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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

TUAN ANH NGUYEN, Petitioner, vs. SHIKHA DOSANJ, Warden, Federal Detention Center, Honolulu, Hawai‘i; POLLY KAISER, Acting Field Office Director, San Francisco Field Office, Immigration and Customs Enforcement; KRISTI NOEM, Secretary of Homeland Security, in Their Official Capacities, Respondents.	CIVIL NO. _____ Hon. **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS; DECLARATION OF COUNSEL; EXHIBITS A-C**

INTRODUCTION

1. Immigration and Customs Enforcement ("ICE") continues to hold Petitioner Tuan Anh Nguyen ("Mr. Nguyen") in custody at the Federal Detention Center ("FDC") in Honolulu, Hawai‘i, even though it has been unable to deport him since his final order of removal on August 20, 2025.

2. Historically, Vietnam has been unwilling to repatriate people, like Mr. Nguyen, who fled to the United States during the Vietnam War.

3. But while ICE refuses to release Mr. Nguyen, it has made no progress in removing him to Vietnam, or any other country, in more than six months.

4. Mr. Nguyen's prolonged detention is unlawful, and he requests that this Court order his immediate release from ICE custody under 28 U.S.C. § 2241 and *Zadvydas v. Davis*, 533 U.S. 678 (2001).

5. Mr. Nguyen arrived in the U.S. when he was twenty years old, after he and his family fled Vietnam in April 1982. That year, he was admitted as a lawful permanent resident ("LPR").

6. In 1988 and 1995, Mr. Nguyen was convicted of state felonies. He served a sentence in Hawai‘i state prison for the 1995 felonies.

7. In 2022, Mr. Nguyen was released from state prison on parole and had since been living peacefully in the Makiki neighborhood on O‘ahu. During that

time, he worked several jobs, attended church regularly, and became engaged to his fiancée.

8. In May 2025, ICE officers arrested Mr. Nguyen at his home without any warning. As of this filing, he has been detained for nearly nine months at FDC Honolulu.

9. Mr. Nguyen was not represented in immigration court proceedings, and the immigration court ordered his removal on August 20, 2025.

10. Because Mr. Nguyen fled Vietnam in his youth, he does not have a Vietnamese passport or travel documents. And he does not have a passport or travel documents from any other country.

11. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that a post-removal order detention period beyond six months is presumptively unconstitutional when there is "no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

12. Mr. Nguyen's detention violates the due process principles outlined in *Zadvydas*. He has been detained for more than six months after his final order of removal, but there is no realistic prospect of him obtaining that passport or other travel document allowing him to be removed to Vietnam.

13. Mr. Nguyen respectfully requests this Court grant this habeas petition and order that Mr. Nguyen be released back to the community immediately under

an order of supervision, or issue an Order to Show Cause as to why the writ should not be granted, which "shall be returned within three days" with "a hearing, not more than five days after the return." 28 U.S.C. § 2243.

JURISDICTION AND VENUE

14. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court), Art . I § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"), and 28 U.S.C. § 1331 (federal question jurisdiction). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, and the All Writs Act, 28 U.S.C. § 1651.

15. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See, e.g.*, *Zadvydas*, 533 U.S. at 687. Respondents' continued detention of Mr. Nguyen up to and past the 90-day removal period has adversely and severely affected his liberty and freedom.

16. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Nguyen is detained within this district at FDC Honolulu. Mr. Nguyen is detained in an immigration detention facility at the direction of, and is in the immediate custody of, Respondent Shikha Dosanj. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–36, 442–43 (2004) (immediate-custodian rule and district-of-confinement principle).

Furthermore, a substantial part of the events or omissions giving rise to this action occurred and continue to occur within this district.

PARTIES

17. Mr. Nguyen is a 63-year-old resident of Hawai‘i who legally entered the United States from Vietnam in 1982.

18. Respondent Shikha Dosanj is the Warden of the Honolulu Federal Detention Center, a federal facility that contracts with ICE to detain non-citizens. Respondent Dosanj is responsible for overseeing FDC Honolulu's administration and management and is Mr. Nguyen's immediate custodian.

