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

10 NAM NGOC TRAN,

11 Petitioner,

12 v.

13 CHRISTOPHER J. LAROSE; et al.,

14 Respondents.
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Case No.: 25-cv-2366-AGS-KSC

**RESPONDENTS' RESPONSE IN
OPPOSITION TO PETITIONER'S
HABEAS PETITION**

1 **I. Introduction**

2 Petitioner has filed a habeas petition pursuant to 28 U.S.C. § 2241. For the
3 reasons set forth below, the Court should deny Petitioner's requests for relief and
4 dismiss the petition.

5 **II. Factual and Procedural Background**

6 Petitioner is a citizen and national of Vietnam. On August 3, 1981, Petitioner was
7 admitted into the United States as a lawful permanent resident. On July 29, 2010,
8 Petitioner was convicted in this district of distributing a controlled substance in
9 violation of 21 U.S.C. § 841(a)(1). On October 28, 2010, an immigration judge ordered
10 Petitioner removed to Vietnam. Declaration of Jason Cole (Cole Decl.) at ¶ 4. On
11 November 16, 2010, Petitioner was released from immigration custody on an Order of
12 Supervision. Cole Decl. at ¶ 5.

13 On August 12, 2025, Immigration and Customs Enforcement (ICE) re-detained
14 Petitioner to effect his removal to Vietnam. *See* Exhibit 1.¹ ICE is currently preparing
15 a travel document (TD) request in order to effectuate Petitioner's removal to Vietnam.
16 Cole Decl. at ¶¶ 8-10. ICE is routinely obtaining TDs from Vietnam and is able to
17 arrange travel itineraries to execute final orders of removal for Vietnamese citizens. *Id.*
18 at ¶ 13. Once Petitioner's TD is obtained, ICE will arrange for his removal to Vietnam.
19 *Id.* at ¶ 16.

20 **III. Argument**

21 **A. Petitioner's Claims and Requests are Barred by 8 U.S.C. § 1252**

22 Petitioner bears the burden of establishing that this Court has subject matter
23 jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770,
24 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a
25 threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C.
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27
28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

§ 1252(g). Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation or prosecution of various stages in the deportation process.”). In other words, § 1252(g) removes district court jurisdiction over “three discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed). Petitioner’s claims necessarily arise “from the decision or action by the Attorney General to . . . execute removal orders,” over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g). The Court should deny the pending motion and dismiss this matter for lack of jurisdiction under 8 U.S.C. § 1252.

B. Petitioner is Lawfully Detained

Alternatively, Petitioner’s petition should be denied because he is properly detained under 8 U.S.C. § 1231(a). Respondents are working expeditiously to acquire the necessary travel document in order to effectuate Petitioner’s removal to Vietnam. Petitioner has not met his burden of rebutting the presumptively reasonable period of detention.

1 ***1. ICE is well-within the presumptively reasonable 6-month period to***
2 ***obtain travel documents for the purpose of executing Petitioner’s final***
3 ***order of removal.***

4 ICE’s authority to detain, release, and re-detain noncitizens who are subject to a
5 final order of removal is governed by 8 U.S.C. § 1231(a), which provides that “the
6 Attorney General shall remove the alien from the United States within a period of 90
7 days,” and “[i]f the alien does not leave or is not removed within the removal period,
8 the alien, pending removal, shall be subject to supervision under regulations prescribed
9 by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C. §
10 1231(a)(6) (permitting detention of aliens removable for violations of criminal law (like
11 Petitioner) beyond the 90-day removal period).

12 An Order of Supervision may be issued under 8 C.F.R. § 241.4, and the order
13 may be revoked under section 241.4(l)(2)(iii) where “appropriate to enforce a removal
14 order or to commence removal proceedings against an alien.” *See also* 8 C.F.R. § 241.5
15 (Conditions of release after removal period). The regulations also provide that the Order
16 of Supervision may be revoked to execute a removal due to changed circumstances,
17 particularly where ICE has determined that there is a significant likelihood of removal
18 in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(i)(2).

19 An alien ordered removed must be detained for 90 days pending the
20 government’s efforts to secure the alien’s removal through negotiations with foreign
21 governments. *See* 8 U.S.C. § 1231(a)(2)(A) (the Attorney General “shall detain” the
22 alien during the 90-day removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683
23 (2001).

