

THE HONORABLE BRIAN A. TSUCHIDA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUOT KUOT,

Petitioner,

vs.

PAMELA BONDI, *et al.*,

Respondents.

No. CV25-2313-BAT

HUOT KUOT'S REPLY TO RETURN
MEMORANDUM

I. INTRODUCTION

ICE has had 26 years to obtain travel documents that will facilitate Huot Kuot's return to Vietnam, the country his family fled in 1978 after the fall of Saigon when he was an infant. The immigration court entered a final order of removal in 1999 when he was 21 years old. Dkt. 15, ¶ 7. He is now 47. Post-order, Mr. Kuot was detained in ICE custody for approximately four months and released on an order of supervision on March 17, 2000, presumably because Vietnam rejected the government's request to for travel documents for Mr. Kuot. *Id.*, ¶¶ 6–8.

Respondents have provided no concrete evidence that ICE is any closer to obtaining such documents now despite Mr. Kuot having been re-detained since May 30, 2025. Because his removal is not reasonably foreseeable, Mr. Kuot's continued detention is not authorized by 8 U.S.C. § 1231 and he must be released. *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). As argued in the Petition, Respondents have also violated Mr. Kuot's due process rights not to be re-detained without a hearing and his regulatory rights regarding re-detention. Because Respondents provide no substantive

arguments refuting these claims, they have been waived. Mr. Kuot's petition should be granted and his immediate release ordered.

II. ARGUMENT

A. Mr. Kuot has met his burden under *Zadvydas*.

On June 15, 1999, Mr. Kuot was served a Notice to Appear charging him as removable. He was immediately detained by ICE while his case was decided by an immigration judge.¹ His removal order became final on November 8, 1999. Dkt. 15, ¶ 7. He was then subject to mandatory detention for 90 days and he remained detained until he was released on bond on March 27, 2000. *Id.*, ¶ 8. Respondents "acknowledge that Courts in this district have found that the presumptively reasonable period expires six months after a final order, regardless of detention." Dkt. 14 at 7 (citing *Tran v. Bondi*, No. CV-25-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025)).

Here, even if this Court were not to count the four months he was detained for removal proceedings in 1999–2000 or the 26 years that have passed since his removal order became final, Mr. Kuot has currently been re-detained for more than six months since he was taken into custody on May 30, 2025. Dkt. 15, ¶ 10. "Although ICE is permitted to hold noncitizens in detention beyond the 90-day window subject to certain limitations, the INA does not permit indefinite detention." *Tran*, 2025 WL 3140462, at *2 (citing *Zadvydas*, 533 U.S. at 682). Rather, "ICE may extend a noncitizen's

¹ Mr. Kuot was charged with removal based on two convictions for second-degree burglary under § 459 of the California Penal for which he was sentenced to eight months' imprisonment. Dkt. 16-1. A conviction under California's second-degree burglary statute does not qualify as an aggravated felony because § 459 is overbroad and indivisible. *Descamps v. United States*, 570 U.S. 254 (2013). Thus, a conviction under § 459 does not amount to "burglary" for any immigration purpose. *See Rendon v. Holder*, 764 F.3d 1077, 1090 (9th Cir. 2014) (Because § 459 is indivisible and the use of the modified categorical approach is not permissible, "California Penal Code section 459 cannot qualify as an attempted theft offense under 8 U.S.C. § 1101(a)(43)(U) and therefore does not render petitioner ineligible for cancellation of removal on that basis.").

1 detention only until ‘it has been determined that there is no significant likelihood of
2 removal in the reasonably foreseeable future.’” *Id.* (citing *Zadvydas*, 533 U.S. at 701).

3 The “presumptive reasonable” period following a removal order is six months.
4 *Zadvydas*, 533 U.S. at 701. After six months, a noncitizen seeking release from
5 detention bears the burden of showing that “there is no reasonable likelihood of
6 removal in the reasonably foreseeable future.” *Id.* And “once the alien provides good
7 reason to believe that there is no significant likelihood of removal in the reasonably
8 foreseeable future, the Government must respond with evidence sufficient to rebut that
9 showing.” *Id.*

10 Multiple courts in this district have found that showings comparable to those
11 made in Mr. Kuot’s petition along with otherwise available facts establish the required
12 showing. *See, e.g., Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, at *4
13 (W.D. Wash. Nov. 17, 2025) (concluding that the facts recited and findings made in
14 *Nguyen v. Scott*, No. 2:25-CV-01398-TMC, 2025 2419288, at *20–*23 (W.D. Wash.
15 Aug. 21, 2025), that “the process for procuring travel documents from Vietnam for pre-
16 1995 immigrants continues to be uncertain and protracted,” demonstrated “‘good reason
17 to believe that there is no significant likelihood of removal in the reasonably
18 foreseeable future’”); *Tran*, 2025 WL 3140462, at *3 (finding that Tran met his burden
19 where “more than six months have elapsed since the entry of the order of removal”).

