UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01168-RMR

ANH KHOA HOANG NGUYEN,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

GEORGE VALDEZ, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,

MARKWAYNE MULLIN, [1] Secretary, U.S. Department of Homeland Security, in his official capacity,

TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,

TODD BLANCHE, [2] Acting Attorney General, U.S. Department of Justice, in her official capacity,

Respondents.

REPLY TO RESPONDENTS' RESPONSE (ECF 12)

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[1] Markwayne Mullin is substituted for former Secretary of Homeland Security Kristi Noem pursuant to Fed. R. Civ. P. 25(d).
[2] Todd Blanche is substituted for former Attorney General Pam Bondi pursuant to Fed. R. Civ. P. 25(d).

I. Introduction

This Court must order Petitioner's ("Mr. Nguyen") immediate release. Respondents' authority to jail Mr. Nguyen is no longer authorized by statute nor the constitution, and his reincarceration violated due process, the *Accardi* doctrine and the Administrative Procedures Act ("APA"). As of today, Respondents admit they have failed to remove Mr. Nguyen for 5,023 days while incarcerating him for 215. ECF 12 (detailing, *inter alia*, the dates on which Respondents jailed, released, and jailed Mr. Nguyen); ECF 12-1 (same). Notably, Respondents do not even argue that Mr. Nguyen's removal is significantly likely in the reasonably foreseeable future. ECF 12, at *6–12. Instead, Respondents claim the evidence shows that Mr. Nguyen's incarceration "is not indefinite." *Id.* at *11. Whether Mr. Nguyen's incarceration is indefinite is a red herring. Instead, Respondents must show that Mr. Nguyen's removal is significantly likely in the reasonably foreseeable future *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). Respondents bare assertions that it is seeking to remove Mr. Nguyen fall woefully flat *E.g.*, *Tran v. Baltazar, et al.*, 1:26-cv-00940-CNS, 2026 WL 764002, at *3 (D. Colo. Mar. 18, 2026). Especially because Respondents have yet to even request a travel document for Mr. Nguyen in over 5,000 days. ECF 12-1. Mr. Nguyen must be immediately released.

II. Mr. Nguyen's Incarceration is Not Presumptively Reasonable.

Mr. Nguyen's incarceration is not presumptively reasonably because it has lasted for more than 180 days and his removal order is over 5,000 days old. As Judge Wang's "independent research" shows, "district courts more often conclude that a detainee's periods of detention should be considered together in determining whether the detention has exceeded the presumptively reasonable time under *Zadvydas*." *Aguilar v. Noem*, 25-

cv-03463-NYW, 2025 WL 3514282, at *3 (D. Colo. Dec. 8, 2025) (collecting cases). Judge Brimmer agrees, *Pena-Gil v. Lyons*, No. 25-cv-03268-PAB-NRN, 2025 WL 3268333, at *2(D. Colo. Nov. 24, 2025) (collecting cases), Judge Sweeney agrees, *Tran*, 2026 WL 764002, at *3, Judge Crews agrees, *Santacruz Macias v. Baltazar*, 1:26-cv-01046-SKC, 2026 WL 865174, at *3 (D. Colo. Mar. 30, 2026), and Magistrate Judge Prose agrees, *Pan v. Blanche*, 1:26-cv-00599-SBP, 2026 WL 947935, at *2 (D. Colo. Apr. 8, 2026). In fact, "[m]ost courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated, in part, by a concern that the federal government could otherwise detain noncitizens indefinitely by continuously releasing and re-detaining them." *Siguenza v. Moniz*, 25-CV-11914-ADB, 2025 WL 2734704, at *3 (D.Mass. Sept. 25, 2025) (collecting cases).[3] Permitting Immigration and Customs Enforcement ("ICE") to do just that "in essence results in an indefinite period of detention, albeit executed in successive six month intervals." *Nguyen v. Scott*, 796 F.Supp.3d 703, 722 (W.D. Wash. 2025) (citation omitted).

Several of the cases upon which Respondents rely in support of their contrary position are unpersuasive and ignore the Supreme Court's concern with indefinite detention. For example, issue of whether incarceration should be viewed cumulatively was not at issue in *Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3011896, at *9 n.9 (W.D. Okla. Oct. 15, 2025) because "such aggregation [was] unnecessary" as the Petitioner there was already reincercreated for more than six months. *Id. Qui v. Carter* is also unhelpful for Respondents because that court relies on a case, *Liu v. Carter*, where

[3] Of note, whether "there is a significant gap between periods of detention" makes no difference. *Tran*, 2026 WL 764002, at *3 (collecting cases).

the petitioner "did not dispute" that the removal period restarts upon reincarceration. Case No. 25-3131-JWL, 2025 WL 2770502, at *1 (D.Kan. Sept. 26, 2025) (citing *Liu v. Carter*, Case No. 25-3036-JWL, 2025 WL 1207089, at *2 (D. Kan. Apr. 25, 2025)). Respondents' reliance on *Liu v. Carter* is similarly unpersuasive.

