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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Vu Loc Nguyen

Petitioner

Case No. 2:26-cv-00335-GJL

vs.

Laura HERMOSILLO, *et al.*,

PETITIONER'S TRAVERSE

Respondents

INTRODUCTION

There is no question about the legal framework that applies to Petitioner's detention. The government claims, and Mr. Nguyen agrees, that his detention is governed by 8 U.S.C. §1231(a), as interpreted by *Zadvydas*, 533 U.S. 678 (2001). Thus, the following questions need to be resolved: (1) Has Mr. Nguyen been held in detention under a final order of removal for more than the *Zadvydas* "presumptively reasonable" six-month period? (2) If so, has Mr. Nguyen failed or refused to make timely application

PETITIONER'S TRAVERSE - I

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1 for travel or other documents warranting an extension of the six-month period pursuant to
2 §1231(a)(1)(C)? (3) If an extension of the six-month period is not warranted, is there a
3 likelihood of Mr. Nguyen's removal in the reasonably foreseeable future? (4) If there is
4 no such likelihood, is the appropriate remedy immediate release from detention? The
5 answers to these questions establish that Mr. Nguyen is entitled to immediate release
6 from detention.

7 In addition, an injunction should be issued prohibiting the removal of Mr. Nguyen
8 to a third country other than Vietnam.

9 **A. Mr. Nguyen Should Be Released from Detention Immediately.**

10 **(1) Mr. Nguyen Has Been Held in Detention under a Final Order of Removal**
11 **for More than Six Months.**

12 In this case, the order of removal against Mr. Nguyen became administratively
13 final on July 28, 2026. Mr. Nguyen has been held in detention under the final order of
14 removal since that time. The Government does not argue to the contrary.

15 **(2) An Extension of the Six Month Period Is Not Warranted under**
16 **§1231(a)(1)(C).**

17 The Government argues that the six month period should be extended because on
18 November 10, 2025, Mr. Nguyen refused to complete Form I-217, and on February 11,
19 2026, Mr. Nguyen refused to sign certain unspecified documents. The Government cites
20 *Pelich v. INS*, 329 F.3d 1057, 1062 (9th Cir. 2003) and *Lema v. INS*, 341 F.3d 853, 856
21 (9th Cir. 2003) in support of its argument. Dkt. 6, p. 7. Both *Pelich* and *Lema*, are based

1 on 8 U.S.C. §1231(a)(1)(C), which states that the 90-day removal period can be extended
2 if the noncitizen “fails or refuses to make timely application in good faith for travel or
3 other documents necessary to the [noncitizen’s] departure.”

4 In *Pelich*, the petitioner was ordered removed to Poland. The Polish government
5 sent a passport application to the petitioner for him to sign, which was necessary before
6 Poland would issue travel documents. The petitioner refused to sign the passport
7 application, thus preventing the issuance of the travel documents. 329 F.3d at 1058.
8 Because the petitioner failed to provide the passport application that was necessary to
9 effectuate his removal, the *Zadvydas* clock was stopped. *Id.* at 1060.

10 In *Lema*, the petitioner was Ethiopian and INS sought to remove him to Ethiopia.
11 When an Ethiopian consular official talked with the petitioner on the phone to verify his
12 identity, which was necessary for the issuance of an Ethiopian travel document, the
13 petitioner misrepresented his status and claimed to be Eritrean, not Ethiopian. The
14 Ethiopian government then refused to issue travel documents. The petitioner continued
15 to refuse to provide the Ethiopian consulate any evidence that would establish that he was
16 Ethiopian. 341 F.3d at 855. Section 1231(a)(1)(C) allowed the detention of the
17 petitioner beyond the *Zadvydas* six-month period because his misrepresentation
18 prevented the Ethiopian government from issuing the travel documents necessary for his
19 removal. *Id.* at 857.

