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DUNG HOANG NGUYEN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DUNG HOANG NGUYEN,	)	Case No. 1:25-cv-01708-AC(HC)
Petitioner,	)	
vs.	)	PETITIONER'S REPLY IN SUPPORT OF
	)	MOTION FOR TEMPORARY
WARDEN OF THE GOLDEN STATE	)	RESTRAINING ORDER
ANNEX DETENTION FACILITY, ET,	)	
AL	)	Judge: Hon. Allison Claire
Respondents.	)	

I. Introduction

The Respondent does not deny any of Mr. Nguyen's sworn claims that he has been ordered removed to Vietnam and has been detained by ICE for a total of more than six months since that removal order became final in 2003, including over eight months in 2003 and another four months in 2008. ECF 1 p. 2. According to Fed. R. Civ. Procedure 8, the failure to deny an allegation in a complaint is treated as an admission. Respondent does not deny that Mr. Nguyen has complied with supervision under 8 C.F.R. §241.4, and 8 C.F.R. §241.13. The parties agree that he has been detained more than five months after he was re-arrested on July 25, 2025, while checking in at the ICE office as he had done for years. The Respondent does not deny Mr. Nguyen's claim that he entered the United States prior to 1995, and that even after Vietnam signed a Memorandum of Understanding in 2020, Vietnam has continued to not issue timely travel documents for pre-1995 immigrants. ECF 1 p. 2. For the reasons set forth in Mr.

1 Nguyen's petition and below, this Court should grant Mr. Nguyen's petition or, at the very least,
 2 grant him a preliminary injunction (1) requiring Respondents to immediately release him under
 3 the same conditions he was released previously; (2) enjoining Respondents from re-detaining
 4 Mr. Nguyen unless they obtain a travel document for his removal and unless and until they
 5 follow all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable
 6 statutory and regulatory procedures; and (3) enjoining Respondents from removing Mr. Nguyen
 7 to a third country without adequate notice and an opportunity to be heard.

8 **II. Argument**

9 **A. Mr. Nguyen Is Likely to Succeed on the Merits.**

10 Through his habeas petition, Mr. Nguyen showed that he is likely to succeed on the
 11 merits of his petition. The parties agree that Mr. Nguyen's removal order has been final since
 12 June 17, 2003. ECF 16, p. 5. Respondents establish that after Mr. Nguyen's removal order
 13 became final on June 17, 2002, Mr. Nguyen was detained by ICE on July 25, 2025 until today
 14 which is five months and ten days. The Respondent's Opposition has not denied that Mr.
 15 Nguyen was previously detained for more than 18 months total after he was ordered deported in
 16 2003.

17 ICE has been unable to remove Mr. Nguyen in the nearly 22 years since his removal
 18 order became final and in the five years since Vietnam signed the Memorandum of
 19 Understanding regarding pre-1995 immigrants.

20 As Mr. Nguyen claimed in his habeas corpus petition, his detention is impermissible
 21 under *Zadvydas v. Davis*, 533 U.S. 678 (2001), because he has already been detained for more
 22 than six months following his removal order and he is not likely to be deported in the reasonably
 23 foreseeable future. ECF 1, pp. 2, 13-14. In addition, his detention is impermissible because
 24 Respondents failed to comply with regulations governing re-detention of persons subject to
 25 removal orders. ECF 1, pp. 8-9, 14-15. Further, removal of Mr. Nguyen to a third country
 26 without adequate notice and an opportunity to be heard would violate Mr. Nguyen's rights under
 27 the Fifth Amendment to the United States Constitution, the Convention Against Torture, and the
 28 Immigration and Nationality Act. ECF 1, pp. 9-12, 14-15. In addition, punitive banishment to a

third country would violate the Fifth, Sixth and Eighth Amendments. ECF 1, pp. 12-3, 15-16.