24 The statute “limits an alien’s post-removal [period] detention to a period
25 reasonably necessary to bring about the alien’s removal from the United States” and
26 does not permit “indefinite detention.” *Zadvydas*, 533 U.S. at 689. The Supreme Court
27 has held that a six-month period of post-removal period detention constitutes a
28 “presumptively reasonable period of detention.” *Id.* at 683; *see also Clark v. Martinez*,
543 U.S. 371, 377 (2005) (“[T]he presumptive period during which the detention of an

1 alien is reasonably necessary to effectuate his removal is six months...”); *Lema v. INS*,
2 341 F.3d 853, 856 (9th Cir. 2003). Release is not mandated after the expiration of the
3 six-month period unless “there is no significant likelihood of removal in the reasonably
4 foreseeable future.” *Zadvydas*, 533 U.S. at 701; *see also Clark*, 543 U.S. at 377.

5 In *Zadvydas*, the Supreme Court held that “the habeas court must ask whether the
6 detention in question exceeds a period reasonably necessary to secure removal. It should
7 measure reasonableness primarily in terms of the statute’s basic purpose, namely,
8 *assuring the alien’s presence at the moment of removal.*” *Zadvydas v. Davis*, 533 U.S.
9 at 699 (emphasis added). The Court in *Zadvydas* therefore recognized that detention is
10 presumptively reasonable pending efforts to obtain travel documents, because the
11 noncitizen’s assistance is needed to obtain the travel documents, and a noncitizen who
12 is subject to an imminent, executable warrant of removal becomes a significant flight
13 risk, especially if he or she is aware that it is imminent.

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

23 In recent cases involving re-detention to effect removal, courts have recognized
24 that ICE has a presumptively reasonable period of six months to obtain travel
25 documents. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D.
26 Md. July 22, 2025) (“The government is entitled to its six-month presumptive period
27 before Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue”);
28 *Guerra-Castro v. Parra*, No. 25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D.

1 Fla. July 17, 2025) (“The Court finds that the Petition is premature because Petitioner
2 has not been detained for more than six months. Petitioner has been in detention since
3 May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*.”);
4 *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *8 (S.D. Fla. July
5 8, 2025) (“Because Grigorian has been in custody for fifteen days, his detention does
6 not violate the implicit six-month period read into the post-removal-period detention
7 statute under *Zadvydas*.”). *Cf. Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL
8 2437268, at *2 (D. Minn. May 2, 2017), *report and recommendation adopted*, No. CV
9 17-28 (PAM/FLN), 2017 WL 2437246 (D. Minn. June 5, 2017) (“Nhean’s 90-day
10 removal period began to run on October 12, 2010, when his removal order became final,
11 and he was released after 91 days of custody to supervised release on January 11, 2011.
12 Nhean was transferred back into ICE custody on August 26, 2016. Nhean’s detention
13 was presumptively reasonable for an additional 90 days (six months in total)”), *cited in*
14 *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19,
15 2018); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn.
16 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
17 the release based on changed circumstances, “the revocation would merely restart the
18 90-day removal period, not necessarily the presumptively reasonable six-month
19 detention period under *Zadvydas*”).

20 Here, Petitioner was in custody for 20 days before being released under an Order
21 of Supervision. ICE then revoked Petitioner’s Order of Supervision for the purpose of
22 executing his final order of removal. *See* Exhibit 1; Cole Decl. at ¶ 6. After revocation,
23 he was in custody for a mere 30 days before filing his petition in this case. *Id.*
24 Petitioner’s 30 days in custody is well-within the re-started 90-day removal period of
25 authorized detention, *see Farah v. INS*, 2003 WL 221809, at *5, and his 50-day total is
26 certainly within the presumptively reasonable period of six months to obtain travel
27 documents. Respondents are working expeditiously to acquire the necessary travel
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1 document in order to effectuate Petitioner's removal to Vietnam. Petitioner has not met
2 his burden of rebutting the presumptively reasonable period of detention.

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4 ***2. There is a significant likelihood of Petitioner's removal in the reasonably foreseeable future.***

5 Apart from the fact that the period of presumptive reasonableness has not yet
6 elapsed, Petitioner cannot show that there is no significant likelihood of removal in the
7 reasonably foreseeable future. Indeed, ICE has been preparing Petitioner's TD request,
8 including obtaining translations of foreign documents, and the completed request was
9 submitted prior to September 24, 2025. Cole Decl. at ¶¶ 8-11. Once ICE receives the
10 TD, it will begin efforts to secure a flight itinerary for Petitioner. ICE's confidence in
11 effecting Petitioner's removal to Vietnam is based on their current ability to do so. Cole
12 Decl. at ¶¶ 12-15.]; *see also ICE Fiscal Year 2024 Annual Report*, at 102
13 <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (ICE removed 58
14 Vietnamese citizens in FY 2024) (last visited Sept. 23, 2025). ICE has removed 587
15 Vietnamese citizens to Vietnam this fiscal year, including as recently as this month.
16 Cole Decl. at ¶¶ 14-15.

