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TUAN ANH NGUYEN

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.	CASE NO. 26-CV-00109 SASP-RT Hon. Judge Shanlyn A.S. Park **PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

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INTRODUCTION

Petitioner Tuan Anh Nguyen ("Mr. Nguyen") seeks release from unlawful immigration detention. Respondents do not meaningfully dispute that they have held him for more than six months without making any progress in obtaining travel documents from Vietnam. Their evidence, including Mr. James Dold's declaration, does not show that it is any more likely that Mr. Nguyen will be removed imminently, as compared to another six months—or six years—from now.

Respondents do not offer any evidence of (1) a timeline for Mr. Nguyen's removal from the U.S.; (2) when they requested travel documents for Mr. Nguyen; (3) why Mr. Nguyen specifically—as opposed to Vietnamese immigrants generally—is likely to receive travel documents or; (4) whether or how Mr. Nguyen is more or less like the Vietnamese citizen removed on February 18, 2026 by the Immigration and Customs Enforcement ("ICE") Honolulu sub-office.

Respondents fail to show a significant likelihood of Mr. Nguyen's removal in the reasonably foreseeable future. This Court should order that Mr. Nguyen's immediate release from immigration detention, so that he may continue to live peacefully in the community while awaiting any further action from ICE.

On this record, Mr. Nguyen does not believe that either an evidentiary hearing or oral argument is necessary. If, however, the Court concludes that any

material factual disputes remain, or if it would aid in the Court's decision, Mr. Nguyen requests a hearing.

ARGUMENT

A. Respondents do not dispute that Mr. Nguyen's detention is presumptively unreasonable

As an initial matter, Respondents do not dispute that Mr. Nguyen's detention exceeds the presumptively reasonable six-month period under *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See* Dkt. 10, at PageID.60. Mr. Nguyen's order of removal became final on August 20, 2025. Dkt. 10-1, at PageID.68 (Dold Decl. ¶ 16). Thus, as of February 20, 2026, his detention became presumptively excessive.

Respondents argue that Mr. Nguyen misunderstands the standard articulated in *Zadvydas*, 533 U.S. at 701. They contend that *Zadvydas* does not *require* release after six months. Dkt. 10 at PageID.58-59. But "[i]t is respondents who misunderstand petitioner's claim." *Pham v. Warden*, No. 1:25-CV-1873, 2026 WL 673404, at *4 (E.D. Cal. Mar. 10, 2026) (finding that similarly situated pre-1995 Vietnamese petitioner had met initial *Zadvydas* burden where Respondents did not dispute "that petitioner's detention has exceeded the presumptively reasonable six-month period"). Here, as in similar cases regarding pre-1995 Vietnamese immigrants, Mr. Nguyen "does not argue that the length of petitioner's detention—by itself—warrants his release." *Id.* Instead, he contends that because his

"detention has exceeded the six-month threshold," it is "therefore *not presumptively reasonable*." *Id.*

And because Mr. Nguyen's detention has exceeded the presumptively reasonable six-month period, he need only show that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

B. Mr. Nguyen has met his initial *Zadvydas* burden

The government does not meaningfully challenge that Mr. Nguyen has met his initial burden under *Zadvydas.* Importantly, to meet his initial burden, Mr. Nguyen need not prove "the absence of *any* prospect of removal." *Id.* at 702. Instead, he must only provide a "good reason to believe" that removal is unlikely. *Id.* at 701. "This distinction is not a matter of semantics, but an important clarification of Petitioner's burden at this stage." *Aguilar v. Noem*, Case No. 25-CV-03463, 2025 WL 3514282, at *4 (D. Colo. Dec. 8, 2025).

In his Petition, Mr. Nguyen alleges that he entered the U.S. before 1995 as a refugee, and he explains why removal to Vietnam for pre-1995 Vietnamese immigrants is generally unlikely, even under the 2020 revised Memorandum of Understanding ("MOU") between the American and Vietnamese governments. Dkt. 1, at PageID.8-11 (Pet. at ¶¶ 34-40). And although Mr. Nguyen has cooperated with ICE's efforts to obtain travel documents to Vietnam, those papers have not

materialized in the nearly seven months that he has been detained. *Id.* at PageID.18-21 (Pet. at ¶¶ 58-63). Even with Respondents' evidence, Mr. Nguyen does not know the date on which travel documents were requested; he has not been provided any criteria that explains whether he will qualify for repatriation; and he not been provided a timeline for the issuance of such documents.