Nevertheless, whether this Court views Mr. Nguyen's incarceration cumulatively is not dispositive. ICE's authority to jail someone for removal is only "*presumptively* reasonable" for six months. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (emphasis added). A jailed noncitizen may rebut that presumption at any time by showing good reason to believe that their removal is not significantly likely in the reasonably foreseeable future regardless of the amount of time ICE jails them. *See id.*

This Court should join Judge Brimmer, Judge Wang, Judge Sweeney, Judge Crews, Magistrate Judge Prose, and most courts across the country to view his incarceration in the aggregate. Mr. Nguyen's 215 days in ICE custody demonstrates that his incarceration is no longer presumptively reasonably, satisfying Mr. Nguyen's good-reason burden. *Tran*, 2026 WL 764002, at *3 ("[b]ecause Petitioner has demonstrated that he has been cumulatively held in immigration detention for over six months . . . the presumptively reasonable period for Petitioner's detention has been exceeded") (cleaned up, citation omitted)).

Alternatively, Mr. Nguyen rebuts the presumptively reasonable period of incarceration through facts demonstrating good reason to believe his removal is not significantly likely in the reasonably foreseeable future: (1) ICE neither alleges nor provides evidence that his removal is significantly likely in the reasonably foreseeable future, ECF 12; ECF 12-1; (2) ICE has failed to remove him in the 5,023 days since his

removal order became final; (3) ICE has yet to request travel documents from any country since his removal order in 2012; (4) ICE has never presented a travel document to Mr. Nguyen for removal to any country; and (5) Mr. Nguyen has no travel document to any country, *see* ECF 1, ¶¶ 24, 28; ECF 12; ECF 12-1. Mr. Nguyen's incarceration is no longer presumptively reasonable and he presents good reason to demonstrate that his removal is not significantly likely in the reasonably foreseeable future.

III. Mr. Nguyen Meets the Good Reason Standard.

Mr. Nguyen met his burden that there is good reason to believe that removal is not significantly likely in the reasonably foreseeable future. This good reason standard is "something less" than showing that removal is not significantly likely in the reasonably foreseeable future. *Azzo v. Noem*, 3:25-cv-03122-RBM-BJW, 2025 WL 3535208, at *3 (S.D. Cal. Dec. 10, 2025); *Ahmed v. Freden*, 744 F.Supp.3d 259, 265 (W.D.N.Y. 2024) (citation omitted); *Hamed Aramin v. Baltasar, et al.*, 1:26-cv-616-RBJ, ECF 14 at *8 (D. Colo. Mar. 18, 2026). The "distinction is not a matter of semantics, but an important clarification of [Mr. Nguyen's] burden at this stage." *Aguilar*, 2025 WL 3514282, at *4. The burden is of production, not persuasion. *Cruz Medina v. Noem*, 794 F.Supp.3d 365, 379 (D. Md. 2025). The good reason standard is satisfied "by, inter alia, showing the existence of either institutional barriers to repatriation or obstacles to . . . removal." *Aguilar*, 2025 WL 3514282, at *4 (citation omitted) (collecting cases). The court may also consider "the target country's prior record of accepting removed [noncitizens] and specific assurances from the target country regarding its willingness to accept a [noncitizen]." *Ahmed*, 744 F.Supp.3d at 265.

Mr. Nguyen's 215 days in ICE custody is good reason to believe that his removal is not significantly likely in the reasonably foreseeable future. *See* Section II, *supra*. But if this Court needs more, it is presented with plenty. For one, there are significant institutional barriers to removing individuals to Vietnam who entered the United States prior to 1995. *Nguyen v. Hyde*, 788 F.Supp.3d 144, 151 (D. Mass 2025). For example, while ICE may seek Mr. Nguyen's removal to Vietnam, "Vietnam has *total discretion* whether to issue a travel document." *Id* (emphasis added). Moreover, ICE has yet to even request a travel document for Mr. Nguyen since his removal order became final 14 years ago. ECF 12-1. He has therefore "shown that his removal . . . is unlikely given that the government has been unable to deport [him]" for over a decade. *Pena-Gill*, 2025 WL 3268333, at *3; *Ali v. Baltazar*, 1:25-cv-03317-RBJ, 2026 WL 322565, at *4 (D. Colo. Jan. 27, 2026) (finding "nearly seven years" sufficient); *Azzo*, 2025 WL 3535208, at *3 (finding twenty years sufficient); *Tran*, 2026 WL 764002, at *3 (same).

