

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PHUC HUU NGUYEN,

Petitioner,

vs.

PAMELA BONDI, *et al.*,

Respondents.

) No. CV25-2723-RAJ

)
) REPLY TO FEDERAL
) RESPONDENTS' RETURN
) MEMORANDUM

I. INTRODUCTION AND FACTUAL BACKGROUND

Phuc Nguyen is 51 years old. In 1975, he and his family fled Vietnam and entered the United States as refugees when he was an infant. He was later granted lawful permanent resident status. After he was convicted of several Oregon state crimes for which he was sentenced from ten to 90 days, Mr. Nguyen was ordered removed on February 2, 1999, and detained for 180 days before he was released because ICE could not obtain a travel document. Dkt. 11, ¶ 8. Mr. Nguyen was detained once again in September 2011, after serving a sentence for a 2000 federal drug conviction. *Id.*, ¶¶ 10, 11. He was again released on an Order of Supervision (OSUP) on October 19, 2011, after ICE was again unable to obtain a travel document. *Id.*, ¶ 11.

Although the government last released Mr. Nguyen on an Order of Supervision in 2011 due to its inability to secure a travel document from Vietnam, the government re-detained him again on December 11, 2025, claiming that there “is now a significant likelihood of Petitioner’s removal in the foreseeable future due to a change in

1 circumstances and ongoing cooperation between the United States and Vietnam.”

2 Dkt. 10 at 6.

3 Because the government provides no evidence or argument demonstrating that
 4 Mr. Nguyen’s removal to Vietnam is reasonably foreseeable, it fails to rebut his
 5 showing that his detention has been unconstitutionally prolonged and that he is entitled
 6 to habeas relief. *Nguyen v. Bondi*, No. 2:24-cv-0204-TL, 2025 WL 3534168, at *4
 7 (W.D. Wash. Dec. 10, 2025). The government raises only two arguments against
 8 Mr. Nguyen’s petition—that his claims regarding potential removal to a third country
 9 are not ripe for review and that injunctive relief should be denied because his arrest
 10 without process is not likely to reoccur. As discussed below, both do not have merit
 11 under the facts and the law.

12 **II. ARGUMENT**

13 **A. The Court should order Mr. Nguyen released because the government** 14 **has offered no credible evidence that his removal is significantly likely in** 15 **the reasonably foreseeable future.**

16 **1. The six-month presumptively reasonable grace period under** 17 ***Zadvydas* has ended.**

18 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that the
 19 government does not have unrestricted authority to indefinitely detain people who have
 20 been ordered deported. Because indefinite detention of a non-citizen in immigration
 21 custody raises “a serious constitutional problem,” *id.* at 690, the Court ruled that it is
 22 “presumptively reasonable” under the Immigration and Nationality Act to detain an
 23 individual for six months following a removal order. *Id.* at 701. After that time, if
 24 removal is not “significantly likely in the reasonably foreseeable future,” the
 25 government must release the petitioner. *Id.*

26 The government admits that Mr. Nguyen has been detained for “253 days post-
 removal order in the aggregate” or over eight months. Dkt. 10 at 6; *see also* Dkt. 11, ¶¶

9, 11, 13. While the government does not concede that Mr. Nguyen has been detained for the six-month presumptively reasonable period, it also does not challenge the argument made in his petition, that the six-month period can be aggregated with prior immigration detention. Dkt. 1 at 8. *See, e.g., Jaranow v. Bondi*, Case No. 2:25-cv-02396-TL, 2026 WL 35864 (W.D. Wash. Jan. 6, 2026) (“Courts in this Circuit have found that a six-month period of detention need not be consecutive to reach the limit established in *Zadvydas*.”).

Having been detained for at least 253 days, Mr. Nguyen has shown that his detention has been prolonged beyond the presumptively reasonable time period. And given that ICE has had almost 27 years since Mr. Nguyen’s final removal order to deport him to Vietnam, there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.

2. The government fails to meet its burden of showing that Mr. Nguyen’s removal is substantially likely in the reasonably foreseeable future.

