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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 HUNG CAO LE NGUYEN,
13
14 Petitioner,

15 v.

16 KRISTI NOEM, Secretary of the
17 Department of Homeland Security,
18 PAMELA JO BONDI, Attorney General,
19 TODD M. LYONS, Acting Director,
20 Immigration and Customs Enforcement,
21 JESUS ROCHA, Acting Field Office
22 Director, San Diego Field Office,
23 CHRISTOPHER LAROSE, Warden at
24 Otay Mesa Detention Center,
25
26 Respondents.

Civil Case No.: 26-cv-426-RSH-SBC

**Traverse in
Support of
Petition for Writ of
Habeas Corpus**

1 INTRODUCTION

2 Having received the government’s Return and supporting evidence, this
3 Court should grant Mr. Nguyen’s petition on the basis of either claim. To do so,
4 the Court need only follow recent decisions in this district and around the country.

5 First, this Court should grant the petition on Claim One because the
6 government admitted it has not complied with 8 C.F.R. §§ 241.4, 241.13. For
7 persons like Mr. Nguyen, those regulations permit re-detention only if ICE (1)
8 “determines that there is a significant likelihood that the alien may be removed in
9 the reasonably foreseeable future,” *id.* § 241.13(i)(2); (2) makes that finding “on
10 account of changed circumstances,” *id.*; (3) provides “an initial informal interview
11 promptly,” *id.* §§ 241.4(l)(1), 241.13(i)(3); and (4) “affords the [person] an
12 opportunity to respond to the reasons for revocation,” *id.* Although ICE provided
13 Mr. Nguyen a Notice of Revocation of his supervised release, this Notice stated
14 only that the decision to take him into custody was “based on a review of your
15 immigration and criminal history.” Dkt. 5-2, Exh. 6. What’s more, the
16 government admits that it never provided him an informal interview. Dkt. 5-1 at ¶
17 14. Respondents’ admitted failure to comply with the requirements of
18 § 241.4(l)(1) and § 241.13(i)(3) alone mandate his immediate release.

19 Second, this Court must grant the petition on Claim Two because the
20 government provides no evidence to satisfy the success element (“a significant
21 likelihood of removal”) or timing element (“in the reasonably foreseeable future”)
22 of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Though Deportation Officer
23 (“DO”) Arredondo asserts that ICE routinely obtains travel documents for
24 Vietnamese citizens, she does not say (1) what proportion of Vietnamese citizens
25 for whom travel documents are sought actually receive them, or (2) whether Mr.
26 Nguyen qualifies for removal at all under the 2020 Memorandum of
27 Understanding (“MOU”). (The government does not dispute that he may not be
28 removed under the 2008 treaty.) Nor does DO Arredondo give any indication of

1 how long it takes to get travel documents for pre-1995 Vietnamese citizens—no
2 statistics, no estimations, no anecdotes, no nothing. The government instead relies
3 on ICE’s mere efforts to seek travel documents without distinguishing these from
4 the same efforts it made 25 years ago.

5 This Court should therefore grant the petition on either ground.

6 **ARGUMENT**

7 **I. In light of the government’s response, Mr. Nguyen succeeds on the**
8 **merits.**

9 With the government’s response in hand, this Court need not speculate
10 about whether Mr. Nguyen may succeed on the merits. Because the government’s
11 evidence is plainly insufficient to justify Mr. Nguyen’s detention, his petition
12 should be granted outright.

13 **A. Claim One: ICE did not adhere to the regulations governing re-**
14 **detention.**

15 First, ICE has not complied with 8 C.F.R. §§ 241.4, 241.13. The
16 government does not deny that these regulations apply to Mr. Nguyen, that
17 Mr. Nguyen may challenge them in this habeas case, or that failure to comply
18 with them is grounds for release. *See* Dkt 5 at 9–12. To the contrary, the
19 government appears to agree that Mr. Nguyen’s release was revoked under 8
20 C.F.R. § 241.4(1)(2)(iii) and 8 C.F.R. § 241.13(i)(2). *See id.* And the government
21 admits that ICE did not follow these regulations.

