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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

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.	CASE NO. CV26-00109 SASP-RT RESPONDENTS 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' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 [ECF NO. 1]; DECLARATION OF JAMES TERRY DOLD; CERTIFICATE OF SERVICE

RESPONDENTS 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' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 [ECF NO. 1]

I. INTRODUCTION

Respondents hereby oppose the Petition in this 28 U.S.C. § 2241 habeas proceeding.[1] Petitioner TUAN AHN NGUYEN ("Petitioner") has not provided a sufficient basis to show that his removal to the Socialist Republic of Vietnam ("Vietnam") is not likely in the reasonably foreseeable future and the Petition should be denied. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (stating that, after six months of detention, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must respond with evidence sufficient to rebut that showing).

II. BACKGROUND

A. Petitioner Is Subject To A Final Order of Removal

Petitioner is a native and citizen of Vietnam who was admitted to the United States on April 14, 1982 as a lawful permanent resident, classification, RE 6. Declaration of James Terry Dold ("Decl."), ¶7; ECF No. 1 ¶5. During the period from 1993 to 1995, Petitioner was convicted of Grand Theft Auto in violation of

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[1] Respondents move to strike and to dismiss all respondents other than Shikha Dosanj from this case. A petitioner seeking *habeas corpus* relief may only name the officer having custody of him as the respondent. *See* 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).

Cal. Penal Code §§ 478.3 (1995) and Second Degree Murder and three counts of Terroristic Threatening in violation of Hawaii Revised Statute §§ 707-701.5(1) and 707-0716. Decl. ¶¶8-10. On October 20, 2022, Petitioner was released from State of Hawaii custody. *Id.* at ¶12.

On March 8, 2023, United States Citizenship and Immigration Services denied Petitioner's Form N-400, Application For Naturalization. *Id.* at ¶13. On May 5, 2025, ICE arrested Petitioner in Honolulu, Hawaii. *Id.* at ¶14. On May 5, 2025, ICE issued Petitioner a Form I-862, Notice to Appear, charging him removable pursuant to 1) INA § 237(a)(2)(A)(iii) for having been convicted of an aggravated felony crime of violence as defined in INA § 101(a)(43)(F), 2) INA § 237(a)(2)(A)(iii) for having been convicted of an aggravated felony, a law relating to murder as defined in INA § 101(a)(43)(A) and 3) INA § 237(a)(2)(A)(ii) for having been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. *Id.* at ¶15.

In August 2025, an immigration judge issued a final order of removal, denied Petitioner's applications for relief and ordered Petitioner to be removed to Vietnam. *Id.* at ¶16. The removal order became final on August 20, 2025. *Id.*

B. Efforts To Remove Petitioner To The Socialist Republic of Vietnam

The Headquarters Office of the Removal and International Operations ("RIO") for the Removal Management Division of ICE is responsible for assisting

Enforcement and Removal Operation's field offices in obtaining travel documents necessary to execute administratively final orders of removal. *Id.* at ¶20. ICE has requested that RIO obtain travel documents to effectuate Petitioner's removal and RIO has been actively engaging Vietnam in pursuit of a travel document for Petitioner and employs an Assistant Attache for Removal ("AAR") who works directly with Vietnam, specifically on repatriation efforts. *Id.*

In fiscal year 2025, ICE has removed at least 587 Vietnamese citizens to Vietnam and, since February 2025, has obtained travel documents for Vietnamese citizens who immigrated to the United States before 1995. *Id.* at ¶¶21-23. ICE has removed several Vietnamese citizens to Vietnam as recently as November 2025 and successfully removed a Vietnamese citizen in February 2026. *Id.* at ¶¶25-26. Once Petitioner's travel document is issued, his removal can be promptly effectuated. *Id.* at ¶27. ICE has no intention to remove Petitioner to a third country. *Id.* at ¶18.

III. ARGUMENT

A. Petitioner Failed To Establish That He Is Entitled to Release From Detention

When an alien becomes subject to a final removal order, 8 U.S.C. § 1231(a)(2) provides that the government "shall" detain the alien during a 90-day removal period. 8 U.S.C. § 1231(a)(2). After the removal period ends, the government "may" detain four categories of aliens: (1) those who, like Petitioner, are inadmissible to the United States pursuant to 8 U.S.C. § 1182; (2) those who are

removable on certain specified grounds, including 8 U.S.C. § 1227, including felony convictions; (3) those who immigration authorities have determined "to be a risk to the community"; and (4) those immigration authorities have determined to be "unlikely to comply with the order of removal." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578–79 (2022) (quoting 8 U.S.C. § 1231(a)(6)).