20 As the court pointed out in *Nguyen*, “Petitioner is not just an immigrant from
21 Vietnam who happened to arrive in the United States before 1995[.]” 2025 2419288, at
22 *14. Rather, like Nguyen, Mr. Kuot is a refugee whose family fled Vietnam after the
23 fall of Saigon when he was an infant, with little to no ties to Vietnam. The court
24 concluded these facts “provides ‘good reason to believe that there is no significant
25 likelihood’ Vietnam will accept Petitioner ‘in the reasonably foreseeable future,’” given
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1 that it had refused to do so for more than twenty years. *Id.* (citing *Zadvydas*, 533 U.S. at
2 701).

3 Mr. Kuot also submits a declaration from FPD paralegal Julie Valencia filed in
4 *Do v. Scott*, No. 2:25-cv-02187-RSL, Dkt. 10-5, Ex. E, and the declaration filed in *Tran*
5 *v. Scott* by Tin Thanh Nguyen, an experienced immigration attorney who has
6 specialized in cases involving Vietnamese citizens for nearly two decades. No. 2:25-cv-
7 01886-TMC, Dkt. 16, Ex. F. These declarations establish, as the court found in *Nguyen*
8 “that the process for procuring travel documents from Vietnam for pre-1995 immigrants
9 continues to be uncertain and protracted.” 2025 WL 2419288, at *15.

10 Having met his burden, the burden shifts to Respondents to show that removal is
11 likely in the reasonably foreseeable future. Respondents fail to meet this burden.

12 **B. Respondents have failed to meet their burden of establishing that Mr.**
13 **Kuot is likely to be removed to Vietnam in the reasonably foreseeable**
14 **future.**

15 Respondents concede that, “as the period of post-removal confinement grows,
16 what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.”
17 Dkt. 14 at 7 (quoting *Zadvydas*, 533 U.S. at 699). Respondents further concede that
18 whether Mr. Kuot “poses a risk of flight or danger to the community are completely
19 irrelevant” and that “[t]he only proper consideration under *Zadvydas* is whether there is
20 a significant likelihood of removal in the reasonably foreseeable future” *Id.* n.5.

21 Respondents’ burden comprises two showings: can Respondents demonstrate
22 that Mr. Kuot is reasonably likely to be removed to Vietnam, and can they show that
23 any such removal is likely in the reasonably foreseeable future. Respondents must show
24 both to prevail. They show neither.

25 As to the first, Respondents present no relevant facts. For example, they present
26 no evidence as to what criteria Vietnam applies in deciding whether to issue travel
documents to individuals who left the country pre-1995. While Respondents aver there

1 has been “increased cooperation” between the United States and Vietnam, dkt. 14 at 9,
2 that tells the Court nothing about whether Vietnam is likely to issue travel documents
3 for Mr. Kuot, particularly where here, Vietnam has already declined to do so. *See*
4 *Nguyen*, 2025 WL 2419288, at *16 (finding a claim of increased cooperation between
5 Vietnam and the United States insufficient to meet Respondents’ burden), and *Abubaka*,
6 2025 WL 3204369, at *5 (same).

7 Respondents also offer the fact that Vietnam has recently issued travel
8 documents “for at least 154 Vietnamese citizens who entered the United States before
9 July 12, 1995.” Dkt. 14 at 8. But they do not say how many total requests for travel
10 documents were made to Vietnam. A “numerator alone [is] meaningless without the
11 denominator[.]” *Emigra Grp., LLC v. Fragomen, Del Rey, Bernsen & Loewy, LLP*, 612
12 F. Supp. 2d 330, 367–68 (S.D.N.Y. 2009). Respondents also provide no information as
13 to how many of those 154 individuals were ultimately removed.