22 Begin with 8 C.F.R. § 241.13(i). This section provides that ICE may revoke
23 an individual’s supervised release for only two reasons: 1) the individual “violates
24 any of the conditions of release” or 2) “if, on account of changed circumstances,
25 the Service determines that there is a significant likelihood that the alien may be
26 removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(1) and (2).
27 Here, ICE never claims that Mr. Nguyen violated any of the conditions of his
28

1 release, nor had it obtained a travel document for Mr. Nguyen. Thus, no basis
2 existed to revoke Mr. Nguyen’s supervised release.

3 But even if there *had* been a basis to revoke Mr. Nguyen’s supervised
4 release, Respondents did not provide him notice of it. Here, the Notice of
5 Revocation of Release simply states that the decision to take Mr. Nguyen into
6 custody was “based on a review of your immigration and criminal history.” Dkt.
7 5-2, Exh. 6. This does not state that Mr. Nguyen violated the conditions of his
8 release *or* that there were “changed circumstances” suggesting that his removal
9 was significantly likely in the reasonably foreseeable future. Thus, Respondents
10 failed to provide Mr. Nguyen the notice the regulations require.

11 Nor *have* there been any “changed circumstances.” Neither the
12 government’s return, nor DO Arredondo’s declaration, ever explain what has
13 changed since the government’s last unsuccessful attempt to remove Mr. Nguyen
14 in 2003. Dkt. 5 at 9-12; 5-1. Nevertheless, the government argues that “ICE’s
15 revived ability to obtain travel documents from the Vietnamese government and
16 to schedule routine removal flights to Vietnam” constitutes “changed
17 circumstances.” Dkt. 5 at 10. But the government never provides statistics about
18 how many individuals it *tried* to remove in 2025 compared to the years prior. For
19 instance, if ICE tried to remove 1,000 people in 2025 but only 200 people in the
20 years prior to that, its success rate would be roughly the same. Without this
21 critical context, there is no evidence of any “changed circumstances”—only that
22 the government simply decided to detain Mr. Nguyen again to try to deport him.

23 Just as importantly, courts have “demanded an individualized analysis” of
24 why *this* person—Mr. Nguyen—will likely be removed. *Nguyen*, 2025 WL
25 2419288, at *17 (citing *Nguyen*, 2025 WL 1725791, at *4). Because “[t]he
26 government has not provided any evidence of [Vietnam’s] eligibility criteria or
27 why it believes *Petitioner* now meets it,” the government’s evidence is
28 insufficient. *Id.* at *18 (emphasis added). Absent a travel document specific to

1 Mr. Nguyen—which the government never claims it has received—nothing is
2 different from the last time ICE tried to remove him.

3 Finally, all of the above goes only to ICE’s violations of 8 C.F.R.
4 § 241.13(i). Sections 241.4(l) and 241.13(i)(3) mandate additional procedures:
5 “[B]oth require ICE to provide ‘an initial informal interview promptly ... to afford
6 the alien an opportunity to respond to the reasons for revocation.’” *Rombot v.*
7 *Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (quoting 8 C.F.R.
8 §§ 241.4(l)(2), 241.13(i)(3)). Here, ICE admits that it “does not have record that
9 Petitioner was provided with an informal interview.” Dkt. 5-1 at ¶ 14. This alone
10 is a basis for granting the petition.

11 “When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it
12 explained that the regulation was intended to provide aliens procedural due
13 process, stating that § 241.4 ‘has the procedural mechanisms that . . . courts have
14 sustained against due process challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d
15 626, 641 (D. Mass. 2018) (quoting *Detention of Aliens Ordered Removed*, 65 FR
16 80281-01). And “[s]ection 241.13(i) includes provisions modeled on § 241.4(l)
17 to govern determinations to take an alien back into custody,” *Continued Detention*
18 *of Aliens Subject to Final Orders of Removal*, 66 FR 56967-01, meaning that it
19 addresses the same due process concerns as 241.4(l). “The procedures in § 241.4”
20 and § 241.13 therefore “are not meant merely to facilitate internal agency
21 housekeeping, but rather afford important and imperative procedural safeguards to
22 detainees.” *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R.
23 §§ 241.4, 241.13 are “intended to provide due process to individuals in
24 [Mr. Nguyen’s] position,” *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC,
25 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable. Thus, this
26 Court should order Mr. Nguyen released on the basis of Claim One alone.

