the
 5 reasonably foreseeable future. In short, this Court ““does not know how long Petitioner
 6 may have to wait for travel documents—if Vietnam even decides to provide them.””
 7 *Abubaka v. Bondi*, No. 2:25-cv-1889 RSL, 2025 WL 3204369, at *5 (W.D. Wash.
 8 Nov. 17, 2025) (citing *Nguyen*, 796 F.Supp.3d at 726).

9 Given these facts, Respondents fail to meet their burden of showing that
 10 Mr. Nguyen’s removal from the United States is substantially likely in the reasonably
 11 foreseeable future. *See, e.g., Gilali v. Warden of McHenry Cnty. Jail*, No. 19-CV-837,
 12 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019) (mere assertions of good-faith
 13 efforts to secure removal “does not make removal likely in the reasonably foreseeable
 14 future”). This Court should thus order Mr. Nguyen’s immediate release with conditions.

15 **C. Mr. Nguyen’s due process rights were violated by his re-detention.**

16 Respondents offer little in the way of response to the due process violations
 17 alleged in Mr. Nguyen’s petition. Dkt. 1 at 9–14. All but dispositively, they ignore the
 18 fact that ICE revoked Mr. Nguyen’s order of supervision and arrested him without a
 19 hearing. Respondents assert because Mr. Nguyen violated the conditions of his OSUP–
 20 given his misdemeanor conviction in 2019 and his arrest for another misdemeanor
 21 offense in 2021—and because there is a “significant likelihood” that he can be removed
 22 in the reasonably foreseeable future, that ICE was allowed to revoke the OSUP and to
 23 take Mr. Nguyen into custody without a hearing. Dkt. 12 at 12. But as stated in *Perera*
 24 *v. Jennings*, No. CV21-4136-BLF, 2021 WL 2400981, at *5 (N.D. Cal. June 11, 2021),
 25 “the interest at stake is not whether the Government may detain [a noncitizen after
 26 releasing him], but whether they may do so without providing him an individualized

1 bond hearing.” *See also Pinchi v. Noem*, 792 F.Supp.3d 1025 (N.D. Cal. 2025) (“[E]ven
 2 when ICE has the initial discretion to detain or release a noncitizen pending removal
 3 proceedings, after the individual is released from custody, she has a protected liberty
 4 interest in remaining out of custody”). Moreover, “the Government’s interest in
 5 detaining petitioner without a hearing is ‘low.’” *Carbello v. Andrews*, No. CV25-978-
 6 KES-EPG, 2025 WL 2381464, *8 (E.D. Cal. Aug. 15, 2025) (cleaned up). That is
 7 because “in immigration court, custody hearings are routine and impose a minimal
 8 cost.” *Carballo*, 2025 WL 2381464, at *8. *See also P.T. v. Hermosillo*, No. C25-2249-
 9 KKE, 2025 WL 3294988, at *4 (W.D. Wash. Nov. 26, 2025) (“That Petitioner’s alleged
 10 violations occurred months or even years before they were acted upon, and Petitioner
 11 participated in multiple appointments where any violations could have been addressed
 12 but were not,” undermines any suggestion that the government’s interests are threatened
 13 if a pre-deprivation hearing is required).

14 Given these conclusions, courts in this district have held that “[b]ased on review
 15 of the *Mathews*⁴ factors,” a “Petitioner has a protected liberty interest in his continuing
 16 release from custody, and that due process requires that Petitioner receive proper notice
 17 and an opportunity to respond before he can be re-detained.” *Jimenez v. Bondi*,
 18 No. C25-2167RSM, 2025 WL 3466925, at *2 (W.D. Wash. Dec. 3, 2025). In *Jimenez*,
 19 the court granted the petition and ordered Mr. Jimenz’s immediate release, barring re-
 20 detention “without providing adequate notice of the reasons for his re-detention and a
 21 meaningful opportunity to respond.” *Id.* at *3. Respondents do not address *Jimenez* or
 22 the multiple cases coming to the same conclusion. *See, e.g., P.T. v. Hermosillo*, No.
 23 C25-2249-KKE, 2025 WL 3294988, at *3 (W.D. Wash. Nov. 26, 2025); *Perez v.*
 24 *Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at *5 (M.D. Fla. Dec. 3,

25
 26

⁴ *Mathews v. Diaz*, 426 U.S. 67 (1976).