14 Nor have Respondents met their burden to show that Mr. Kuot is likely to be
15 removed to Vietnam in the reasonably foreseeable future. Respondent submits the
16 declaration of Deportation Officer (DO) Daniel Strzelczyk and select ICE documents
17 related to Mr. Kuot’s removal order. But DO Strzelczyk confirms that in the over six
18 months that Mr. Kuot has been re-detained, ICE has yet to submit a request for travel
19 documents to the Vietnamese government. Instead, ICE has taken only preliminary
20 steps: “On October 24, 2025, efforts were made to obtain translated documents in order
21 to complete Petitioner’s Travel Document (‘TD’) Request” and “[o]n November 2,
22 2025, Petitioner’s A-file was requested in order to complete a TD request to Vietnam.”
23 Dkt. 15 at ¶¶ 14–15. DO Strzelczyk provides no timeline for when the request might be
24 ready for transmission, stating only that “ERO is presently working on securing
25 translations for the TD request. Once translation has been completed, the TD request
26 will be sent to ERO Headquarters for review and submission to the Vietnamese

1 Consulate.” *Id.* at ¶ 16. Nor have Respondents explained why it has taken over five
2 months to get Mr. Kuot’s A-file, which is within ICE’s complete control and
3 possession, or why it has taken so long to complete the translations given the
4 translations presumably involve text that is largely consistent in all requests involving
5 Vietnam.

6 And other than the A-file, Respondents do not say what other documents ICE
7 has in its possession or what additional documents might still be needed. Again,
8 Respondents provide no information about Vietnam’s eligibility criteria for obtaining a
9 travel document or why Respondents believe that Mr. Kuot meets that criteria,
10 particularly given that Vietnam has already declined to issue him travel documents.
11 Respondents also do not say whether Mr. Kuot has a Vietnamese birth certificate or
12 passport. Finally, while DO Strzelczyk declares that “I am aware of . . . the general
13 protocol regarding arrangements for the removal of aliens with a final order of removal
14 to Vietnam, including but not limited to, Vietnamese citizens who entered the United
15 States prior to July 12, 1995,” dkt. 15, ¶ 18, he again provides no specifics of that
16 protocol or its applicability to Mr. Kuot.

17 Almost identically vague and conclusory representations have been rejected by
18 multiple courts in this district as insufficient to rebut Petitioner’s showing. For example,
19 in *Abubaka*, the Respondents, like here, submitted a declaration from an ICE officer
20 stating that the government “was making preparations to submit a travel document
21 request to the Government of Vietnam by having certain documents translated[.]” 2025
22 WL 3204369, at *5. The court found this representation utterly unpersuasive given, as
23 here, the translated documents had not even been submitted. *Id.* The court pointed out
24 that “[e]ven assuming the required documents have now been translated and a complete
25 travel document request submitted to the Government of Vietnam, this Court ‘does not
26 know if Vietnam has acknowledged or otherwise responded to the request’ and ‘does

1 not know how long Petitioner may have to wait for travel documents—if Vietnam even
2 decides to provide them.” *Id.* (citing *Nguyen*, 2025 WL 2419288, at *18). *See also Do*
3 *v. Scott*, 2025 WL 3496909, at *4 (W.D. Wash. Dec. 5, 2025) (“Courts in this circuit
4 have regularly refused to find Respondents’ burden met where Respondents have
5 offered little more than generalizations regarding the likelihood that removal will
6 occur.”); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3
7 (E.D. Cal. July 16, 2025) (court noting that the “fact that Respondents intend to
8 complete a travel document request for Petitioner does not make it significantly likely
9 he will be removed in the foreseeable future.”); *Singh v. Gonzales*, 448 F. Supp. 2d
10 1214, 1220 (W.D. Wash. 2006) (finding government had failed to meet its burden
11 where it “merely assert[ed] that it has followed up on its request for travel documents”
12 but could not provide any “substantive indication regarding how long or when it
13 expect[ed] to obtain the necessary travel document from the Indian government.”).

14 Citing to two cases, Respondents further argue this Court “can take notice of the
15 many cases in this district alone where Vietnamese citizens have been removed on a
16 relatively short time frame once the travel document request has been submitted.” Dkt.
17 14 at 8. Notwithstanding that the government has yet to submit a travel document
18 request here, this exact same argument was rejected in *Do*, where Respondents
19 provided the court with the same two cases. *See Do*, 2025 WL 3496909, at *5. There,
20 the court noted that the “total number of cases respondents cite is small: two” and only
21 one of the two cases, *Nguyen v. Bondi et al.*, 2:25-cv-01833-JNV, involved a pre-1995
22 Vietnamese immigrant. Given that “the Court is left with one cited example in support
23 of petitioner’s contention, not ‘many’ examples[,]” the court was unpersuaded. *Do*,
24 2025 WL 3496909, at *5.