1 Here, the Government says that on November 10, 2025, Mr. Nguyen refused to
2 complete Form I-217.¹ Dkt. 6, ¶12. A copy of the Form I-217, which is apparently titled
3 “Information for Travel Document or Passport,” is not attached to the Government’s
4 Return. Mr. Nguyen did not sign Form I-217 because he did not understand the form; he
5 did provide a copy of his passport and information regarding his family background.
6 Declaration of Sam Nguyen, attached as Exhibit A. The Government nowhere claims
7 that the Form I-217 or information requested on the form was necessary for ICE to obtain
8 a travel document or other documents necessary for removal. Indeed, it appears that the
9 form was not necessary since, when ICE sent a letter to the government of Vietnam on
10 December 1, 2025, requesting a travel document for Mr. Nguyen, ICE attached a copy of
11 Mr. Nguyen’s passport, a copy of Mr. Nguyen’s Family Information Sheet, a Self-
12 Declaration Form, and Biometric Information regarding Mr. Nguyen. Dkt. 7-4. ICE
13 does not allege that this information was insufficient, or that Mr. Nguyen failed to
14 provide any forms or other information necessary for the proper submission of a request
15 for a travel document to the government of Vietnam. All the necessary information was
16 in ICE’s possession.²
17
18

19 ¹ The Government adds that Mr. Nguyen stated that he will not return to Vietnam
20 and will stay indefinitely, but that statement does not trigger §1231(a)(1)(C); it does not
21 constitute a failure to make an application for travel documents necessary for removal.

22 ² The Government also claims that Mr. Nguyen failed to sign certain unspecified
documents on February 11, 2026. Dkt. 6, ¶13. However, at that time Mr. Nguyen
was represented by undersigned counsel and his habeas petition was pending.

1
2 In sum, Respondents have not alleged that Mr. Nguyen has refused to provide any
3 information or documents that are necessary for his removal. Thus §1231(a)(1)(C) does
4 not provide a basis for extending the *Zadvydas* six month period.

5 **(3) There is No Significant Likelihood of Mr. Nguyen's Removal in the**
6 **Reasonably Foreseeable Future.**

7 According to *Zadvydas*, Congress has previously doubted the constitutionality of
8 immigration detention for more than six months. 533 U.S. at 701. Consequently, the
9 Court adopted a presumption that detention for six months after a final removal order has
10 been issued is reasonable and Constitutional.³ After the six month period, if the
11 noncitizen “provides good reason” to believe that there is no significant likelihood of
12 removal in the reasonably foreseeable future, then the Government “must respond with
13 evidence” sufficient to establish that there is a likelihood of removal in the reasonably
14 foreseeable future. *Id.*⁴ If the Government does not provide such evidence, then the
15 noncitizen must be released.

16 Respondents did not contact Mr. Nguyen's counsel and Mr. Nguyen reasonably
17 refused to sign documents that had not been reviewed by his counsel.

18 ³ This is only a presumption, not a hard and fast rule. Accordingly, the
19 Government's statement that “six months is the *earliest* point at which a
20 noncitizen's detention could raise constitutional issues,” Dkt. 5, p. 6, is incorrect.

21 ⁴ The noncitizen does not have the burden of proof. Rather, *Zadvydas* creates a burden-shifting
22 procedure for determining whether removal is likely in the reasonably foreseeable future.
Zadvydas sets forth what the noncitizen must plead, and imposes the evidentiary burden of
proof on the Government: once the noncitizen has provided a good reason, the Government
“must respond with evidence.” The burden is on the Government to produce admissible,
credible evidence concerning the likelihood of removal in the foreseeable future.

1 There is good reason good reason to believe that there is no significant likelihood
2 of removal in the reasonably foreseeable future. The removal order against Mr. Nguyen
3 became final on July 28, 2025. ICE submitted a request for a travel document to the
4 Consul General of Vietnam on December 1, 2025. If Vietnam was going to issue a travel
5 document, that should have been done within 30 days of the date of the request. Dkt. 7-4.
6 ICE provided a copy of Mr. Nguyen's Vietnamese passport; no additional signature or
7 additional application from Mr. Nguyen was necessary. *Id.* Under these circumstances,
8 there is good reason to believe that a travel document from Vietnam is not forthcoming in
9 the reasonably foreseeable future. Consequently, the government has the burden of
10 proving that Mr. Nguyen's removal is likely in the reasonably foreseeable future. *See,*
11 *e.g., Vu Thanh Tran v. Bondi*, 2025 U.S. Dist. LEXIS 221487, *7 (W.D. Wash. Nov. 10,
12 2025) ("Zadvydas grace period ended six months following the entry of the order of his
13 removal" and therefore "the burden shifts to Respondents to show Mr. Tran is likely to be
14 removed in the foreseeable future").