19. Respondent Polly Kaiser is the Acting Field Office Director of the San Francisco ICE Field Office, which oversees immigration enforcement operations in Honolulu, Hawai‘i. As such, Kaiser is one of Mr. Nguyen's immediate custodians and is responsible for his detention and removal.

20. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Mr. Nguyen.

21. All Respondents are sued in their official capacities.

REQUIREMENTS OF 28 U.S.C. § 2243

22. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added), *overruled on other grounds by, Wainwright v. Sykes*, 433 U.S. 72 (1977).

23. "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

24. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

FACTS

Immigration to the United States

25. Petitioner Tuan Anh Nguyen was born in Vietnam in 1962, during the Vietnam War. Mr. Nguyen's father served alongside United States forces during the Vietnam War.

26. Mr. Nguyen's family fled Vietnam due to the war. Mr. Nguyen entered the United States in April 1982. He gained Lawful Permanent Resident status at that time.

27. In 1988, Mr. Nguyen was convicted of [redacted] He was released from Hawai'i state prison on parole in 2022. Upon information and belief, when he was released, Mr. Nguyen was not placed in removal proceedings.

28. [redacted]

Immigration Detention

29. Although he was living peacefully in the community, in May 2025, Mr. Nguyen was abruptly arrested at his home by ICE agents. He was stripped

away from his fiancée. As a result of his detention, he has been unable to make payments on rent or his car.

30. In May 2025, DHS initiated removal proceedings against Mr. Nguyen. He was not represented by an attorney in immigration court. On August 20, 2025, an Immigration Judge ("IJ") ordered Mr. Nguyen deported to Vietnam. Mr. Nguyen does not have a passport or travel documents from Vietnam or any other country.

31. Mr. Nguyen has now been detained for more than 6 months after his final order of removal—and for more than 9 months in total.

32. In advance of both his 90-day and 180-day post-removal order custody determinations, Mr. Nguyen complied with ICE in attending interviews for these custody reviews and submitting letters of support for his release. His 90-day custody determination was denied. And he was entitled to a 180-day custody determination as of February 16, 2026—but to date, Mr. Nguyen has not received any formal decision.

33. Mr. Nguyen regularly checks in with ICE officers that visit FDC nearly every week, offering to provide any information needed to obtain a Vietnamese passport or travel documents.

Vietnam's Repatriation Agreement with the United States

34. There is an obvious reason why ICE has been unable to remove Mr. Nguyen to Vietnam in the past six months: Vietnam has a longstanding policy of

not accepting pre-1995 Vietnamese immigrants like him—and especially those whose families supported the American forces during the Vietnam War.

35. In 2008, Vietnam and the United States signed a repatriation treaty under which Vietnam agreed to consider accepting certain Vietnamese immigrants for deportation. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). The treaty exempted pre-1995 Vietnamese immigrants, providing, "Vietnamese citizens are not subject to return to Vietnam under this agreement if they arrived in the United States before July 12, 1995." *Id.* (citation omitted).

36. Despite that express exception, the first Trump administration detained pre-1995 Vietnamese immigrants and held them for months, while the administration tried to pressure Vietnam to accept such immigrants. *Id.* at 1083–84.

37. That possibility did not materialize. "In total, between 2017 and 2019, ICE requested travel documents for pre-1995 Vietnamese immigrants 251 times. Vietnam granted those requests only 18 times, in just over seven percent of cases." *Id.* at 1087–88.

38. Eventually, in 2020, the administration secured a Memorandum of Understanding ("MOU") with Vietnam, which created a process through which the Vietnamese government could consider some pre-1995 Vietnamese immigrants for removal. The 2020 MOU limited consideration to persons meeting certain criteria, but many of these criteria have been shielded from public view. *See Nguyen v.*

Scott, 796 F.Supp.3d 703, 722 (W.D. Wash. 2025). When an immigrant does qualify, the MOU provides only that Vietnam has "discretion whether to issue a travel document," which it exercises on "a case-by-case basis." *Hoac v. Becerra*, No. 25-CV-01740, 2025 WL 1993771, at *4–5 (E.D. Cal. July 16, 2025) (citations omitted).