With a petitioner’s preliminary showing of indefinite detention, the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701. Somewhat remarkably, the government does not engage in *Zadvydas*’s burden-shifting framework and provides no argument asserting that it has met its burden. The government has thus either waived or forfeited these arguments. *See, e.g., Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1023 (9th Cir. 2023) (internal quotation marks omitted) (a party must “specifically and distinctly raise an argument and support it with citations to the record” to avoid forfeiture) (internal quotation marks omitted); *Tibble v. Edison Int’l*, 843 F.3d 1187, 1193 (9th Cir. 2016) (citation omitted) (“[A]n issue will generally be deemed waived . . . if the argument was not raised sufficiently for the trial court to rule on it.”) (citation omitted).

1 In addition, the limited evidence that the government has provided supports a
 2 finding that it has failed to meet its burden. The only evidence the government proffers
 3 on this issue is the Declaration of Deportation Officer Brandon Curran. *See* Dkt. 11. But
 4 because the declaration offers mostly generalities rather than specific facts about
 5 Mr. Nguyen’s circumstances, it is of little evidentiary value. For example, the Officer
 6 maintains that “[f]rom the time that a request is made from the local office through to
 7 the Attache the issuance of travel documents is typically within 1-3 months currently
 8 due to the high volume of requests.” Dkt. 11, ¶ 15. But “[a] statement regarding how
 9 quickly a country ‘can’ issue a travel document is too generic to be of any value.”
 10 *Jaranow*, 2026 WL 35864, at *4; *see also Nguyen v. Scott*, 796 F.Supp.3d 703, 723
 11 (W.D. Wash. 2025) (finding unpersuasive the government’s suggestion that a pre-1995
 12 Vietnamese immigrant’s application for travel documents is likely to be granted by the
 13 Vietnamese government within 30 day of submittal). Notably, the government does not
 14 specify whether this timeline pertains to pre-1995 Vietnamese immigrants. As the court
 15 explained in *Nguyen*, the “evidence that the process for procuring travel documents
 16 from Vietnam for pre-1995 immigrants continues to be uncertain and protracted.” *Id.* at
 17 723.

18 In addition, Office Curran candidly avers that as of January 13, 2026, “ERO has
 19 not received confirmation at this time what stage the TDR request is at, whether still in
 20 review or forwarded to the Vietnamese Consulate[.]” Dkt. 11, ¶ 4. If the request is still
 21 at the review stage, the Officer gives no indication of when that review will be
 22 completed or when the request will be sent to the Vietnamese government if it remains
 23 in ERO’s possession. *See Huynh v. Bondi*, No. C25-2093-KKE, 2025 WL 3534210, at
 24 *4 (W.D. Wash. Dec. 10, 2025) (noting there, in granting petition, that “Respondents
 25 provide no guidance as to how long each ERO review may take”). Consequently, his
 26 assertion that Vietnam “typically” takes 1-3 months to issue a travel document is

1 meaningless given that there is no information proffered as to when the travel request
2 will be sent to the Vietnamese government. *See, e.g., Gilali v. Warden of McHenry*
3 *Cnty. Jail*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019)
4 (holding that although the “respondent asserts that [the petitioner’s] travel document
5 requests remain . . . pending and ERO continues to follow up on the documents’
6 status . . . [,] this is insufficient. It is merely an assertion of good-faith efforts to secure
7 removal; it does not make removal likely in the reasonably foreseeable future.”).

8 Officer Curran also states that for individuals, like Mr. Nguyen, “without
9 documentation of Vietnamese citizenship, the Vietnamese government will conduct an
10 interview.” Dkt. 11, ¶ 15. But there is no information provided as to when an interview
11 is likely to take place, whether the Vietnamese government is even doing citizenship
12 interviews at this time and if so, whether one has even been requested for Mr. Nguyen.
13 But whatever the timeframe, an even more fundamental issue is that the government
14 provides no basis for the Court to conclude that a travel document request for
15 Mr. Nguyen will be approved at all. As in *Nguyen*, “[t]he Government has not provided
16 any evidence of Vietnam’s eligibility criteria or why it believes that Petitioner now
17 meets it” after it has refused to accept Mr. Nguyen for over two decades. *Nguyen*, 796
18 F. Supp. 3d at 723 (internal quotation marks omitted).