25 Finally, Respondents throw out, almost as an afterthought, a statement that
26 detention only becomes indefinite where removal to the specified country is impossible

1 or legally barred. Dkt. 14 at 8 (citing to *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th
2 Cir. 2008)). But *Diouf* involved a very different fact pattern. In *Diouf*, ICE arrested the
3 petitioner after he failed to depart voluntarily. 542 F.3d at 1226. “ICE then made
4 arrangements for Diouf to depart for Senegal, but, after Diouf refused to leave on that
5 date, continued to detain him.” *Id.* Diouf fought off his removal by filing two motions
6 to reopen, thereby obtaining stays of removal from the Ninth Circuit. *Id.*

7 The reason for Diouf’s prolonged detention, therefore, and the only obstacle for
8 his removal was his own actions, including his pending petition before the Ninth Circuit
9 and the attendant stay order. Diouf’s detention was thus not open-ended (or indefinite),
10 since it would naturally terminate once the Ninth Circuit decided the matter. The import
11 of *Diouf* is that a petitioner objecting to his removal cannot obtain release under
12 *Zadvydas* unless he shows he would be “unremovable even if the government defeated
13 his petition for review.” *Id.* at 1233. And since Senegal had issued travel documents,
14 Diouf could not meet that burden. The court cited to *Prieto-Romero v. Clark*, 534 F.3d
15 1053, 1063 (9th Cir. 2008), where similarly, “repatriations to Prieto-Romero’s country
16 of origin, Mexico, are routine and . . . the government stands ready to remove Prieto-
17 Romero as soon as judicial review is complete.” *See also Casas-Castrillon v. Dept. of*
18 *Homeland Sec.*, 535 F.3d at 948–49 (9th Cir. 2008) (concluding that an alien’s
19 detention was not unauthorized based on the length of his nearly seven-year detention
20 because nothing would prevent his removal if he were ultimately unsuccessful in his
21 then-pending petition for review”). These cases have no application here.

22 **C. Mr. Kuot’s criminal history is, as Respondents concede, “completely**
23 **irrelevant” to the *Zadvydas* analysis.**

24 Respondents also assert, without citation to legal authority or argument, that “the
25 lawfulness of Petitioner’s current detention” is “compounded here, because Petitioner
26 was arrested [but not charged] in 2025” of various alleged offenses, which they claim

1 “underscores the government’s legitimate interest in effectuating removal promptly.”
2 Dkt. 14 at 10. Respondents further state, without substantive argument, that the
3 “government has significant legitimate interests in Petitioner’s continued detention to
4 ensure he will appear for removal.” *Id.* At the same time, Respondents concede that
5 “whether [Mr. Kuot] poses a risk of flight or danger to the community are completely
6 irrelevant” and that “[t]he *only* consideration under *Zadvydas* is whether there is a
7 significant likelihood of removal in the reasonably foreseeable future[.]” *Id.* at 10, n.5
8 (emphasis added). Respondents’ concession is correct and should be accepted by this
9 Court. *See Zadvydas*, 533 U.S. at 684 (noting *Zadvydas* had “a long criminal record,
10 involving drug crimes, attempted robbery, attempted burglary, and theft,” and “a history
11 of flight, from both criminal and deportation proceedings.”).

12 Because Respondents have failed to meet their burden of showing that there is a
13 reason to believe either that Mr. Kuot is likely to be removed to Vietnam or that any
14 such removal will occur in the reasonably foreseeable future, Mr. Kuot’s rights under
15 *Zadvydas* have been violated. His petition should be granted.

16 **D. Mr. Kuot was constitutionally entitled to a hearing before being re-**
17 **detained.**

18 Respondents claim that “Petitioner’s arguments regarding notice are in error”
19 because “*EA. T.-B [v. Wamsley]*, No. CV25-1192-KKE, 2025 WL 2402130] and other
20 cases cited by Petitioner refer to pre-removal detention pursuant to 8 U.S.C.
21 § 1225(b) or § 1226(a)—not *post-order* removal under § 1231.” Dkt. 14 at 2.
22 Specifically, Respondents argue that “[t]he cases Petitioner invokes in urging
23 application of the *Mathews* factors are inapposite” because “[e]ach arises in the context
24 of *pre-order* detention or under regulatory schemes wholly distinct from the *post-order*
25 detention framework at issue here.” *Id.* at 10.
26

