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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 KEM TRAN,

11 Petitioner,

12 v.

13 KRISTI NOEM, *et al.*,

14 Respondents.

Case No.: 26-cv-03385-LL-DEB

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner Kem Tran has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 alleging there is not a significant likelihood he will be removed from the United States in the reasonably foreseeable future, and, that ICE may seek to remove him to a third country without adequate notice. ECF No. 1 at 5-12. However, because Petitioner's claims are unripe under *Zadvydas* and speculative as to future agency action, the Court should deny Petitioner's requests for relief. 533 U.S. 678 (2001)

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Vietnam. He was admitted to the United States on March 5, 1982 as the child of a refugee. Declaration of Edgar A. Olvera ("Olvera Decl.") ¶¶ 6-7; Exhibit 1 (Form I-213). On August 14, 1995, Petitioner was convicted of 1st-degree attempted murder of a peace officer (2 counts), assault on a peace officer with a firearm (2 counts), assault on a peace officer (2 counts), and 1st-degree robbery (4 counts), and sentenced to life in prison with the possibility of parole. Most of the offenses received sentencing enhancements for having involved the personal use of a firearm during the commission of a felony (Cal. Pen. Code §§ 12022(A)(1), 12021.5) and because they were committed to promote or benefit a criminal street gang (Cal. Pen. Code § 186.22(B)(1)). Olvera Decl. ¶¶ 8-11; Exhibit 2 (Conviction Documents).

While serving his life sentence, on December 4, 2015, Petitioner was convicted of assault with a deadly weapon with a sentencing enhancement for inflicting great bodily injury and Petitioner was sentenced to 12 years in custody to run consecutive to his life sentence. Olvera Decl. ¶ 12; Cal. Pen. Code §§ 245(A)(1), 12022.7(A). Next, on August 25, 2016, Petitioner was convicted of assault by a prisoner with sentencing enhancements for inflicting great bodily injury and for already serving a sentence for a violent felony and Petitioner was sentenced to 10 years in custody. Olvera Decl. ¶ 12; Cal. Pen. Code §§ 4501, 12022.7(A), 667.5(A).

On January 2, 2026, after 31 years in prison, Petitioner was released from state criminal custody on parole and taken into custody by Immigration and Customs

1 Enforcement (ICE). Olvera Decl. ¶ 14; Exhibit 3 (Arrest Warrant). Petitioner was
2 served with a Notice to Appear (NTA) that charged him with being removable from the
3 United States under Immigration and Nationality Act (INA) § 237(a)(2)(A)(iii) for
4 being an alien convicted of an aggravated felony at any time after admission. Olvera
5 Decl. ¶ 15; Exhibit 4 (NTA).

6 On February 4, 2026, the Immigration Judge ordered Petitioner removed to
7 Vietnam and both parties waived appeal. Olvera Decl. ¶ 16; Exhibit 5 (Removal Order).
8 Accordingly, Petitioner's order of removal became administratively final on the date
9 that it was entered. *See* 8 C.F.R. § 1003.39. On April 7, 2026, the agency submitted a
10 travel doc request in order to effectuate Petitioner's removal to Vietnam. On June 5,
11 2026, the request was transmitted directly to an attaché at the United States Embassy in
12 Hanoi, Vietnam. Olvera Decl. ¶¶ 17-18. Once the agency receives a travel document
13 for Petitioner, Petitioner will be removed to Vietnam via a special high-risk charter
14 flight due to his criminal history. *Id.* at ¶ 21. The agency believes there is a significant
15 likelihood of Petitioner's removal to Vietnam in the reasonably foreseeable future as 99
16 Vietnamese non-citizens were recently removed via charter flight on June 2, 2026;
17 additionally, the agency has recently secured a travel document for a different
18 Vietnamese non-citizen who also entered the United States before 1995 and was an
19 aggravated felon. Olvera Decl. ¶¶ 22-24.

20 III. ARGUMENT

21 An alien ordered removed must be detained for ninety (90) days pending the
22 government's efforts to secure the alien's removal through negotiations with foreign
23 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien
24 during the 90-day removal period). The statute "limits an alien's post-removal detention
25 to a period reasonably necessary to bring about the alien's removal from the United
26 States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678,
27 689 (2001). The Supreme Court has held that a six-month period of post-removal
28 detention constitutes a "presumptively reasonable period of detention." *Id.* at 683.