15 By way of an effort to meet its burden of proof, the Government offers only the
16 following:

- 17 ▪ On December 1, 2025, ICE submitted a request to the Vietnam Consul General
18 requesting that a travel document be issued for Mr. Nguyen. Dkt. 7-4.
- 19 ▪ ERO is pursuing information about the status and location of Petitioner's travel
20 document. Declaration of Andre Ouk, Dkt. 6, ¶13.

1 Courts have repeatedly held – including in the context of removal to Vietnam – that such
2 statements are not sufficient for the Government to meet its burden of proof. *See, e.g.,*
3 *Huu Nguyen v. Bondi*, 2026 U.S. Dist. LEXIS 12858, *10-11 (W.D. Wash. Jan. 23, 2026)
4 (Government has not met its burden of proof where there was “no indication in the record
5 of when a travel document may issue”); *Masheli v. Noem*, 2026 U.S. Dist. LEXIS 12007,
6 *9-10 (W.D. Mich. Jan. 22, 2026) (no likelihood of removal in the reasonably foreseeable
7 future where DHS’s only evidence was that “a travel document has been requested more
8 than five months ago”); *Arenado-Borges v. Bondi*, 2025 U.S. Dist. LEXIS 263058, *10
9 (W.D. Wash. Dec. 19, 2025) (Government has not met its burden of proof where it
10 “simply states that it will ‘attempt to remove him’”); *Hamidi v. Bondi*, 2025 U.S. Dist.
11 LEXIS 235312, *15 (W.D. Okla. Nov. 14, 2025), *report and recommendation adopted*,
12 2025 U.S. Dist. LEXIS 233692 (W.D. Okla. Dec. 1, 2025) (finding the respondents’
13 contention that they “have been working to obtain a travel document” for petitioner
14 insufficient); *Abubaka v. Bondi*, 2025 U.S. Dist. LEXIS 225914, *14-15 (W.D. Wash.
15 Nov. 17, 2025) (ICE’s claim that “there is at least some possibility that Vietnam will
16 accept Petitioner at some point” does not establish that “there is a significant likelihood
17 that the petitioner will be accepted in the reasonably foreseeable future”); *Momennia v.*
18 *Bondi*, 2025 U.S. Dist. LEXIS 212091, *20 (W.D. Okla. Oct. 15, 2025) (R&R), *adopted*
19 2025 U.S. Dist. LEXIS 211038 (W.D. Okla. Oct. 27, 2025) (failure to prove removal in
20 the reasonably foreseeable future; ICE’s claim that “we’re working on it” “does not
21

1 suffice under either the regulations or *Zadvydas*”). *Cf. Yee S. v. Bondi*, 2025 U.S. Dist.
2 LEXIS 200016, *12 (D. Minn. Oct. 9, 2025) (petitioner not significantly likely to be
3 removed in the reasonably foreseeable future where “Respondents simply repeat the
4 vague and conclusory assertions that ‘ICE is in the process of obtaining a travel
5 document’”); *Sun v. Noem*, 2025 U.S. Dist. LEXIS 193795, *6-7 (S.D. Cal. Sept. 30,
6 2025) (ICE claims that it is “putting together a travel document [TD] request to send to
7 [the] Cambodian embassy”; the court holds that “these kind of vague assertions—akin to
8 promising the check is in the mail—insufficient”).

9
10 **(4) The Appropriate Remedy Is Immediate Release.**

11 Where, as here, a noncitizen has been held in detention after a final removal order
12 for more than six months and removal is not likely in the reasonably foreseeable
13 future, the Supreme Court has held that release from detention is the proper remedy.
14 *Zadvydas*, 533 U.S. at 699 (“once removal is no longer reasonably foreseeable, continued
15 detention is no longer authorized by statute”).

16 In the immigration context, the justification for detention is two-fold: first,
17 preventing danger to the community; and second, ensuring the appearance of the
18 noncitizen at future immigration proceedings and for removal, if ordered. *Zadvydas*, 533
19 U.S. at 690. *See also Lopez v. Decker*, 978 F.3d 842, 857 (2d Cir. 2020) (“[t]he
20 Government ... has no interest in the continued incarceration of an individual who it
21 cannot show to be either a flight risk or a danger to his community”).