In addition, Mr. Nguyen does not have a passport and his only ties to any country other than to the United States are with Vietnam. ECF 2-1. Respondents neither provide proof nor allege that they have requested a travel document from Vietnam or any country. ECF 12-1. Rather, ICE has only advised Mr. Nguyen that it will try to remove him to Vietnam. *Id*.

Mr. Nguyen therefore demonstrates that there is good reason to believe that his removal is not significantly likely in the reasonably foreseeable future. The burden now shifts to Respondents to prove that removal is significantly likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Respondents fail to meet that burden.

IV. Respondents Did Not Meet Their Burden.

This Court must order Mr. Nguyen's immediate release because "once the [noncitizen] 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." *Zadvydas*, 533 U.S. at 701 (emphasis added). Here, Respondents provide neither evidence, ECF 12-1, nor argument that removal is significantly likely in the reasonably foreseeable future, ECF 12 (merely stating that Mr. Nguyen's incarceration is not indefinite). Respondents have therefore conceded that Mr. Nguyen's removal is not significantly likely in the reasonably foreseeable future. *Alfaro Herrera v. Baltazar*, 1:25-cv-04014-CNS, 2026 WL 91470, at *5 (D. Colo. Jan. 13, 2026); *see also C1.G ex rel. C.G. v. Siegfried*, 38 F.4th 1270, 1282 (10th Cir. 2022) (holding that the district court correctly dismissed plaintiff's facial challenge as "abandoned" where plaintiff failed to include that challenge in his response to arguments raised in defendant's motion to dismiss). This Court must order his immediate release.

Alternatively, Respondents' vague statements that it is trying to remove Mr. Nguyen are insufficient to satisfy their burden. "*Zadvydas* rejected the proposition that continued detention is permissible 'as long as good faith efforts to effectuate deportation . . . continue.'" *Ahrach v. Baltazar*, 25-cv03195-PAB, 2025 WL 3227529, at *4 (D. Colo. Nov. 19, 2025) (quoting *Zadvydas*, 533 U.S. at 702)). In other words, "the possibility of removal does not equate to a significant likelihood of removal. *Santacruz Macias*, 2026 WL 865174, at *4 (citing *Tran*, 2026 WL 764002, at *3). Courts have therefore resoundingly found that Respondents' "[u]nsubstantiated assertions that [it] will pursue removal are insufficient to satisfy its burden." *Pena-Gil*, 2025 WL 3268333, at *4 (collecting cases).

Courts have "persuasively rejected such equivocated, conclusory justifications for continued detention . . . ." *Chennah*, 2026 WL 179951, at *3 (quotation omitted). In fact, "vague statement[s]" about ICE's pursuit of removal that provide "no meaningful information" do "not demonstrate that removal is likely" let alone significantly so. *Koca v. Noem*, 26-cv-00443-NYW, 2026 WL 575661, at *3 (D. Colo. Mar. 2, 2026); *Tran*, 2026 WL 764002, at *4.

Respondents' assertion that ICE is working to remove Mr. Nguyen to Vietnam is a quintessential example of a vague statement with no meaningful information. *Tran*, 2026 WL 764002, at *4. Notably, Judge Sweeney rejected the same statement that Respondents' make here, acknowledging that while she accepted that Respondents were seeking "to obtain travel documents from Vietnam . . . and that ICE has successfully removed Vietnamese citizens to Vietnam in recent months . . . those facts do not move the needle." *Compare id.* at *3, *with* ECF 12-1, at ¶ 19 (also stating that ICE has removed Vietnamese citizens "in recent months"). Courts across the country agree. *E.g.*, *Hoac v. Becerra*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *5 (E.D.Ca. Jul.16, 2025) ("Respondents' contention that [Mr. Tran's] removal is reasonably foreseeable because removals to Vietnam are in fact occurring is unpersuasive").

Moreover, Respondents fail to provide "some very pertinent information including the total number of requests for removal that were made to Vietnam." *Hoac*, 2025 WL 1993771, at *5 (quotation and citation omitted). For example, "if DHS submitted 350 requests and Vietnam issued travel documents for 328 individuals then removal [would be] significantly likely. However, if DHS submitted 3,500 requests and only 328 individuals

received travel documents" removal would not be significantly likely." *Id.* Respondents' statements here suffer from that exact fatal flaw. ECF 12-1.

Finally, and perhaps more importantly, Respondents acknowledge that they have not even requested a travel document from Vietnam or any country. ECF 12-1, at ¶ 18.[4] And even if it did, "[m]erely asserting" that ICE has requested "travel documents" without any "substantive indication regarding how or when it expects to obtain the necessary travel document" does not meet ICE's burden anyways. *Singh v. Gonzales*, 448 F.Supp.2d 1214, 1220 (W.D. Wash. 2025).