19 In short, the government has failed to show that Mr. Nguyen is likely to be
20 removed to Vietnam at all, let alone within the reasonably foreseeable future. This
21 Court should thus find that his continued detention has been unconstitutionally
22 prolonged and order his immediate release.

23 **B. Numerous courts have also repeatedly rejected the government’s**
24 **argument that Mr. Nguyen’s claims regarding removal to a third country**
25 **are not yet ripe.**

26 Mr. Nguyen’s petition also asked for an order precluding ICE from removing
him to a third country under its punitive removal policies and an order precluding the

1 government from removing him to a third country absent notice and a meaningful
2 opportunity to respond. The government asserts—ignoring that multiple courts in this
3 district have rejected that same assertion—that this Court should deny his request
4 because it is speculative and not ripe. Dkt. 10 at 8. A similar argument was rejected in
5 *Nguyen*, 769 F.Supp.3d at 727. There, the government also represented that it was
6 seeking only to remove the petitioner to his home country of Vietnam and even
7 stipulated that it would not attempt to move him to any other country unless Vietnam
8 rejected him. The court was unpersuaded, explaining that “the Ninth Circuit has found
9 such voluntary promises insufficient” to eliminate the potential irreparable injury that
10 petitioner could face if the promise were withdrawn, particularly given the underlying
11 allegations that third party removals were being conducted rapidly and without an
12 opportunity for due process. 796 F.Supp.3d at 737.

13 Here, Mr. Nguyen’s claim is not speculative because ICE has been unable to
14 obtain a travel document for him from Vietnam for over two decades. And while the
15 government suggests that it does not intend to remove Mr. Nguyen to any country other
16 than Vietnam, that limitation was also rejected in *Nguyen v. Bondi*, 2025 WL 3534168,
17 at *7. There, the court found a noncitizen seeking habeas under *Zadvydas* had standing
18 to challenge potential third-country removal even though the government in that case
19 presented an ICE officer’s sworn declaration it was not seeking to remove Petitioner to
20 a third country. The court reasoned that the officer’s language “clearly indicates that the
21 decision could be changed at any moment,” in which case “irreparable harm could
22 easily occur before Petitioner’s counsel could seek relief or obtain a ruling from the
23 Court.” *Id.* (citation modified). *See also Hambarsonpour*, 2025 WL 3251155, at *5
24 (rejecting government’s ripeness argument).

25 Just as other courts in this district have done after rejecting the government’s
26 ripeness contention and turning to the substantive issue, this Court should grant the two

1 forms of relief Mr. Nguyen has requested regarding third-country removal. *See*
 2 *Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, at *7–8 (W.D. Wash.
 3 Nov. 17, 2025) (ruling in petitioner’s favor on merits of third-country removal and both
 4 due process and punitive nature of removal); *Nguyen v. Bondi*, 2025 WL 3534168, at
 5 *10 (same); *Baltodano v. Bondi*, No. CV25-1958RSL, 2025 WL 3484769, at *10 (W.D.
 6 Wash. Dec. 4, 2025) (quoting *Hambarsonpour*, 2025 WL 321155, at *1, *4–5)
 7 (ordering government “not to remove petitioner to any third country where he is likely
 8 to fact imprisonment or harm”).

9 **C. Petitioner’s re-arrest is highly likely given his criminal history, the**
 10 **Trump administration’s priorities, and the sporadic success the**
 11 **government has had in securing travel documents from Vietnam**