1. Mr. Nguyen Will Likely Succeed On His Claim That His Current Detention Violates *Zadvydas*.

Where the government has not shown a significant likelihood that a petitioner who has been detained for over six months following their final order of removal will be removed in the reasonably foreseeable future, the petitioner is likely to succeed on claim that he is entitled to relief under *Zadvydas*. *Tran v. Noem*, No. 1:25-CV-01523-TLN-CKD, 2025 WL 3268491, at *2 n. 1 (E.D. Cal. Nov. 24, 2025).

In its Opposition to the Motion for a TRO, the government does not even claim that his removal is imminent. Respondent has not fulfilled the government's burden under *Zadvydas* to show that despite Vietnam's refusal to issue a travel document for Mr. Nguyen in the last five months, there is a significant likelihood that Mr. Nguyen will be removed in the reasonably foreseeable future. Evidence that "there is at least some possibility that Vietnam will accept Petitioner at some point . . . is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future." *Nguyen v. Scott*, 2025 WL 2419288, at *16 (W.D. Wash. Aug. 21, 2025); *see also Tran v. Scott*, 2025 WL 2898638, at *4 (W.D. Wash. Oct. 12, 2025) (government failed to show significant likelihood of removal in reasonably foreseeable future where it provided no data on the number of requests they have recently submitted to Vietnam, how many requests Vietnam has granted, or how many in either category have concerned pre-1995 Vietnamese immigrants like petitioner); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4-5 (E.D. Cal. July 16, 2025) (neither 2020 Memorandum of Understanding between Vietnam and the United States, which gives Vietnam discretion whether to issue a travel document, nor fact that another person was deported to Vietnam, establish significant likelihood petitioner will be deported to Vietnam in the reasonably foreseeable future); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151 (D. Mass. 2025) (neither 2020 Memorandum of Understanding between Vietnam and United States nor evidence that some Vietnamese nationals were deported in fiscal years 2024 and 2025, sufficient to show a significant likelihood petitioner would be removed to Vietnam in the reasonably foreseeable future). *Andreasyan v.*

1 *Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's
 2 case was "still under review and pending a decision" did not meet respondents' burden); *Islam v.*
 3 *Kane*, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*,
 4 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh
 5 Consulate that the travel document request is pending does not provide any insight as to when, or
 6 if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala.
 7 2011) (granting petition despite pending travel document request, where "[t]he government
 8 offers nothing to suggest when an answer might be forthcoming or why there is reason to believe
 9 that he will not be denied travel documents"); *Mohamed v. Ashcroft*, 2002 WL 32620339, at *1
 10 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

11 Respondents argue that "petitioner has been detained by DHS for less than 6 months."
 12 ECF 16. Plainly, this is inaccurate as he has been detained for over 18 months since his order of
 13 removal became final, which was two years after the Supreme Court decided in *Zadydas v.*
 14 *Davis*, *supra*, that prolonged detention without probability of deportation was unconstitutional.
 15 After his final order of removal was issued, Mr. Nguyen was detained for 12 months between
 16 2003 and 2008, and he has been re-detained for approximately five-and-a-half months since July
 17 2025. ECF 1, 16. The six-month presumptively reasonable period to carry out a removal order
 18 "does not reset when the government detains an alien under 8 U.S.C. § 1231(a), releases him
 19 from detention, and then re-detains him again." *Sied v. Nielsen*, 2018 WL 1876907, at *6 (N.D.
 20 Cal. Apr. 19, 2018) (citing authorities); *Nguyen v. Warden*, 2025 WL 2971654, at *2 (S.D. Cal.
 21 Oct. 21, 2025) (same); *Siguenza v. Moniz*, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025)
 22 ("Most courts to consider the issue have concluded that the *Zadydas* period is cumulative,
 23 motivated, in part, by a concern that the federal government could otherwise detain noncitizens
 24 indefinitely by continuously releasing and re-detaining them.") (collecting cases).

25 **2. Mr. Nguyen Will Likely Succeed On His Claim that Respondent** 26 **Violated Governing Regulations in Revoking His Release.**

27 As to Mr. Nguyen's claim that ICE violated its own regulations in re-detaining him,
 28 Respondents do not even argue any changed circumstance to justify ICE's re-detention of Mr.