39. Even after signing the MOU, Vietnam overwhelmingly has declined to timely issue travel documents for pre-1995 immigrants. By October 2021, ICE had adopted a "policy of generally finding that 'pre-1995 Vietnamese immigrants' . . . are not likely to be removed in the reasonably foreseeable future." Order on Joint Motion for Entry of Stipulated Dismissal at 3, *Trinh*, 466 F.Supp.3d 1077, (C.D. Cal. Oct. 7, 2021), Dkt. 161, https://perma.cc/G3JQ-Y7HW. That admission aligned with two years' worth of quarterly reports that ICE agreed to submit as part of a class action settlement. Those quarterly reports showed that, between September 2021 and September 2023, only four immigrants who came to the U.S. before 1995 were given travel documents and deported. *See Resources on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995*, Asian Law Caucus (July 15, 2025), https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports (providing links to all quarterly reports). During the same period, ICE made 14 requests for travel documents that, as of 2023, had not been granted, including requests made months or years before the

September 2023 cutoff. *See id.* (proposed counsel's count based on quarterly reports).

40. On June 9, 2025, without justification, the Trump administration "rescinded [ICE's] policy of generally finding that pre-1995 Vietnamese immigrants were not likely to be removed in the reasonably foreseeable future." *See Nguyen v. Scott*, 796 F. Supp. 3d at 715. But since then, several courts have found that facts on the ground likely have not changed enough to show that these detainees will be timely removed to Vietnam. *See, e.g.*, *id.* at 725–26; *Hoac*, 2025 WL 1993771, at *4–5; *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 152 (D. Mass. 2025).

Third country removals

41. When immigrants cannot be removed to their home country ICE has begun deporting those individuals—including Vietnamese immigrants—to third countries without adequate notice or a hearing. The Trump administration reportedly has attempted to negotiate with at least 58 countries to accept deportees from other nations. *See* Edward Wong et al., *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, (June 26, 2025), https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html. The Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. *See id.*; Vanessa Buschschlüter, *Costa Rican Court Orders Release of Migrants*

Deported from US, BBC (June 25, 2025), https://www.bbc.com/news/articles/cwyrn42kp7no.

42. ICE has deported other pre-1995 Vietnamese immigrants to other countries, including South Sudan and Eswatini. *See Wong* et al., *supra*; Gerald Imray, *3 Deported by U.S. Held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025, at 13:40 ET), https://www.pbs.org/newshour/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say.

43. On April 18, 2025, the District Court of Massachusetts issued a national class-wide preliminary injunction requiring ICE to follow statutory and constitutional requirements before removing an individual to a third country. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 392–93 (D. Mass. 2025). That injunction was stayed pending appeal. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *Dep't of Homeland Sec. v. D.V.D*, 145 S. Ct. 2627 (2025).

44. But just last week, the District Court of Massachusetts issued class-wide relief in the case, declaring that "8 C.F.R. § 1240.12(d) requires Defendants, before effecting removal of a class member to any third country, to first seek removal to that class member's designated country of removal or specified alternative country or countries of removal." Order on Defendants' Motion to

Dismiss and on Plaintiffs' Motion for Partial Summary Judgment at 80, *D.V.D. v. U.S. Dep't of Homeland Sec.* (D. Mass. Feb. 25, 2026), Dkt. 241, https://perma.cc/CU94-VEYG. The Court further held that 8 U.S.C. § 1231(b) requires that class members—which would include Mr. Nguyen if Respondents attempt to remove him to a third country—are entitled to "meaningful notice before removal to any third country." *Id.* Specifically, the government must "first seek removal" to a class member's designated country of removal and provide an "opportunity to raise a country-specific claim against removal before removal to any third country." *Id.*

45. If Respondents attempt to remove Mr. Nguyen to a country other than Vietnam, the *D.V.D.* decision requires that he receive proper notice and process.

Post-Removal Order Detention

46. 8 U.S.C. § 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. §§ 1231(a)(2)–(6). The "removal period" begins once a non-citizen's removal order "becomes administratively final." *Id.* § 1231(a)(1)(B)(i). The removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States," *id.* § 1231(a)(1)(A), and "shall detain" the non-citizen as it carries out the removal, *id.* § 1231(a)(2)(A).