27
28

1 **B. Claim Two: The government has not proved that there is a**
2 **significant likelihood of removal in the reasonably foreseeable**
3 **future.**

4 Second, the government provides no evidence that Mr. Nguyen will likely
5 be removed to Vietnam at all, let alone in the reasonably foreseeable future.

6 **1. The government provides no evidence to support a**
7 **“significant likelihood of removal” to Vietnam.**

8 As an initial matter, DO Arredondo admits that ICE has detained Mr.
9 Nguyen for over a year since he was ordered removed—nearly six months of
10 which has been since his redetention in August 2025. Dkt. 5-1 at ¶ 10–14.
11 Because the six-month grace period has passed, the burden thus shifts to the
12 government to prove that there is a “significant likelihood of removal in the
13 reasonably foreseeable future.” *Zadvyas*, 533 U.S. at 701. That standard has a
14 success element (“significant likelihood of removal”) and a timing element (“in
15 the reasonably foreseeable future”). The government meets neither.

16 As an initial matter, the government has not shown that Mr. Nguyen’s
17 removal to Vietnam is “significant[ly] like[ly].” *Zadvyas*, 533 U.S. at 701.

18 *First*, as previously explained, DO Arredondo’s assertion that ICE routinely
19 obtains travel documents for Vietnamese citizens does not show that a high
20 *proportion* of Vietnamese citizens are successfully removed when ICE seeks
21 travel documents. “[I]f the total number of requests that were made to Vietnam
22 was disclosed, [this Court] might be able to gauge how likely it is that Petitioner
23 would be removed to Vietnam. If DHS submitted 350 requests and Vietnam
24 issued travel documents for 328 individuals, Respondents may very well have
25 shown that removal is significantly likely in the reasonably foreseeable future. On
26 the other hand, if DHS submitted 3,500 requests and only 328 individuals
27 received travel documents, Respondents would not be able to meet their burden.”
28 *Nguyen*, 2025 WL 1725791, at *4; *accord Hoac*, 2025 WL 1993771, at *5. DO

1 Arredondo provides no ratio of requests to travels documents issued, precluding
2 this kind of analysis.

3 Just as importantly, courts have “demanded an individualized analysis” of
4 why *this* person—Mr. Nguyen—will likely be removed. *Nguyen*, 2025 WL
5 2419288, at *17 (citing *Nguyen*, 2025 WL 1725791, at *4). This Court cannot
6 know if Mr. Nguyen qualifies at all under the MOU, because (1) the MOU applies
7 only to persons meeting certain criteria, but (2) the government has never
8 disclosed in full what those criteria are. *Id.* at *6. And even for those who qualify,
9 the MOU provides only that Vietnam has “discretion whether to issue a travel
10 document,” which it exercises “on a case-by-case basis.” *Hoac*, 2025 WL
11 1993771, at *5. By itself, then, “the MOU has repeatedly been deemed
12 insufficient to show a significant likelihood of removal^[1] in the reasonably
13 foreseeable future.” *Nguyen*, 2025 WL 2419288, at *17. Because “[t]he
14 government has not provided any evidence of Vietnam's eligibility criteria or why
15 it believes Petitioner now meets it,” the government’s evidence is insufficient. *Id.*
16 at *18.

17 *Second*, good faith efforts to secure a travel document do not themselves
18 satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a “Fifth Circuit
19 h[olding] [that] [the petitioner’s] continued detention [was] lawful as long as good
20 faith efforts to effectuate deportation continue and [the petitioner] failed to show
21 that deportation will prove impossible.” 533 U.S. at 702 (cleaned up). The
22 Supreme Court reversed, finding that the Fifth Circuit’s good-faith-efforts
23 standard “demand[ed] more than our reading of the statute can bear.” *Id.*

24 Thus, “under *Zadvydas*, the reasonableness of Petitioner's detention does
25 not turn on the degree of the government's good faith efforts. Indeed, the
26 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of
27 Petitioner's detention turns on whether and to what extent the government's efforts
28 are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL

1 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is required
2 to demonstrate the likelihood of not only the *existence* of untapped possibilities,
3 but also of a probability of success in such possibilities.” *Elashi v. Sabol*, 714 F.
4 Supp. 2d 502, 506 (M.D. Pa. 2010).