1 Nguyen. Respondents' argument falls short. Respondents have not provided any evidence that
2 despite Vietnam's refusal to issue a travel document to Mr. Nguyen for over twenty years, it is
3 now willing to do so in the reasonably foreseeable future. *Cf. Tran*, 2025 WL 3268491, at *3
4 (Petitioner likely to succeed on merits of claim that Respondent violated 8 C.F.R. § 241.13(i) in
5 re-detaining petitioner where Respondents "have not stated whether they have an indication from
6 Vietnam that it is likely to issue such a travel document.").

7 "[A] vague assertion that after a review of petitioner's file, ICE determined petitioner
8 could be expeditiously removed is insufficient to constitute adequate notice." *Uzzhina v.*
9 *Chestnut*, No. 1:25-CV-01594-DAD-SCR, 2025 WL 3458787, at *5 (E.D. Cal. Dec. 2, 2025).
10 *See also Hoac*, 2025 WL 1993771, at *4 (where "Respondents have not provided any details
11 about why a travel document could not be obtained in the past, nor have they attempted to show
12 why obtaining a travel document is more likely this time around," TRO granted requiring release
13 from custody).

14 This Court should therefore grant the petition, or at least a preliminary injunction, on
15 Ground Four of Mr. Nguyen's petition. Numerous courts have granted habeas petitions and/or
16 ordered an immigration detainee's release where ICE has failed to follow its own regulations in
17 re-detaining the petitioner. *See, e.g., Phan v. Noem*, 2025 WL 2898977, at *4 (S.D. Cal. Oct. 10,
18 2025) (granting petition and ordering release of person with final order of removal to Vietnam
19 where "ICE's failure to provide an interview and opportunity to respond" and failure to show a
20 determination "that there is a significant likelihood that the [noncitizen] may be removed in the
21 reasonably foreseeable future" fell short of requirements of 8 C.F.R. § 241.13(i)); *Yee S. v.*
22 *Bondi*, 2025 WL 2879479, at *6 (D. Minn. Oct. 9, 2025) (partially granting petition and ordering
23 petitioner released where "Petitioner has shown that ICE's re-detention of him on June 6, 2025
24 violated the law because ICE did not comply with its own regulations under section
25 241.13(i)(2)"); *Hoac*, 2025 WL 1993771, at *4.¹

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28 ¹ *See also Bui v. Warden, Otay Mesa Detention Facility, et al.*, 2025 WL 2988356, at *5 (S.D.
Cal. Oct. 23, 2025) (granting petition and ordering release where respondent failed to follow its
own regulations in revoking release); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL

3. Mr. Nguyen Will Likely Succeed on His Claim That ICE's Third-Country Removal Policy Violates Due Process.

Respondents do not try to defend ICE's third-country removal policy on the merits. This Court should therefore bar the government from removing Mr. Nguyen to a third country without complying with procedures mandated by Ninth Circuit precedent. *G.A.A. v. Chestnut*, No. 1:25-CV-01102-EPG-HC, 2025 WL 3251316, at *7 (E.D. Cal. Nov. 21, 2025) (enjoining respondent from removing petitioner to third country without providing process required by Ninth Circuit precedent); *see also Nguyen v. Scott*, 2025 WL 2419288, at *19 (W.D. Wash. Aug. 21, 2025) ("Petitioner is likely to succeed on his claim that removal to a third country under ICE's current policy, without meaningful notice and reopening of his removal proceedings for a hearing would violate due process."). The fact that ICE failed to comply with the notice and opportunity to be heard for re-detention under 8 C.F.R. § 241(l)(1) and § 241.13(i)(3) in Mr. Nguyen's case demonstrates that there is a reasonable probability that ICE will not comply with the advance notice requirements for deportation to third country in 8 U.S.C. § 1231(b)(2).

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B. Mr. Nguyen Suffers Irreparable Harm Every Day He is Illegally Detained.