47. If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "may be detained beyond the removal period" if they meet

certain criteria, such as being inadmissible or deportable under specified statutory categories. *Id.* § 1231(a)(6).

48. Following a final order of removal, the government therefore has a proscribed period during which they can detain a noncitizen while attempting to remove them. But if, after six months of post-final-order detention, there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the Government to justify continued detention. *Zadvydas*, 533 U.S. at 701.

49. DHS regulations provide that, before the end of the 90-day removal period that begins upon a non-citizen's removal order becoming final, the local ICE field office with jurisdiction over the non-citizen's detention must conduct a custody review to determine whether the non-citizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the non-citizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *id.* § 241.4(c)(2), which must conduct a custody review before or at 180 days. *Id.* § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. *Id.* § 241.4(e).

50. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained non-

citizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [non-citizen] submits, or the record contains, information providing a substantial reason to believe that the removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future." 8 C.F.R. § 241.4(i)(7).

51. Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to third countries. *See id.* § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* §§ 241.14(a)–(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is "specially dangerous." *Id.* § 241.14(f).

ARGUMENT

52. This Court should grant this petition and order Mr. Nguyen's immediate release under an order of supervision. *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to indefinitely detain

immigrants like Mr. Nguyen, for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701. Due process also requires ICE to provide notice and an opportunity to be heard before any removal to a third country.

A. Mr. Nguyen's detention violates *Zadvydas* and 8 U.S.C. § 1231.

53. In *Zadvydas*, the Supreme Court considered a problem affecting people like Mr. Nguyen: Federal law requires ICE to detain an immigrant during the "removal period," which spans the first 90 days after the immigrant's order of removal becomes final. 8 U.S.C. §§ 1231(a)(1)–(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the immigrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal typically happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," they are "ordered removed to countries with whom the United States does not have a repatriation agreement," their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these circumstances, detained immigrants can find themselves trapped in detention for months or even years.

54. If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided that constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 701. As an initial matter, *Zadvydas* held that post-removal order detention is "presumptively reasonable" for six months. *Id.*

55. But after this six-month grace period, courts must use a burden-shifting framework to decide whether detention is still authorized. First, the petitioner must show that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The burden then shifts to the government, which "must respond with evidence sufficient to rebut that showing." *Id.* Mr. Nguyen can show that there is no significant likelihood of removal to Vietnam in the reasonably foreseeable future, and Respondents cannot rebut that showing.

56. As an initial matter, more than six months have passed since Mr. Nguyen's order of removal became administratively final. The *Zadvydas* grace period lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma*, 257 F.3d at 1102 n.5. Here, Mr. Nguyen's order of removal was entered on August 20, 2025. Exh. A. Based on information and belief, Mr. Nguyen waived appeal at the immigration

court hearing, meaning his removal order became final on August 20, 2025, and his 90-day removal period began that same day. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six months later—on February 20, 2026.

57. Because the six-month grace period has passed, this Court must evaluate Mr. Nguyen's *Zadvydas* claim using the burden-shifting framework. At the first stage of the framework, Mr. Nguyen must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

58. The "good reason to believe" standard is a relatively forgiving one. "A petitioner need not establish that there exists no possibility of removal, but merely that there is good reason to believe that removal is not significantly likely in the reasonable foreseeable future." *Freeman v. Watkins*, Civ. Action No. B: 09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009), *report and recommendation adopted by Freeman v. Watkins*, Civ. Action No. B: 09-160, 2010 WL 11668247, at *1 (S.D. Tex. Mar. 16, 2010). Nor does the "good reason" standard "place a burden upon the detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or show that his detention is indefinite; it is something less than that." *Rual v. Barr*, 6:20-CV-06215, 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (citation omitted). In short, the standard means what it says: Mr. Nguyen need only

give a "good reason" why he is not likely to be removed in the near future—not prove anything to a certainty.

59. The "significant likelihood of removal" element focuses on whether it is likely that Mr. Nguyen will be removed: Continued detention is permissible only if there is a "significant likelihood" that ICE will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities, but also of a probability of success in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010). In other words, even if "there remains some possibility of removal," a petitioner can still meet their burden if there is good reason to believe that successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002).