1 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL 3137296, at *5 (D. Or.
2 Nov. 10, 2025).

3 Regarding *Mathews*' third factor, the Respondents point to their "interest in
4 enforcing compliance with its orders of release and returning individuals to custody
5 who violate their terms," notwithstanding that the government took no action to revoke
6 Mr. Nguyen in 2019 and 2021. Dkt. 12 at 13. That is not the governmental interest at
7 issue here. As stated by the court in *P.T.*, "[i]n the final *Mathews* factor, the Court
8 considers the Government's interest in arresting and detaining Petitioner *without a*
9 *hearing*." 2025 WL 3294988, at *3 (emphasis added). *Accord Perera*, 2021 WL
10 2400981, at *5 ("the interest at stake is not whether the government may detain [a
11 noncitizen after releasing him], but whether they may do so without providing him an
12 individualized bond hearing.").

13 Respondents' assertion that no hearing is necessary because the post-detention
14 administrative process described in the regulations provide Mr. Nguyen with the
15 safeguards he needs should also be rejected. As the court pointed out in *Guillermo M.R.*
16 *v. Kaiser*, 791 F.Supp.3d 1021 (N.D. Cal. 2025), the regulations provide no opportunity
17 to have a neutral party evaluate ICE's unilateral determination of contested facts. And
18 that it is this lack of "any neutral review" that "creates a heightened risk of deprivation
19 for Petitioner." *Id.* at 1034.

20 Finally, although Respondents also assert in a short separate section that
21 Mr. Nguyen is not entitled to a pre-detention hearing because "he is subject to an
22 administratively final order of removal," they acknowledge, without analysis, that
23 courts in this district "have recently found that the Due Process Clause requires a pre-
24 deprivation hearing before revocation of an OSUP." Dkt. 12 at 15 (citing to *Wana*, 2025
25 WL 3628634, at *5) (holding that regulations do not provide the process due under the
26 Due Process Clause and that "the government's interest in arresting and detaining a

1 noncitizen without a hearing is low where the noncitizen was already released because
 2 the government had been persuaded that he would not abscond and would not pose a
 3 danger to the community”); *Khim v. Bondi*, No. 2:25-CV-02383-RSL, 2025 WL
 4 3653724, at *4 (W.D. Wash. Dec. 17, 2025) (same)).

5 Because Mr. Nguyen was not given a hearing before being re-detained, he must
 6 be released on this ground as well.

7 **D. Numerous courts have rejected Respondents’ argument that**
 8 **Mr. Nguyen’s claims regarding removal to a third country are not yet**
 9 **ripe.**

10 Mr. Nguyen asked for an order precluding ICE from removing him to a third
 11 country under its punitive removal policies and an order precluding removing him to a
 12 third country absent notice and a meaningful opportunity to respond. Respondents
 13 assert—ignoring that multiple courts in this district have rejected that same assertion—
 14 that this Court should deny Mr. Nguyen’s request because it is speculative and not ripe.
 15 Dkt. 12 at 17. A similar argument was rejected in *Nguyen v. Scott*. There, the
 16 government also represented that it was seeking only to remove the petitioner to his
 17 home country of Vietnam and even stipulated that it would not attempt to move him to
 18 any other country unless Vietnam rejected him. The court was unpersuaded, explaining
 19 that “the Ninth Circuit has found such voluntary promises insufficient” to eliminate the
 20 potential irreparable injury that petitioner could face if the promise were withdrawn,
 21 particularly given the underlying allegations that third party removals were being
 22 conducted rapidly and without an opportunity for due process. 796 F.Supp.3d at 737.