Mr. Nguyen has therefore satisfied his initial burden under *Zadvydas* by showing that there is good reason to believe that there is not a significant likelihood of his removal to Vietnam in the reasonably foreseeable future. *See, e.g.*, *Nguyen v. Hermosillo*, CASE NO. 2:26-CV-00335, 2026 WL 538497, at *5 (W.D. Wash. Feb. 26, 2026) (granting habeas petition and noting that petitioner had met his initial burden due to "[t]he lack of travel documents from Vietnam and the absence of evidence regarding the status or expected timeline of travel document procurement").

C. Respondents fail to rebut Mr. Nguyen's showing that removal is not likely to occur in the reasonably foreseeable future

Because Mr. Nguyen established that his detention is presumptively unreasonable and met his initial burden of production, the burden shifts to Respondents to show "that removal is likely to occur within the reasonably foreseeable future." *Id.* at *3; *see Zadvydas*, 533 U.S. at 701. Yet the evidence produced by Respondents contains glaring factual gaps, and it is therefore insufficient to counter the presumptive unreasonableness of Mr. Nguyen's

detention. In short, Respondents provide generic statements about deportations of Vietnamese citizens as a whole, but their rebuttal does not show that *Mr. Nguyen* in particular is likely to be removed soon.

1. Respondents have not established that Vietnam has been promptly accepting pre-1995 immigrants

To begin with, Respondents have not answered the following critical questions: How many pre-1995 immigrants similarly situated to Mr. Nguyen has ICE successfully deported to Vietnam in the past few years? How long did those deportations take? What was the profile of the individuals who were deported? Does Mr. Nguyen satisfy the criteria Vietnam uses when considering which individuals to accept?

Mr. Dold's declaration strategically talks around these factual gaps. He states that "[s]ince mid-February 2025, ICE has obtained travel documents for Vietnamese citizens who immigrated to the United States before 1995." Dkt. 10-1, at PageID.69 (Dold Decl. ¶ 22). But that statement does not clarify *how many* pre-1995 immigrants have received travel documents in that period, *how long* it takes Vietnam to process each request for documents, or *what percentage* of requests for documents are denied—nor does it clarify the likelihood of obtaining *Mr. Nguyen's* travel documents. These omissions undercut Respondents' rebuttal. *See Vo v. Scott*, CASE NO. 2:26-CV-00135, 2026 WL 445046, at *3 (W.D. Wash. Feb. 17, 2026) (granting habeas relief where the government did "not explain why it believes

Vietnam will accept Vo, in particular—it does not provide Vietnam's criteria for issuing travel documents, much less explain whether Vo meets them . . . Nor does it explain how long Vietnam *typically* takes to issue travel documents."). As other courts have noted, while the 2020 MOU gave Vietnam discretion to issue travel documents for pre-1995 Vietnamese immigrants to the U.S., that understanding does not require repatriation or acceptance of all such requests. *See Nguyen v. Hyde*, 788 F. Supp. 3d 144, 152 n.6 (D. Mass. 2025) ("Vietnam retains total discretion to approve or deny issuance of a travel document to any individual.").

Moreover, Mr. Dold's statement that "ICE routinely obtains travel documents for Vietnamese citizens, including those who immigrated to the United States before 1995" does not explain how frequently those travel documents are obtained, or, more importantly, what percentage of travel documents are obtained for those who immigrated before 1995. Dkt. 10-1, at PageID.68 (Dold Decl. ¶ 21). This omission is fatal. *See Nguyen v. Bondi*, Case No. C26-460, 2026 WL 508180, at *3 (W.D. Wash. Feb. 24, 2026) (concluding that where "the government has not obtained travel documents for Petitioner, does not know when such documents might issue, and does not know if they will issue at all," then "[u]nder *Zadvydas*, that is insufficient to justify continued detention").

Similarly, Mr. Dold's statement that "[i]n fiscal year 2025, ICE has removed at least 587 Vietnamese citizens to Vietnam" is too generalized to clarify the

likelihood of Mr. Nguyen's removal in the near future. Dkt. 10-1, at PageID.69 (Dold Decl. ¶ 23). That statement does not explain what percentage of the 587 Vietnamese citizens removed were pre-1995 immigrants, what makes it more likely that a particular individual's travel document will be issued, or even what percentage of attempted removals are successful. In particular, because the removal of pre-1995 immigrants is a recurring issue in this District, and the Court specifically inquired about this issue at the hearing, the Court can infer that Government's lack of specificity means that *few* of the 587 removals involved pre-1995 immigrants—if the contrary were true and the Government were successfully removing many pre-1995 immigrants to Vietnam, or if Vietnam were accepting the majority of attempted removals, surely that fact would have been highlighted in Mr. Dold's Declaration.