17 Further, Petitioner's case does not implicate the impossibility of repatriation in
18 *Zadvydas*. *Zadvydas* was stateless, and both countries to which he potentially could
19 have been deported (the country where he was born and the country of which his parents
20 were citizens) refused to accept him because he was not a citizen. *See id.*, at 684. The
21 deportation of the other petitioner in *Zadvydas*, Ma, was prevented, because there was
22 no repatriation agreement at that time between the United States and Cambodia. *Id.* at
23 685. Conversely, Petitioner is a Vietnamese citizen, ICE is able to obtain travel
24 documents from Vietnam, and ICE is also able to remove Vietnamese citizens to
25 Vietnam. Furthermore, ICE is actively working to effect Petitioner's removal to
26 Vietnam and his continued detention is not unconstitutionally indefinite.

27 On this record, Petitioner cannot sustain his burden, and it would be premature
28 to reach that conclusion before permitting ICE an opportunity to complete its diligent

1 efforts to effect his removal. “[E]vidence of progress, albeit slow progress, in
2 negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s
3 detention grows unreasonably lengthy.” *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB)
4 slip op., at 7 (S.D. Cal. June 2, 2003) (finding that petitioner’s one-year and four-month
5 detention does not violate *Zadvydas* given respondent’s production of evidence showing
6 governments’ negotiations are in progress and there is reason to believe that removal is
7 likely in the foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No.
8 19cv1250 WQH AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) (“the record at this
9 stage in the litigation does not support a finding that there is no significant likelihood
10 of Petitioner’s removal in the reasonably foreseeable future.”) [Exs. 35-39.]; *Marquez*
11 *v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3 (denying petition
12 because “Respondents have set forth evidence that demonstrates progress and the
13 reasons for the delay in Petitioner’s removal”).

14 **C. ICE did not violate its regulations when it revoked Petitioner’s Order of**
15 **Supervision.**

16 Petitioner claims that his detention is unlawful because the agency, in violation
17 of its regulations, did not notify him before he was re-detained. ECF No. 1 at 8, ¶ 32.
18 This claim misstates the law. The governing regulation is 8 C.F.R. § 241.4(l), which
19 contains two grounds for the revocation of an Order of Supervision: 1) a violation of
20 the conditions of release, and 2) a discretionary determination by ICE².

21 Notice is only required where an Order of Supervision is revoked for violating
22 the conditions of release. *See* 8 C.F.R. § 241.4(l)(1) (“Upon revocation, the alien will be
23 notified of the reasons for revocation of his or her release or parole.”). Conversely, where
24 “appropriate to enforce a removal order,” ICE has discretion to revoke an Order of
25

26 ² Though the regulations still reference the Immigration and Naturalization
27 Service (INS), or “the Service,” the INS was dismantled by the Homeland Security
28 Act of 2002, with its functions transferred to various agencies within the Department
of Homeland Security, including, as pertinent here, ICE.

1 Supervision and may do so without notice. *See* 8 C.F.R. § 241.4(l)(2)(iii) (omitting the
2 “notice” requirement in § 241.4(l)(1)).

3 Here, ICE permissibly exercised its discretion to revoke Petitioner’s Order of
4 Supervision to enforce his removal order. Accordingly, there is therefore no legal basis
5 for Petitioner’s claim that he was entitled under the regulation to prior notice of
6 revocation and re-detention.³

7 Moreover, even assuming the agency’s compliance with its regulations fell short,
8 Petitioner has not established substantial prejudice. *See Carnation Co. v. Sec’y of Lab.*,
9 641 F.2d 801, 804 n.4 (9th Cir. 1981) (adopting prejudice standard to determine whether
10 regulatory violation violated due process); *Cnty. Legal Servs. in E. Palo Alto v. United*
11 *States Dep’t of Health & Hum. Servs.*, 780 F. Supp. 3d 897, 921 (N.D. Cal. 2025) (the
12 *Accardi* doctrine, which generally requires federal agencies to comply with their own
13 regulations, requires plaintiffs to “show both that (1) the Government violated its own
14 regulations, and (2) Plaintiffs suffer substantial prejudice as a result of that violation.”)
15 (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268) (1954); *Al Otro*
16 *Lado, Inc. v. Mayorkas*, No. 23-cv-1367-AGS-BLM, 2024 WL 4370577, at *8–9 (S.D.
17 Cal. Sept. 30, 2024)).

18 At the time of his re-detention, Petitioner knew he was subject to a final order of
19 removal to Vietnam. *See* ECF No. 1 at ¶ 2. And as discussed above, because
20 Respondents had, and continue to have, an evidentiary basis to determine there is a
21 significant likelihood that Petitioner will be removed to Vietnam in the reasonably
22 foreseeable future, any challenge that Petitioner would have raised under the regulations
23 would have failed. Because Petitioner cannot show prejudice under these

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26 ³ There are also sensible law enforcement reasons for not providing prior notice of a re-
27 detention to execute a removal order just as there is no requirement to provide prior
28 notice of execution of an arrest warrant. Providing such notice “creates a risk that the
alien will leave town before the delivery or deportation date.” *United States v. Gonzales*
& *Gonzales Bonds & Ins. Agency, Inc.*, 103 F. Supp. 3d 1121, 1137 (N.D. Cal. 2015).