23 The government argues that Mr. Nguyen’s requests are purely speculative given
 24 that “DHS anticipates that a travel document will be issued by Vietnam.” Dkt. 12 at 16.
 25 But as argued above, Respondents have not met their burden of showing that his
 26 removal is reasonably foreseeable. And if the government is saying it does not intend to
 remove Mr. Nguyen to any country other than Vietnam, that limitation was rejected in

1 *Nguyen v. Bondi*, No. 2:25-cv-02024-TL, 2025 WL 3534168, at *7 (W.D. Wash.
 2 Dec. 10, 2025). There, the court stated that “considering [Respondents’] qualified
 3 assurance in light of current ICE policy, President Trump’s support of and commitment
 4 to ‘sudden deportation in a place and manner solely of our discretion,’ and the
 5 undisputed actions of Respondents in carrying out such sudden and discretionary
 6 removals, the Court find the voluntary promise insufficient.” *Id.* (citations omitted). The
 7 court further reasoned that “the fact that this injury is directly traceable to a written
 8 policy suggests that there is an implicit likelihood of its repetition in the immediate
 9 future.” *Id.* (cleaned up) (finding issues ripe). *See also Hambarsonpour*, 2025 WL
 10 3251155, at *5 (rejecting government’s ripeness and lack-of-likelihood arguments).

11 Just as other courts in this district have done after rejecting the government’s
 12 ripeness contention and turning to the substantive issue, this Court should grant the two
 13 forms of relief Mr. Nguyen requested regarding third-country removal. *See Abubaka*,
 14 2025 WL 3204369, at *7–8 (ruling in petitioner’s favor on merits third-country removal
 15 and both due process and punitive nature of removal); *Nguyen*, 2025 WL 3534168, at
 16 *10 (same); *Baltodano v. Bondi*, No. CV25-1958RSL, 2025 WL 3484769, at *10 (W.D.
 17 Wash. Dec. 4, 2025) (quoting *Hambarsonpour*, 2025 WL 321155, at *1, *4–5)
 18 (ordering government “not to remove petitioner to any third country where he is likely
 19 to face imprisonment or harm”).

20 **E. Respondents’ claim that Mr. Nguyen’s claims can only be brought**
 21 **through habeas is wrong.**

22 Respondents argue this Court has no subject matter jurisdiction to hear
 23 Mr. Nguyen’s claim that his detention violates the Administrative Procedure Act
 24 (APA). They essentially argue that Petitioners’ claims can only be brought through
 25 habeas. But courts have held that “APA and habeas review may coexist.” *R.I.L.-R v.*
 26 *Johnson*, 80 F. Supp. 3d 164, 185 (D.D.C. 2015); *J.G.G. v. Trump*, 772 F. Supp. 3d 18,

31 (D.D.C. 2025) (noting the APA has “long been available to plaintiffs . . . even in immigration challenges where habeas is also available”); *see also Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 510 n.10 (D. Md. 2025) (indicating that habeas claims need not be brought to the exclusion of all other claims in certain contexts); *Valez-Chavez v. McHenry*, 549 F. Supp. 3d 300, 305 (S.D.N.Y. 2021) (recognizing the same); *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 140 (D.D.C. 2018) (permitting plaintiffs to proceed with their APA claim alleging DHS's violations of the INA); *cf. Castaneda v. Garland*, 562 F.Supp.3d 545, 559–61 (C.D. Cal. 2021) (finding subject-matter jurisdiction and permitting a detained noncitizen to proceed with APA claims).

In *Valez-Chavez*, the court adopted the reasoning of *R.I.L.-R* regarding the coexistence of APA and habeas review because “[n]othing in the text of the writ of habeas corpus, or the legislative history relied on by the government, demonstrates the customization or exclusivity needed to prove, by clear and convincing evidence, that Congress created the writ as a special and adequate review procedure within the meaning of § 704.” *Valez-Chavez*, 549 F. Supp. at 306; *see also Citizens for Resp. & Ethics in Washington v. United States Dep't of Just.*, 846 F.3d 1235, 1244 (D.C. Cir. 2017) (requiring clear and convincing evidence of legislative intent to create a special, alternative remedy to bar APA review). Thus, there is no exclusivity of habeas claims that bars the availability of APA review.

III. CONCLUSION

Based on the foregoing, the Court should grant the petition in its entirety and to grant the remedies stated in the petition’s prayer for relief at page 27–28 of the petition. *See* Dkt. 1 at 27–28.

RESPECTFULLY SUBMITTED this 20th day of January 2026.

s/ Vicki W.W. Lai
Assistant Federal Public Defender
Attorney for Danh Van Nguyen