1 The goal of “ensuring the appearance of [the noncitizen] at future immigration
2 proceedings” fails as a justification for continued detention once the six-month period has
3 passed and removal is not likely in the reasonably foreseeable future. 533 U.S. at 690.
4 Under those circumstances, continued detention no longer “bear[s] [a] reasonable relation
5 to the purpose for which the individual [was] committed.” *Id.* (quoting *Jackson v.*
6 *Indiana*, 406 U. S. 715 (1972)).

7 With respect to “preventing danger to the community,” the *Zadvydas* Court
8 stated: “[W]e have upheld preventive detention based on dangerousness only when
9 limited to specially dangerous individuals and subject to strong procedural protections.”
10 533 U.S. at 691. Generally, in order to support continued detention without bond, the
11 Government must provide clear and convincing evidence that the detainee is a danger to
12 the community. *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011) In this case,
13 there is no reason to believe that Mr. Nguyen is a “specially dangerous” individual, nor
14 has the Government alleged as much.

15 There is no legitimate justification under *Zadvydas* for continuing to hold Mr.
16 Nguyen in detention either as a flight risk or as a danger to the community. Therefore,
17 Mr. Nguyen should be released from detention immediately.

18 **B. Injunctive Relief Should Be Granted.**

19 To obtain preliminary injunctive relief, a plaintiff must show (1) a likelihood of
20 success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary
21

1 relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the
 2 public interest. *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1142 (9th Cir. 2018), citing
 3 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). When the government is
 4 a party, the last two factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092
 5 (9th Cir. 2014). Alternatively, courts may issue a preliminary injunction based on a
 6 “sliding scale” test if there are “serious questions going to the merits . . . and the balance
 7 of hardships tips sharply in the plaintiff’s favor.” *All. for the Wild Rockies v. Cottrell*, 632
 8 F.3d 1127, 1135 (9th Cir. 2011).

9 **(1) Likelihood of Success on the Merits.**

10 **1. Ripeness**

11 Mr. Nguyen claims that his removal to any third country should be enjoined because the
 12 procedures used by the Government do not comply with Due Process. The Government argues
 13 that Mr. Nguyen’s request for protection against removal to a third country is “speculative and
 14 not ripe” because “there is no concrete indication that removal to any third country will occur.”
 15 Dkt 5, p.8. That argument has no merit.

16 ICE issued a Memorandum on July 9, 2025, under which ICE intends to remove
 17 noncitizens to third countries swiftly and with little notice. Specifically, the Memorandum states
 18 that where there are adequate “diplomatic assurances” from a third country, a noncitizen may be
 19 removed “without the need for further procedures.” Even without such assurances, ICE may
 20 execute a removal order in as little as six hours if it deems there to be “exigent circumstances.”
 21 ICE Memorandum on Third Country Removals, attached as Exhibit B. Some noncitizens have
 22 been peremptorily deported to South Sudan, Eswatini, and other countries with little or no prior

notice. *See, e.g.*, New Yorker, “Disappeared to a Foreign Prison” (Nov. 24, 2025), pp. 4-15, attached as Exhibit C. ICE has not stated that it has no intention of removing Mr. Nguyen to a third country. In other words, ICE claims to have the authority to remove Mr. Nguyen to a third country without the need for further procedures and gives no assurance that it will not attempt to exercise such authority. Under these circumstances, there is an imminent threat of third country removal and the issue is ripe. *See Huu Nguyen*, 2026 U.S. Dist. LEXIS 12858, *17-18 (where petitioner “appears to fall into a priority group for Respondents’ current removal efforts” and “it is questionable whether Respondents will be able to obtain a travel document for him to Vietnam” there is a “palpable risk that Respondents may attempt to deport him through other means”); *Wana v. Bondi*, 2025 U.S. Dist. LEXIS 258932, *14 (W.D. Wash. Dec. 15, 2025) (issue is ripe for review; “[t]hat respondents are currently moving through the steps necessary to remove petitioner to Vietnam does not mean that they will forego the options set forth in ICE’s July 9, 2025, internal memorandum regarding third-country removals”).

2. Third Country Removal – Notice and Right to Respond

Mr. Nguyen has a likelihood of success in his argument that, as a matter of due process, he is entitled to notice of removal to a third country and a meaningful opportunity to respond – and specifically more process than is provided under the July 9 Third Country Removal Policy.