1 circumstances, the alleged violation of agency regulations does not warrant release here.
2 *See, e.g., Carnation Co.*, 641 F.2d at 804 n.4 (“violations of procedural regulations
3 should be upheld if there is no significant possibility that the violation affected the
4 ultimate outcome of the agency’s action” (citation omitted)); *United States v.*
5 *Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow regulations
6 requiring that an arrested alien be advised of his right to speak to his consul was not
7 prejudicial and thus not a ground for challenging the conviction); *United States v.*
8 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that
9 the judge had violated the rule by failing to inquire into the alien’s background, any
10 error was harmless because there was no showing that the petitioner was qualified for
11 relief from deportation).

12 IV. CONCLUSION

13 For the foregoing reasons, Respondents respectfully request that the Court
14 dismiss the petition.

15 DATED: October 2, 2025

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United States Attorney

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21 Attorneys for Respondents
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NAM NGOC TRAN,

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Case No.: 25-cv-2366-AGS-KSC

**DECLARATION OF JASON COLE IN
SUPPORT OF RESPONDENTS'
RESPONSE IN OPPOSITION TO
PETITIONER'S HABEAS PETITION**

I, Jason Cole, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following statements are true and correct, to the best of my knowledge, information, and belief:

1. I am currently employed by the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), as a Deportation Officer (DO) assigned to the Otay Mesa suboffice of the ICE ERO San Diego Field Office.

2. I have been employed by ICE as a law enforcement officer since September 28, 2020, serving as an DO since September 28, 2020. I currently remain serving in that position. As an DO, my responsibilities include case management of individuals detained

1 by ICE at the Otay Mesa Detention Center in Otay Mesa, California. I have access to
2 government databases and documentation relating to Petitioner Thoth Sun (Petitioner).

3 3. This declaration is based upon my personal knowledge and experience as a law
4 enforcement officer and information provided to me in my official capacity as an SDDO
5 for the Otay Mesa suboffice of the ICE ERO San Diego Field Office, as well as my review
6 of government databases and documentation relating to Petitioner Nam Ngoc Tran
7 (Petitioner).

8 4. On October 28, 2010, Petitioner was ordered removed to Vietnam.

9 5. On November 16, 2010, Petitioner was released from ICE custody under an
10 Order of Supervision because ICE was unable to obtain a travel document

11 6. On August 12, 2025, ICE re-detained Petitioner to execute his removal order
12 to Vietnam.

13 7. ICE is not seeking to remove Petitioner to a third country.

14 8. To effectuate Petitioner's removal to Vietnam, ERO must acquire a travel
15 document and schedule a flight for Petitioner. Since Petitioner's re-detention, ERO has
16 worked expeditiously to effectuate Petitioner's removal to Vietnam. These removal efforts
17 remain ongoing.

18 10. ERO has been diligently preparing a travel document (TD) request to send to
19 the Vietnam embassy, which requires a TD application in Vietnamese.

20 11. ERO has obtained Petitioner's Vietnamese birth certificate and has sent the
21 documents necessary for the TD request to be translated to Vietnamese. The translation
22 process takes approximately a week. Once received, ERO can submit the TD request that
23 same day. The TD packet will then be forwarded to the Vietnam embassy, at which point
24 Vietnam has thirty days to issue the travel document.

25 12. Based on my experience and having reviewed the progress of Petitioner's TD
26 request, there is a high likelihood of removal to Vietnam in the near future. I am aware of
27 no barrier to the consulate's issuance of a travel document for Petitioner.
28

1 13. ICE has been routinely obtaining travel documents for Vietnamese citizens,
2 including those who, like Petitioner, entered the United States before 1995.

3 14. Compared to fiscal year 2024, where ICE removed 58 Vietnamese citizens,
4 ICE has removed 587 Vietnamese citizens this fiscal year (as of September 18, 2025).

5 15. ICE has flights to Vietnam scheduled every month, including one next month
6 on October 22, 2025.

7 16. Once a travel document is issued for Petitioner, his removal can be effected
8 promptly.

9
10 I declare under penalty of perjury of the laws of the United States of America that the
11 foregoing is true and correct.

12
13 Executed this 24 day of September 2025.

JASON N
COLE

Digitally signed by JASON
N COLE
Date: 2025.09.24 08:47:34
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15 Jason Cole
16 Deportation Officer
17 San Diego Field Office
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