This lack of specificity undermines Respondents' position regarding the likelihood of removal. *See, e.g.*, *Vu v. Dosanj*, Civ. No. 26-00013, 2026 WL 594740, at *3 (D. Haw. Mar. 3, 2026) (granting habeas petition where ICE agent's declaration provided the same statistic, noting that the "fundamental flaw is that [respondents] do not offer any indication of what percentage of the government's requests are successful, or what percentage of the total number of attempted removals the 587 successful ones represent"); *Dao v. Bondi*, CASE NO. 2:25-CV-02340, 2026 WL 18626, at *5 (W.D. Wash. Jan. 2, 2026) (granting habeas petition

because even though respondents offered evidence of "the issuance of travel documents for at least 569 final order Vietnamese citizens as of September 11, 2025 . . . there is no indication of the total number of detainees involved, or how many individuals were *not* removed despite Respondents' request that Vietnam issue travel documents" (citation omitted)); *Vo v. Scott*, 2026 WL 445046, at *4 (finding that the government had not met burden of rebuttal because "[w]hile it states that it removed 327 pre-1995 entrants to Vietnam in Fiscal Year 2025, it does not state how long those individuals were detained before their deportation"); *Nguyen v. Hyde*, 788 F. Supp. 3d at 151 (granting habeas petition where respondents' "Second Declaration does not identify how many of the 328 individuals removed during Fiscal Years 2024 and 2025 were pre-1995 Vietnamese refugees, like [Petitioner]"); *Nguyen v. Scott*, 796 F. Supp. 3d 703, 725 (W.D. Wash. 2025) (reviewing similar declarations and concluding that while "these developments show there is at least some possibility that Vietnam will accept Petitioner at some point . . . that is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future"); *Abubaka v. Bondi*, Case No. C25-1889, 2025 WL 3204369, at *5 (W.D. Wash. Nov. 17, 2025) (granting habeas under similar circumstances).

2. Respondents fail to show that Mr. Nguyen's removal is significantly likely

Respondents do not show that Mr. Nguyen's removal—as opposed to other Vietnamese immigrants' removal—is significantly likely. Mr. Dold's declaration is conclusory and provides practically no specific evidence about Mr. Nguyen's removal timeline from which the Court could conclude that removal will happen in the "reasonably foreseeable future." All Mr. Dold states is that Enforcement and Removal Operations ("ERO") "has worked expeditiously to effectuate Petitioner's removal to Vietnam," and "has submitted a travel document request packet to ERO Removal and Internal Operations ("RIO") to obtain a travel document to effectuate Petitioner's removal to Vietnam." Dkt. 10-1, at PageID.68 (Dold Decl. ¶¶ 19-20).

By contrast, Mr. Dold's declaration is notable for what it does *not* say. He does not state when RIO submitted the request to Vietnam. He does not clarify the timeline for RIO's acquisition of travel documents for Mr. Nguyen—the declaration simply states that "[t]hese removal efforts remain ongoing" and "RIO has been actively engaging the Government of Vietnam in pursuit of a travel document for Mr. Nguyen." *Id.* And he does not give an estimate of when any next steps in the process are reasonably likely to occur for Mr. Nguyen.

Similarly, as detailed above, the declaration does not describe the likelihood of approval of RIO's request for pre-1995 immigrants like Mr. Nguyen. Nor does it explain what similarities exist between cases in which Vietnam issued travel

documents for some pre-1995 immigrants as compared to the dozens of cases in which Vietnam has refused to do so. *See* Dkt. 1, at PageID.9-11 (Pet. at ¶¶ 36-40) Mr. Dold also does not state that there is any evidence that Mr. Nguyen meets the criteria under the 2020 MOU for repatriation to Vietnam. The declaration does not say that Vietnam seems likely to grant the request for Mr. Nguyen's document, or that Vietnam has even acknowledged the request.

Respondents' evidence thus falls far short of showing that Mr. Nguyen's removal is imminent. Mr. Dold's declaration does not make it clear that travel documents for Mr. Nguyen will be issued soon or at all. *See Nguyen v. Hermosillo*, 2026 WL 538497, at *5 (granting habeas petition where "Respondents submit no evidence showing that Vietnam has agreed to accept Petitioner for removal"); *Nguyen v. Scott*, 796 F. Supp. 3d at 725-26 (collecting similar cases).