1 Release is not mandated after the expiration of the six-month period unless “there is no
2 significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

3 In *Zadvydas*, the Supreme Court held: “[T]he habeas court must ask whether the
4 detention in question exceeds a period reasonably necessary to secure removal. It should
5 measure reasonableness primarily in terms of the statute’s basic purpose, namely,
6 *assuring the alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added).
7 In so holding, the Court recognized that detention is presumptively reasonable pending
8 efforts to obtain travel documents, because the noncitizen’s assistance is needed to
9 obtain the travel documents, and a noncitizen who is subject to an imminent, executable
10 warrant of removal becomes a significant flight risk, especially if he or she is made
11 aware that removal is imminent.

12 The Supreme Court also held that the detention could exceed six months: “This
13 6-month presumption, of course, does not mean that every alien not removed must be
14 released after six months. To the contrary, an alien may be held in confinement until it
15 has been determined that there is no significant likelihood of removal in the reasonably
16 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
17 reason to believe that there is no significant likelihood of removal in the reasonably
18 foreseeable future, the Government must respond with evidence sufficient to rebut that
19 showing and that the noncitizen has the initial burden of proving that removal is not
20 significantly likely.” *Id.*

21 Here, the Petition should be denied. Petitioner brings this challenge
22 approximately four months into a detention period that the Supreme Court held is
23 presumed reasonable for six months. The Ninth Circuit has also emphasized that
24 “*Zadvydas* places the burden on the alien to show, *after a detention period of six months*,
25 that there is ‘good reason to believe that there is no significant likelihood of removal in
26 the reasonably foreseeable future.’” *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003)
27 (quoting *Zadvydas*, 533 U.S. at 701) (emphasis added); *see also Xi v. INS*, 298 F.3d
28 832, 840 (9th Cir. 2003). Accordingly, Petitioner’s detention in this case should be

1 presumed reasonable until at least August 2026. *See Ali v. Barlow*, 446 F.Supp. 2d 604,
2 609–10 (E.D. Va. 2006) (finding habeas petition was unripe for review where *Zadvydas*
3 six-month period had not expired; dismissing petition without prejudice); *Gonzales v.*
4 *Naranjo*, No. EDCV 12–1392 DSF (FFM), 2012 WL 6111358, at *4–5 (C.D. Cal. Nov.
5 5, 2012) (same); *Waraich v. Ashcroft*, No. CVF051036RECSMSHC, 2005 WL
6 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same). *But see Trinh v. Homan*, 466 F. Supp.
7 3d 1077, 1093 (C.D. Cal. 2020) (“At no point did the *Zadvydas* Court preclude a
8 noncitizen from challenging their detention before the end of the presumptively
9 reasonable six-month period.”).

10 Even if Petitioner’s detention had exceeded six months in this case, he cannot
11 show that there is no significant likelihood of removal in the reasonably foreseeable
12 future. Contrary to Petitioner’s claims, ICE routinely removes non-citizens to Vietnam
13 and can even obtain travel documents from Vietnam for individuals, like Petitioner,
14 who have aggravated felony convictions and entered the United States prior to 1995.
15 *See Olvera Decl.* at ¶¶ 22–24 Because Petitioner has only been in the post-final order
16 removal period for four months, and there is a significant likelihood of removal in the
17 reasonably foreseeable future, it is premature for Petitioner to seek administrative or
18 judicial review of this process. Evidence of progress, even slow progress, in negotiating
19 a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s detention grows
20 unreasonably lengthy. *See, e.g., Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF
21 No. 5 at 5 (S.D. Cal. Aug. 15, 2019) (“The record at this stage in the litigation does not
22 support a finding that there is no significant likelihood of Petitioner’s removal in the
23 reasonably foreseeable future.”); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM,
24 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because
25 “Respondents have set forth evidence that demonstrates progress and the reasons for
26 the delay in Petitioner’s removal”). Here, Petitioner cannot show that there is no
27 significant likelihood of removal in the reasonably foreseeable future and the Court
28 should deny the petition.

1 Finally, there is no evidence to support Petitioner's claim that ICE will attempt
2 to remove him to a third country and the Court should not be persuaded by speculative
3 allegations of agency misconduct in the future. The only evidence before the Court
4 indicates Petitioner will be removed to Vietnam. *See Olvera Decl.* at ¶¶ 16-24.

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court should deny the petition as premature under
7 *Zadvydas*.

8 DATED: June 11, 2026

9 Respectfully submitted,

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