12 Petitioner also seeks an order prohibiting any future detention without a hearing
 13 and that he not be re-detained absent specific conditions are met. Dkt. 1 at 27–28. The
 14 government argues that arrest without process is not likely to recur and thus
 15 Mr. Nguyen’s request for injunctive relief should be denied. Dkt. 10 at 7. But the public
 16 record and the record in this case belies this assertion. The Trump administration’s
 17 priority for over a year has been to remove people with criminal histories, and on paper,
 18 Mr. Nguyen fits this profile (although he has no recent criminal history). For example,
 19 the most recent press release on the Department of Homeland Security’s website
 20 trumpets, “The U.S. Department of Homeland Security (DHS) today announced U.S.
 21 Immigration and Customs Enforcement (ICE) arrested more worst of the worst criminal
 22 illegal aliens from across the country convicted of heinous crimes including indecent
 23 liberties with a child, domestic violence, and *distribution of cocaine*.” DHS, *ICE*
 24 *Arrests Worst of Worst Criminal Illegal Alien Pedophiles, Domestic Abusers, and Drug*
 25 *Traffickers* (Jan. 20, 2026) (emphasis added), [https://www.dhs.gov/news/2026/01/20/](https://www.dhs.gov/news/2026/01/20/ice-arrests-worst-worst-criminal-illegal-alien-pedophiles-domestic-abusers-and-drug)
 26 [ice-arrests-worst-worst-criminal-illegal-alien-pedophiles-domestic-abusers-and-drug](https://www.dhs.gov/news/2026/01/20/ice-arrests-worst-worst-criminal-illegal-alien-pedophiles-domestic-abusers-and-drug)

1 [https://perma.cc/9TWK-W5VZ]. Mr. Nguyen has just such a drug conviction. *See*
2 Dkt. 10 at 5

3 Furthermore, the government claims that “Vietnam continues to issue travel
4 documents for their citizens, and based on this, ERO believes that Vietnam will
5 ultimately issue travel documents for the Petitioner.” Dkt. 10 at 6. ICE’s stated position
6 that it “ultimately” expects to be able to carry out Mr. Nguyen’s removal makes it
7 highly likely that ICE will again seek to remove him via a new arrest, particularly if it
8 succeeds in obtaining a travel document for him.

9 Of course, if there is a travel document, such a hearing would not be a major
10 obstacle for the government. “[T]he government’s interest in detaining petitioner
11 without a hearing is low.” *Carballo*, 2025 WL 2381464, *8 (cleaned up). “In
12 immigration court, custody hearings are routine and impose a minimal cost.” *Id.*
13 (cleaned up). But hearings are necessary to prevent detentions without any reasonable
14 prospect of accomplishing the removal, precisely as occurred in this case.

15 Because Mr. Nguyen fits the profile of the Trump administration’s highest arrest
16 priority and the government allegedly has been able to effect some removals to
17 Vietnam, Mr. Nguyen’s re-arrest is a strong possibility and more than meets the
18 standard for injunctive relief. *See Cummings v. Connell*, 316 F.3d 886, 897 (9th Cir.
19 2003) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953)) (“The
20 necessary determination is that there exists some cognizable danger of recurrent
21 violation, something more than the mere possibility which serves to keep the case
22 alive.”). Notably, in the case cited by the government, the defendant union had, after
23 sending various notices to its members that did not comply with the requirements of
24 *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 310 (1986), then sent another notice
25 that “undisputed[ly]. . . complied with *Hudson*.” *Cummings*, 316 F.3d at 890, and so the
26

1 court reasoned that “it would be foolish for the Union to now revert to a deficient
2 format and subject itself to additional lawsuits.” *Id.* at 898.

3 Here, the government has not desisted in making arrests without hearings, nor
4 have they indicated any interest in doing so. A permanent injunction is necessary to
5 remedy ongoing—and thus very likely in Mr. Nguyen’s case—deprivations of due
6 process. Accordingly, courts in this district have granted permanent injunctions on
7 similar facts. *See, e.g., Khim v. Bondi*, No. CV25-02383-RSL2025, WL 3653724, at *4
8 (W.D. Wash. Dec. 17, 2025); *E.A. T.-B. v. Wamsley*, 795 F.Supp.3d 1316, 1324 (W.D.
9 Wash. 2025); *Tzafir v. Bondi*, No. CV25-2070-JHC-GJL, 2025 WL 3724708, at *4
10 (W.D. Wash. Dec. 24, 2025). This Court should do the same.

11 **III. CONCLUSION**

12 Based on the foregoing, the Court should grant the petition in its entirety and to
13 grant the remedies requested in the Petitioner’s prayer for relief as set forth at pages 27–
14 28 of his petition.

15 DATED this 20th day of January 2026.

16 Respectfully submitted,

17 s/ *Vicki W.W. Lai*
18 Assistant Federal Public Defender
19 Attorney for Phuc Huu Nguyen
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