The Ninth Circuit has recognized "the irreparable harms imposed on anyone subject to immigration detention." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1253 (W.D. Wash. 2025) (citing *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017)) ("For example ... subpar

2898985 (S.D. Cal. Oct. 10, 2025) (same); *Sun v. Noem*, 2025 WL 2800037 (S.D. Cal. Sept. 30, 2025) (granting TRO for release where respondent failed to follow its own regulations in revoking release); *Van Tran v. Noem*, 2025 WL 2770623 (S.D. Cal. Sept. 29, 2025) (same); *Zhu v. Genalo*, 2025 WL 2452352, at *9 (S.D.N.Y. Aug. 26, 2025) (partially granting petition and ordering release where respondent did not follow regulations before revoking release); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025) ("because ICE did not follow its own regulations in deciding to re-detain Ceesay, his due process rights were violated, and he is entitled to release."); *M.S.L. v. Bostock*, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025) (granting petition and ordering release where respondent violated regulations in revoking release); *Escalante v. Noem*, 2025 WL 2206113, at *4 (E.D. Tex. Aug. 2, 2025) (same); *Liu v. Carter*, 2025 WL 1696526, at *3 (D. Kan. June 17, 2025) (same); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (ordering ICE to release petitioner where ICE failed to follow its own regulations in detaining petitioner).

1 medical and psychiatric care in ICE detention facilities, the economic burdens imposed on
 2 detainees and their families as a result of detention, and the collateral harms to children of
 3 detainees whose parents are detained.”). “In the absence of an injunction, harms such as these
 4 will continue to occur needlessly on a daily basis.” *Hernandez*, 872 F.3d at 995.

5 **C. The Balance of Equities Favor Grant of a Temporary** 6 **Restraining Order and Preliminary Injunction.**

7 The consideration of the balance of equities and the public interest in an injunction merge
 8 when the government is a party. *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL
 9 2791778, at *10 (E.D. Cal. Aug. 20, 2025) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d
 10 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009))).

11 “It is always in the public interest to prevent the violation of a party’s constitutional
 12 rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Furthermore, “[j]ust as the
 13 public has an interest in the orderly and efficient administration of this country’s immigration
 14 laws, the public has a strong interest in upholding procedural protections against unlawful
 15 detention.” *Hoac*, 2025 WL 1993771, at *6 (internal quotation marks omitted). Here, where Mr.
 16 Nguyen’s current detention violates his constitutional right to due process, the balance of equities
 17 favor issuance of a preliminary injunction (1) reinstating Mr. Nguyen’s release on supervision,
 18 and (2) prohibiting the government from removing him to a third country without an opportunity
 19 to file a motion to reopen with an Immigration Judge.

20 **III. Conclusion**

21 For the foregoing reasons and the reasons set forth in Mr. Nguyen’s petition, this Court
 22 should grant Mr. Nguyen’s petition, or at the very least grant a preliminary injunction, providing
 23 that

24 1. Respondents SHALL IMMEDIATELY RELEASE Petitioner under appropriate
 25 conditions of supervision set forth in 8 C.F.R. § 241.5;

26 2. Respondents are PERMANENTLY ENJOINED AND RESTRAINED from
 27 effectuating Petitioner’s third country removal unless Respondents adhere to the following
 28 procedures:

1 a. Provide Petitioner and a minimum of ten (10) days to raise a fear-based claim for
2 protection prior to removal;

3 b. If Petitioner demonstrates reasonable fear of removal to the third country, Respondents
4 must move to reopen Petitioner's removal proceedings;

5 c. If Petitioner is not found to have demonstrated a reasonable fear of removal to the third
6 country, Respondents must provide a meaningful opportunity, and a minimum of fifteen (15)
7 days for Petitioner to seek reopening of his immigration proceedings.

8
9 Respectfully submitted,

10 HEATHER E. WILLIAMS
Federal Defender

11 Date: January 5, 2026

12 /s/ Douglas Beevers
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