In *Arteaga-Martinez*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) does not require a bond hearing before an Immigration Judge after six months of detention in which the government bears the burden of proving by clear and convincing evidence that a noncitizen poses a flight risk or a danger to the community. *Arteaga-Martinez*, 596 U.S. at 580–81 (stating that the text of section 1231(a)(6) does not address or even hint at the requirement of a bond hearing after six months of detention). In *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001), however, the Supreme Court held that section 1231(a)(6) "does not permit indefinite detention" and instead "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. The Supreme Court stated that, after six months of detention, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must respond with evidence sufficient to rebut that showing. *Id.* at 701. The Court was careful to note, however, that: "This 6–month presumption, of course, does not mean that every alien not removed must be released after six

months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

The relationship between the United States and Vietnam has been evolving. For example, in November 2020, the United States and Vietnam agreed to a process for the deportation of certain citizens of Vietnam who entered the United States prior to 1995. *See* November 21, 2020 Memorandum of Understanding Between the Department of Homeland Security and the United States of America and the Ministry of Public Security of the Socialist Republic of Vietnam on the Acceptance of the Return of Vietnamese Citizens who Arrived in the United States Before July 12, 1995 and Who Have Been Ordered Removed from the United States *available at* ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf (last visited Oct. 10, 2025). Further, as noted above, in fiscal year 2025, ICE has removed at least 587 Vietnamese citizens to Vietnam and, since February 2025, has obtained travel documents for Vietnamese citizens who immigrated to the United States before 1995. Decl. at ¶¶22-23. ICE has removed several Vietnamese citizens to Vietnam since November 2025 and as recently as February 2026. *Id.* at ¶¶25-26.

In this case, the RIO is actively attempting to obtain travel documents for Petitioner to be removed. RIO has made the request for travel documents and is awaiting a response from the Vietnamese government. Based on the efforts of RIO

and the recent history of removal to Vietnam, Petitioner is expected to be deported to Vietnam in the near future.

Petitioner's detention satisfies the standard articulated in *Zadvydas*. Although Petitioner has been in custody for longer than six months, the six-month presumption articulated by *Zadvydas* does not automatically entitle an alien to release. To the contrary, *Zadvydas* provides an alien may be held in confinement until it has been determined that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Here, Petitioner will be expeditiously removed from the United States once the Socialist Republic of Vietnam issues the requested travel document. Respondents request that this Court find that there is a likelihood of Petitioner's removal in the reasonably foreseeable future.

B. <u>The Due Process Clause Does Not Prevent Petitioner's Detention</u>

Petitioner's detention is not proscribed by the Due Process Clause. Although the Fifth Amendment entitles aliens to due process of law, the Ninth Circuit interprets the Due Process Clause "consistent with longstanding precedent recognizing that the process due aliens must account for the government's countervailing interests in immigration enforcement – considerations that do not apply to U.S. citizens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205–06 (9th Cir. 2022). It is well-established that "Congress may make rules as to aliens that

would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 522 (2003). This is true because "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government, which are core sovereign powers." *Id.*

Assuming the factors set forth in *Mathews v. Eldridge* apply in this context to determine whether procedural protections satisfy the Due Process Clause,[2] the Court considers the following the three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *Mathews* is not a bright-line test, but a flexible standard that must account for the heightened governmental interest in the immigration detention context. *Rodriguez-Diaz* at 53 F.4th at 1206–07.

The first factor favors Respondents because Petitioner's liberty interest in his

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[2] The Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*. *Rodriguez Diaz*, 53 F.4th at 1206 (9th Cir. 2022) (citing Supreme Court cases).

supervised release is low. From the outset, his supervision was in place only until he could be removed from the United States. *See Diouf v. Napolitano*, 634 F.3d 1081, 1086–87 (9th Cir. 2011), a*brogated on other grounds*. Petitioner's diminished interest in this context weighs against imposing the hearing requirement or release.

The second *Mathews* factor also favors Respondents. In the context of an alien with a final order that is in the process of being removed, the risk of erroneous deprivation is relatively low. Here, Petitioner is undisputedly subject to a final order of removal, § 1231(a)(6) undisputedly authorizes Petitioner's detention in order to effectuate his removal order, and *Zadvydas* permits his detention because his removal is likely in the reasonably foreseeable future.

The final factor weighs decisively in Respondents' favor. The government has a strong interest in preventing aliens from remaining in the United States in violation of our law and, to this end, effectuating a final order of removal as expeditiously as possible, particularly when the order relates to an alien who has a criminal history. *See Rodriguez Diaz*, 53 F.4th at 1208. Once the government determines that an alien may be removed in the reasonably foreseeable future, there should not be any additional hurdles to effectuate what is already a final order. District courts cannot provide injunctive relief via habeas cases and the courts should not do indirectly`` what it is prohibited from doing directly. *See Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022); *see also Reyes-Aguilar v. United States Dep't of*

Homeland Security, No. 2012 WL 12849082 (C.D. Cal. Oct. 10, 2012). If applied, the *Mathews* factors weigh decisively in Respondents' favor.

C. Removing Petitioner To An Alternate Country

As noted above, Respondents have no intention to remove Petitioner to an alternate country. Decl. at ¶18. However, in the event that ICE seeks to remove Petitioner to an alternate country, Respondents understand that prior to any removal to an alternate country, Petitioner must be provided notice of such removal and an opportunity to claim "fear" arising out of the removal to an alternate country. If "fear" is claimed, Petitioner will have the opportunity to have that claim adjudicated. Respondents do not agree that Petitioner should be afforded the opportunity to re-open the immigration proceedings if "fear" is claimed.

IV. CONCLUSION

For the foregoing reasons, it is respectfully requested that this Honorable Court deny the Petition.

DATED: March 12, 2026 at Honolulu, Hawaii.

KENNETH M. SORENSON
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District of Hawaii

/s/ Edric M. Ching
By_____
EDRIC M. CHING
Assistant U.S. Attorney

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CERTIFICATE OF SERVICE

I hereby certify that, on this date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

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DATED: March 12, 2026 at Honolulu, Hawaii.

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