60. Finally, the "in the reasonably foreseeable future" component focuses on when Mr. Nguyen will likely be removed. Continued detention is permissible only if removal is likely to happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's removal efforts. And where ICE cannot articulate a timeline for removal, a petitioner meets their initial burden: as one court has explained, where ICE has "no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it *might* occur—in the

reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019), *abrogated on other grounds by, Alvarez Ortiz v. Freden*, 25-CV-960, 2025 WL 3085032 (W.D.N.Y. Nov. 4, 2025).

61. Mr. Nguyen readily meets his burden of showing that it is not likely that he will be removed in the reasonably foreseeable future. First, as explained above, Vietnam generally does not accept pre-1995 Vietnamese immigrants for deportation. Even after Vietnam signed the 2020 MOU with the U.S., ICE admitted that there was no reasonable likelihood of removing such immigrants in the reasonably foreseeable future. Order on Joint Motion for Entry of Stipulated Dismissal, *Trinh v. Johnson*, 18-CV-316 (C.D. Cal. Oct. 7, 2021), Dkt. 161 at 3, https://perma.cc/G3JQ-Y7HW. That admission is amply backed up by two years' experience under the MOU. Asian Law Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul. 15, 2025), https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports; *see also Lam v. Noem*, Civ. Action No. 3:25-CV-00397, 2026 WL 492383, at *7 (W.D. Pa. Feb. 23, 2026) (noting that "the process for procuring travel documents from Vietnam for pre-1995 immigrants remains uncertain and protracted").

62. Though the Trump administration rescinded this admission, *Nguyen v. Scott*, 796 F. Supp. 3d at 715, there is no evidence that facts on the ground have changed. Thus, several courts have found that these barriers continue to obstruct

removal for people like Mr. Nguyen. *See id.* at 726; *Hoac*, 2025 WL 1993771, at *4–6; *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151–52 (D. Mass. 2025); *Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *4–5 (E.D. Cal. July 16, 2025).

63. Second, Mr. Nguyen's own experience bears this out. ICE has now had over six months to deport him, and Mr. Nguyen has fully cooperated with ICE's removal efforts during that time. Yet ICE has been unable to remove him, or to show that it has made *any* progress in obtaining travel documents for Mr. Nguyen.

64. Thus, Mr. Nguyen has met his initial burden under the *Zadvydas* framework, and the burden shifts to Respondents. Unless Respondents can prove a "significant likelihood of removal in the reasonably foreseeable future," Mr. Nguyen must be released. *Zadvydas*, 533 U.S. at 701.

B. *Zadvydas* unambiguously prohibits this Court from denying Mr. Nguyen's petition because of his criminal history.

65. If released on supervision, Mr. Nguyen poses no risk of danger or flight. He has been on parole supervision by the State of Hawai‘i since his release in 2022, and he has fully complied with those conditions. During that time, he has committed himself to being a hardworking individual—most recently, holding down two jobs at once—and a steadfast member of his church community. He also supports his fiancée, and made regular rent and car payments, until being detained

at FDC. Apart from his convictions in 1988 and 1995, he has had no criminal convictions in the past 30 years. And he is willing to check in regularly with ICE under an order of supervision upon release from detention.

66. ICE denied Mr. Nguyen's release at his 90-day post-order custody review based on his criminal history alone—in other words, based purely on crimes for which he was convicted of over 3 decades ago. But not only is the purported community safety concern belied by Mr. Nguyen's release on parole and compliance with parole monitoring, *Zadvydas* also squarely held that danger or flight risk are not grounds for detaining an immigrant when there is no significant likelihood of removal in the reasonably foreseeable future. 533 U.S. at 690–92. Indeed, the two petitioners in *Zadvydas* both had significant criminal histories. Mr. Zadvydas himself had "a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft," as well as "a history of flight, from both criminal and deportation proceedings." *Id.* at 684. The other petitioner, Kim Ho Ma, was "involved in a gang-related shooting" and "convicted of manslaughter." *Id.* at 685. The government argued that both men could be detained regardless of their likelihood of removal, because they posed too great a risk of danger or flight. *Id.* at 690–96. The Supreme Court flatly rejected that argument. While the Court appreciated the seriousness of the government's concerns, it held that the government would need to show that the immigrant was "specially dangerous"—or

that there was "some other special circumstance" to justify a "potentially permanent" preventive civil detention. *Id.* at 690–91.