5 Here, then, “[w]hile the respondent asserts that [Mr. Nguyen’s] travel
6 document requests with [the Vietnamese] Consulate[]” will be lodged, “this is
7 insufficient. It is merely an assertion of good-faith efforts to secure removal; it
8 does not make removal likely in the reasonably foreseeable future.” *Gilali v.*
9 *Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis.
10 Oct. 15, 2019). Many courts have agreed that requesting travel documents does
11 not itself make removal reasonably likely. *See, e.g., Andreev v. Gonzales*, 446
12 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner’s
13 case was “still under review and pending a decision” did not meet respondents’
14 burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D.
15 Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205
16 (D. Ariz. Sept. 20, 2011) (“Repeated statements from the Bangladesh Consulate
17 that the travel document request is pending does not provide any insight as to
18 when, or if, that request will be fulfilled.”); *Khader v. Holder*, 843 F. Supp. 2d
19 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document
20 request, where “[t]he government offers nothing to suggest when an answer might
21 be forthcoming or why there is reason to believe that he will not be denied travel
22 documents”); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1
23 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document
24 request).

25 **2. The government provides no evidence to support that any**
26 **such removal will occur “in the reasonably foreseeable**
27 **future.”**

27 Additionally, even if ICE will eventually remove Mr. Nguyen, the
28 government provides zero evidence that removal will happen “in the reasonably

1 foreseeable future.” *Zadvydas*, 533 U.S. at 701. DO Arredondo provides no
2 timetable for how long travel document requests like his typically take—no
3 statistics, no estimations, no anecdotes, no nothing.

4 That is fatal. “[D]etention may not be justified on the basis that removal to
5 a particular country is likely *at some point* in the future; *Zadvydas* permits
6 continued detention only insofar as removal is likely in the *reasonably*
7 *foreseeable* future.” *Hassoun*, 2019 WL 78984, at *6. “The government’s active
8 efforts to obtain travel documents from the Embassy are not enough to
9 demonstrate a likelihood of removal in the reasonably foreseeable future where
10 the record before the Court contains no information to suggest a timeline on
11 which such documents will actually be issued.” *Rual v. Barr*, No. 6:20-CV-06215
12 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). “[I]f DHS has no idea
13 of when it might reasonably expect [Mr. Nguyen] to be repatriated, this Court
14 certainly cannot conclude that his removal is likely to occur—or even that it *might*
15 occur—in the reasonably foreseeable future.” *Singh v. Whitaker*, 362 F. Supp. 3d
16 93, 102 (W.D.N.Y. 2019).

17 Courts have routinely granted habeas petitions where, as here, the
18 government does not establish *Zadvydas*’s timing element. *See, e.g., Balza v.*
19 *Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020),
20 *report and recommendation adopted*, No. 6:20-CV-00866, 2020 WL 6064881
21 (W.D. La. Oct. 14, 2020) (“[A] theoretical possibility of eventually being
22 removed does not satisfy the government’s burden[.]”); *Eugene v. Holder*, No.
23 408CV346-RH WCS, 2009 WL 931155, at *4 (N.D. Fla. Apr. 2, 2009) (“While
24 Respondents contend Petitioner *could* be removed to Haiti, it has not been shown
25 that it is significantly likely that Petitioner *will* be removed in the *reasonably*
26 *foreseeable* future.”); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D.
27 Pa. 2004) (granting petition because even if “Petitioner’s removal will ultimately
28 be effected . . . the Government has not rebutted the presumption that removal is

1 not likely to occur in the reasonably foreseeable future”); *Seretse-Khama v.*
2 *Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002) (granting petition where the
3 government had not provided any “evidence . . . that travel documents will be
4 issued in a matter of days or weeks or even months”).

5 In sum, then, there could be “some possibility that Vietnam will accept
6 Petitioner at some point. But that is not the same as a significant likelihood that he
7 will be accepted in the reasonably foreseeable future.” *Nguyen*, 2025 WL
8 2419288, at *16. Mr. Nguyen therefore succeeds under *Zadvydas*, too.

9 CONCLUSION

10 For all these reasons, this Court should grant the petition, or at least enter a
11 temporary restraining order and injunction.

12
13 Respectfully submitted,

14 Dated: February 4, 2026

s/ Kara Hartzler

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