If ICE intends to remove a noncitizen to a third country not designated in the order of removal, then the noncitizen “is entitled to a remand in order to present additional evidence of the persecution that he would face if deported to that country.” *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). The noncitizen “must be given sufficient notice of a country of deportation” such that “he would have a reasonable opportunity to raise and pursue his claim for

withholding of deportation.” *Aden v. Nielsen*, 409 F. Supp. 3d at 1009. As a matter of due process there must be “a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her particular claim”; at such hearing, the burden is on the government to “provide a meaningful opportunity to be heard on asylum and withholding claims” – “regardless of whether the country of deportation is designated during or after the removal hearing.” *Phong Thanh Nguyen*, 796 F. Supp. 3d at 727. These requirements “flow directly from binding Ninth Circuit precedent about due process protections before removal to a third country.” *Id.*, citing *Andriasian*, 180 F.3d at 1041. Thus, the abbreviated procedures provided for in ICE’s July 9, 2025 Third Country Removal Policy “contravene[] Ninth Circuit law.” *Id.* at 728. *See also Kumar v. Wamsley*, 2025 U.S. Dist. LEXIS 225933, *15 (W.D. Wash. Nov. 17, 2025) (“numerous courts in this district and elsewhere have held that ICE’s third country removal policy violates due process”).

B. Irreparable Harm

There is no doubt about the possibility of irreparable harm. Detention in violation of Due Process constitutes irreparable harm. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)) (“It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.”); *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, *FEDERAL PRACTICE AND PROCEDURE*, § 2948.1 (2d ed. 2004)) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”)

1 Furthermore, as to the risk of deportation to an undesignated third country, the Supreme
2 Court has long recognized that removal is a “particularly severe” injury, inflicting substantial
3 harm on a noncitizen. *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (quoting *Fong Yeu Ting v.*
4 *United States*, 149 U.S. 698, 740 (1893)). Special care accordingly must be taken in persecution
5 cases lest the court permit persecution to occur. *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th
6 Cir. 2011) (threat of persecution, including beatings, constitutes irreparable harm); *D.V.D. v.*
7 *DHS*, 778 F.Supp.3d 355, 391 (D. Mass. 2025). Removal to an undesignated third country
8 constitutes an irreparable harm.

9 C. Balance of Equities and the Public Interest

10 The remaining two factors to be considered for an injunction – balance of harms and
11 public interest – merge when the government is the party opposing a motion for preliminary
12 injunction. *Nken v. Holder*, 556 U.S. 418, 435 (2009). According to the Supreme Court, “there is
13 a public interest in preventing [noncitizens] from being wrongfully removed, particularly to
14 countries where they are likely to face substantial harm.” *Nken*, 556 U.S. at 436; *see also*
15 *Alabama Ass’n of Realtors v. HHS*, 594 U.S. 758, 766 (2021) (“our system does not permit
16 agencies to act unlawfully even in pursuit of desirable ends”); *Youngstown Sheet & Tube Co. v.*
17 *Sawyer*, 343 U.S. 579, 582 (1952) (affirming district court’s preliminary injunction of an illegal
18 executive order even though a wartime president said his order was “necessary to avert a national
19 catastrophe”); *Diaz v. Kaiser*, 2025 U.S. Dist. LEXIS 113566, *8, 2025 WL 1676854, at *8
20 (N.D. Cal. 2021) (“The public has a strong interest in upholding procedural protections against
21 unlawful detention, and the Ninth Circuit has recognized that the costs to the public of
22 immigration detention are staggering.”); *Index Newspapers LLC v. U.S. Marshals Serv.*, 977

1 F.3d 817, 838 (9th Cir. 2020) (“It is always in the public interest to prevent the violation of a
2 party’s constitutional rights.”).

3 **CONCLUSION**

4 For the foregoing reasons, Petitioner Vu Loc Nguyen requests this Court to issue an order
5 requiring Respondents to release him immediately. In addition Mr. Nguyen requests that this
6 Court issue preliminary injunctive relief enjoining his removal to a third country.

7
8 Dated this 17th day of February, 2026 .

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18 I certify that this brief contains 3,544 words,
19 in compliance with the Local Civil Rules.
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