Compare, for example, the circumstances under which courts have found that removal *is* likely to occur in the reasonably foreseeable future. In one case where a *Zadvydas* habeas petition was denied without prejudice, the ICE officer provided evidence of the specific date that travel documents were requested, and the expected timeline for Vietnam issuing travel documents. *See, e.g.*, *Nguyen v. U.S. Immigr. & Customs Enf't.*, No. C26-0219, 2026 WL 640773, at *2 (W.D. Wash. Mar. 6, 2026). And in another similar case, a court denied habeas relief because the ICE officer's declaration confirmed that a Vietnamese travel document

had been issued, ERO was "in receipt of the travel document," and a repatriation flight was tentatively scheduled. *Lam v. Noem*, Case No. 5:25-CV-03344-CV, 2026 WL 332224, at *6 (C.D. Cal. Feb. 5, 2026). Here, by contrast, Mr. Dold's declaration does not come close to showing that Mr. Nguyen's travel documents are in hand (or even nearly there), nor that a repatriation flight has been scheduled.

And "Courts . . . have regularly refused to find Respondents' burden met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur." *Nguyen v. Scott*, 796 F. Supp. 3d at 725. Respondents' evidence in Mr. Nguyen's case therefore fails to provide the level of specificity required under *Zadvydas*.

Thus, while Respondents provide some evidence that Mr. Nguyen's removal is possible, they have failed to meet their burden of showing that removal is "significantly likely" in the "reasonably foreseeable future."

D. Respondents' remaining arguments are meritless

As an initial matter, Respondents incorrectly argue that "Petitioner's detention is not proscribed by the Due Process Clause." Dkt. 10, at PageID.60. To the contrary, the Supreme Court noted in *Zadvydas* that the issue of potentially indefinite detention is an issue squarely at the heart of due process. *See Zadvydas* v. Davis, 533 U.S. at 690 ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem."). That analysis is addressed above.

Respondents mistakenly argue that Mr. Nguyen's due process rights should be evaluated under the test outlined in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), a procedural due process case. Dkt. 10, at PageID.61-63. But Mr. Nguyen did not raise procedural due process as a basis for habeas relief, as there was no revocation of supervised release. *See, e.g.*, *Nguyen v. Bondi*, Case No. 2:25-CV-02723, 2026 WL 183819, at *4 (W.D. Wash. Jan. 23, 2026) (explaining that courts apply the *Mathews* procedural due process test where the government "re-detained noncitizens with a final order of removal without notice and a meaningful opportunity to respond"). If, instead, Respondents contend that Mr. Nguyen is not entitled to supervised release while awaiting Vietnamese travel documents, that analysis is governed by *Zadvydas* as described above—not by *Mathews*.

To the extent Respondents suggest that this Court does not have jurisdiction to review this petition or issue injunctive relief because, "[o]nce 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," Dkt. 10, at PageID.62 (citing *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022) and *Reyes-Aguilar v. U.S. Dep't of Homeland Sec.*, Case No. CV 12-08402, 2012 WL 12849082 (C.D. Cal. Oct. 10, 2012)), the Government misses the point. Mr. Nguyen does not challenge the validity of his removal order or its effectuation—he challenges his indefinite *detention* when there is no reasonable

likelihood he will be removed in the foreseeable future. *See Zadvydas*, 533 U.S. at 687; *see also Huynh v. Dosanj*, Civ. No. 26-00014 (D. Haw. Mar. 12, 2026), Dkt. 27, at PageID.114-115. Thus, there is no need for the Court to consider the *Mathews* factors here, and it may issue the relief Mr. Nguyen has requested.

* * *

Here, Mr. Nguyen has been detained for longer than the presumptively reasonable six months post final order of removal, and he has shown that there is good reason to believe his removal to Vietnam is not significantly likely in the reasonably foreseeable future. Respondents have failed to meet their burden on rebuttal because they have offered no evidence that Mr. Nguyen *will* be granted travel documents, nor have they provided any concrete plans about *when* that would happen. Respondents have therefore not shown that Mr. Nguyen's removal is likely to happen in the next few weeks, or even the next few months.

CONCLUSION

Accordingly, this Court should grant his immediate release on an order of supervision, such release to occur no later than 72 hours from the Court's order.

Mr. Nguyen does not believe that either an evidentiary hearing or oral argument is required on the current record. If, however, the Court concludes that any material factual disputes remain, or if it would aid in the Court's decision, Mr. Nguyen requests a hearing.

DATED: Honolulu, Hawai'i, March 17, 2026.

Respectfully submitted,
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