1 While Respondents are correct that the specific cases cited in Mr. Kuot's
 2 petition, dkt. 1 at 8–11, did not involve individuals detained under § 1231(a), numerous
 3 cases have applied *Mathews* to § 1231(a) detainees and found they were entitled to a
 4 pre-redetention hearing. Just recently, Judge Ricardo Martinez held, “Based on this
 5 review of the *Mathews* factors, the Court finds that Petitioner has a protected liberty
 6 interest in his continuing release from custody, and that due process requires that
 7 Petitioner receive proper notice and an opportunity to respond before he can be re-
 8 detained.” *Jimenez v. Bondi*, No. C25-2167RSM, 2025 WL 3466925, at *2 (W.D.
 9 Wash. Dec. 3, 2025) The court granted the petition and ordered Jimenez’s immediate
 10 release, barring re-detention “without providing adequate notice of the reasons for his
 11 re-detention and a meaningful opportunity to respond.” *Id.* at *3. *See also, e.g., Perez v.*
 12 *Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at *5 (M.D. Fla. Dec. 3,
 13 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL 3137296, at *5 (D. Or.
 14 Nov. 10, 2025). *Cf. Lopez Dejesus, v. Bostock*, No. 25-CV-01427-JHC-TLF, 2025 WL
 15 3268002 (W.D. Wash. Nov. 24, 2025) (applying *Mathews* factors to conclude that
 16 petitioner was entitled to pre-redetention due process, even though his detention was
 17 under the mandatory detention provisions of 8 U.S.C. § 1226(c)).

18 **E. Mr. Kuot’s claims regarding removal to a third country are ripe.**

19 Finally, Respondents state, again without substantive argument or citation to
 20 legal authority, that “[w]hile much of [Mr. Kuot’s] Petition discusses removal to a third
 21 country, Petitioner presents no evidence of any intention to do so. ICE has no intention
 22 of removing Petitioner to a third country.” Dkt. 14 at 2.

23 In *Nguyen*, the government also represented that it was seeking only to remove
 24 the petitioner to his home country of Vietnam and stipulated that it would not attempt to
 25 remove him to any other country unless Vietnam rejected him. 2025 WL 2419288, at
 26 *27. The court was unpersuaded, explaining that “the Ninth Circuit has found such

1 voluntary promises insufficient” to eliminate the potential irreparable injury that
2 petitioner could face if the promise was withdrawn, particularly given the underlying
3 allegations that third party removals were being conducted rapidly and without an
4 opportunity for due process. *Id.* at *27–28.

5 Similarly, the court in *Louangmilith v. Noem, et al.*, No. 25-cv-2502-JES-MSB,
6 2025 WL 2881578 (S.D. Cal. Oct. 9, 2025), rejected the government’s argument that
7 “this situation is not ripe for adjudication because ICE is not seeking to remove
8 Petitioner to a third country.” *Id.* at *4. Despite the government’s representations, the
9 court citing to *Nguyen*, stated it was “more persuaded by Petitioner’s arguments” that
10 “by the time [the claims] are ripe by the Government’s argument, it will be too late for
11 the individuals to meaningfully challenge the removal.” *Id.* (granting petition on claim
12 that ICE should be prevented from removing petitioner to a third county without due
13 process). *See also Hambarsonpour v. Bondi*, No. C25-1802-RSM, 2025 WL 3251155,
14 at *5 (W.D. Wash. Nov. 21, 2025) (rejecting government’s ripeness argument).

15 In addition, the events cited in Mr. Kuot’s petition, dkt. 1 at 18–21, demonstrate
16 that the government has undertaken rapid third-country removals without the process
17 required by its own regulations, further showing that such an action against him is
18 sufficiently likely to render the matter ripe.

19 Because Respondents have provided no substantive response to Mr. Kuot’s
20 petition on the issue of third country removal, they have waived any arguments against
21 this claim. This Court should grant the two forms of relief that Mr. Kuot has requested
22 related to third country removal. *See Abubaka*, 2025 WL 3204369, at *7–8 (W.D.
23 Wash. Nov. 17, 2025) (ruling in petitioner’s favor on merits of third country removal as
24 to both due process and punitive nature of removal).

1 **III. CONCLUSION**

2 The Court should grant Mr. Kuot's petition on all grounds and grant the
3 requested relief, including his immediate release.

4 DATED this 8th day of December 2025.

5 Respectfully submitted,

6 *s/ Vicki W.W. Lai*

7 Assistant Federal Public Defender

8 Attorney for Huot Kuot

9 I certify that this reply contains 3,484 words, in compliance with the Local Civil Rules.
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