Respondents therefore did not meet their burden because "[a]t bottom, Respondents' own evidentiary submission belies their argument that [Mr. Nguyen's] removal is significantly likely in the reasonably foreseeable future." *Chennah v. Baltazar*, 1:26-cv-00112-CNS, 2026 WL 179951, at *3 (D. Colo. Jan. 23, 2026) (quotation omitted). The Court must therefore order Mr. Nguyen immediately released.

V. In the Alternative, the Court Should Order Mr. Nguyen's Immediate Release because Respondents' Concede that it Did Not Provide Him with Process Required by the Constitution.

Respondents do not contest that ICE failed to provide Mr. Nguyen with notice or an opportunity to be heard before rejailing him. ECF 12; ECF 12-1. That failure is particularly egregious where, as here, ICE previously found Mr. Nguyen to be neither a risk of flight nor a danger to the community. *Compare Alfaro Herrera*, 2026 WL 91470, at *9 (ordering immediate release of a noncitizen who ICE previously released and

[4] While Respondents acknowledge that Mr. Nguyen is cooperating with their attempt to procure a travel document and do not allege any recalcitrance to assisting them in his removal, ECF 12, at *11 (noting Mr. Nguyen's assistance), Mr. Nguyen reminds the Court that the documents Respondents ask him to fill out are in Vietnamese, a language he does not read well, ECF 2-1, at ¶ 15.

redetained without process) *with* 8 C.F.R. § 241.4(d)(1) (providing that ICE may release someone who is subject to a final order of removal if they are neither a risk of flight nor a danger). "While Respondents get to repeat themselves, they don't get to repeatedly violate [a Petitioner's] due process rights." *Cortes v. Guadian*, 1:26-cv-00294-CNS, 2026 WL 265688, at *2 (D. Colo. Feb. 2, 2026). That is exactly what Respondents are doing here.

Respondents cannot illegally jail Mr. Nguyen and then deny him due process. ECF 2, at **7–10. ICE does not contest that these violations occurred or that due process applies. ECF 12. Therefore, "where, as here, a party files a response to a motion but does not address all arguments which the motion raises, the party has effectively conceded the arguments which it does not address." *Alfaro Herrera*, 2026 WL 91470, at *5.

This Court should grant Mr. Nguyen's immediate release because Respondents already "determined that [Mr. Nguyen] is neither a flight risk nor a danger to the community, and because [Mr. Nguyen] has already been held in immigration detention for over six months . . . ." *Id.* at *13. Immediate release is the only appropriate remedy for Respondents' conceded, ongoing constitutional violations. *See* ECF 2 at *10 (citing cases).

VI. Also Alternatively, the Court Should Order Immediate Release as Respondents' Concede They Failed to Provide the Process Required by the Regulations.

Before rejailing Mr. Nguyen, "the regulations at issue . . . place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future," *Roble v. Bondi*, 803 F.Supp.3d. at 772 (D.Minn. 2025); 8 C.F.R. § 241.13(i)(2), and to notify Mr. Nguyen of the reasons for his revocation, 8 C.F.R.

241.13(i)(3). The regulations also require a prompt interview after being returned to custody. *Id.* Respondents do not contest that ICE failed to give Mr. Nguyen notice prior to his reincarceration. ECF 12. Respondents do not contest that ICE failed to give him a prompt interview upon reincarceration. *Id.* Respondents do not contest that the interview Mr. Nguyen was scheduled to receive was advanced without notice to him or his counsel. *Id.* Respondents also do not claim changed circumstances merited Mr. Nguyen's incarceration. *Id.* Instead, they claim that they rejailed him solely to pursue his removal despite having no travel document, not having requested a travel document, and having no plan to effectuate his removal. *See* ECF 12-1, at ¶ 13 (noting that the only reason they jailed Mr. Nguyen was to pursue his removal). Once again, these egregious violations of Mr. Nguyen's rights should not go unaddressed.

Respondents seek to evade repercussions for their violations by arguing that instead of release, Mr. Nguyen should be provided process without saying what that process is and how it would remedy his unlawful incarceration. ECF 12. The proper remedy is release, "because [once again] it has already been determined that [Mr. Nguyen] is neither a flight risk nor a danger to the community, and because [Mr. Nguyen] has already been held in immigration detention for over six months . . . ." *Alfaro Herrera*, 2026 WL 91470 at *13. Courts across the country agree. *Roble*, 803 F.Supp.3d. at 774; *Nguyen*, 788 F.Supp.3d at 152–53; *Hoac v. Becerra, et al.*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. Jul. 16, 2025).

VII. Conclusion

Based on the foregoing, this Court should order Respondents to immediately release Mr. Nguyen.

Dated: April 13, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2026 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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