67. Mr. Nguyen has already been living peacefully in the community for several years, and any conditions of supervision—in addition to his state parole conditions—will be sufficient to protect the public.

C. ICE may not remove Mr. Nguyen to a third country without adequate notice and an opportunity to be heard.

68. By statute, the government is prohibited from removing a noncitizen to any third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

69. To comport with the requirements of due process, if Respondents attempt to remove Mr. Nguyen to a country other than Vietnam, they must provide notice of the third country removal and an opportunity to respond. Due process requires "written notice of the country being designated" and "the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S.*

Dep't of Homeland Sec., No. 25-10676, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025); *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999).

70. "[L]ast minute" notice of the country of removal will not suffice. *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lynch*, 630 F. App'x 724 (9th Cir. 2016). To have a meaningful opportunity to apply for fear-based protection from removal, Mr. Nguyen must have time to prepare and present relevant arguments and evidence, and he must be asked whether he "fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response." *Aden*, 409 F. Supp. 3d at 1019.

71. This Court should prohibit the government from removing Mr. Nguyen unless these due process safeguards are provided.

CLAIMS FOR RELIEF

COUNT I

Violation of Due Process

72. Mr. Nguyen repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

73. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V.

74. Indefinite detention violates the Fifth Amendment's Due Process Clause. *Zadvydas v. Davis*, 533 U.S. at 682, 689.

75. There is no significant likelihood of Mr. Nguyen's removal in the reasonably foreseeable future.

76. Respondents do not have evidence sufficient to demonstrate that Mr. Nguyen's removal is reasonably foreseeable.

77. Mr. Nguyen's detention in excess of six months without such evidence of imminent removal is a violation of Due Process.

COUNT II

Violation of 8 U.S.C. § 1231(a)(6) and Regulations for Custody Review, 8 C.F.R. § 241.4

(*Detention in excess of 6 months*)

78. Mr. Nguyen repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

79. The Immigration and Nationality Act authorizes a post-removal-period detention of six months to allow the United States to effectuate removal. *See* 8 U.S.C. § 1231(a)(6); *Zadvydas*, 533 U.S. at 701.

80. There is good reason to believe that there is no significant likelihood of Mr. Nguyen's removal in the reasonably foreseeable future.

81. Respondents do not have evidence sufficient to demonstrate that Mr. Nguyen's removal is reasonably foreseeable.

82. Thus, the burden is on Respondents to prove that Mr. Nguyen has a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R.

§ 241.13. Respondents have not met that burden, and they have not provided the required 180-day custody review decision. *See* 8 C.F.R. §§ 241.13(c), (d); § 241.4(k)(2).

83. Mr. Nguyen is therefore being held in violation of 8 U.S.C. § 1231(a)(6).

PRAYER FOR RELIEF

For the foregoing reasons, Mr. Nguyen respectfully requests that this Court:

84. Order Respondents to immediately release Mr. Nguyen from custody on an order of supervision, or issue an Order to Show Cause as to why the writ should not be granted, which "shall be returned within three days" with "a hearing, not more than five days after the return." 28 U.S.C. § 2243.

85. Enjoin Respondents from re-detaining Mr. Nguyen under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;

86. Enjoin Respondents from transferring Mr. Nguyen from the jurisdiction of this District pending these proceedings;

87. Enjoin Respondents from removing Petitioner to any country other than Vietnam, unless they provide the following process:

a. written notice to both Mr. Nguyen and his counsel in a language Mr. Nguyen can understand;

b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;

c. if Mr. Nguyen is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen his immigration proceedings;

d. if Mr. Nguyen is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for Mr. Nguyen to seek reopening of his immigration proceedings.

88. Award Mr. Nguyen fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law.

89. Order all other relief that the Court deems just and proper.

Dated: March 4, 2026

Respectfully submitted,

/s/ Leilani Stacy

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