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9 Attorneys for Respondents

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 SON TAN NGUYEN,

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN,
16 *Secretary of the Department of Homeland*
Security, et al.,

17 Respondents.
18
19

Case No.: 26-cv-02815-JAO-JLB

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

1 **I. INTRODUCTION**

2 Petitioner Son Tan Nguyen has filed a habeas petition. For the reasons set forth
3 below, the Court should deny Petitioner's requests for relief and dismiss the petition.

4 **II. FACTUAL BACKGROUND**

5 Petitioner is a native and citizen of Vietnam. Declaration of Jason Cole ("Cole
6 Decl.") ¶ 3. Petitioner was admitted to the United States as a refugee on March 6, 1985.
7 *Id.* ¶ 4. On January 22, 2013, Petitioner was ordered removed from the United States by
8 an Immigration Judge. *Id.* On January 30, 2013, Petitioner was released from
9 immigration custody on an order of supervision as the government was unable to obtain
10 travel documents to effectuate Petitioner's removal to Vietnam. *Id.* ¶ 5. On April 23,
11 2026, Petitioner was taken into custody so that ERO could effectuate the outstanding
12 removal order. At the time of re-detention, Petitioner was provided with a Notice of
13 Revocation of Release, explaining that his release on an order of supervision was being
14 revoked due to changed circumstances (i.e., that ICE has the ability and means to
15 effectuate removal). Exhibit 2. Additionally, Petitioner was provided with an informal
16 interview. *Id.* ¶ 6; Exhibit 3.

17 Since Petitioner's re-detention, ICE has worked expeditiously to obtain a travel
18 document (TD) from the Vietnamese government, to include submitting a travel
19 document request on May 6, 2026. *Id.* ¶ 8. Once Petitioner's TD is obtained, ICE will
20 arrange for a removal flight to Vietnam. In fiscal year 2025, ICE removed at least 587
21 Vietnamese citizens to Vietnam. Of those 587 removed, 324 were Vietnamese citizens
22 who immigrated to the United States before July 12, 1995, like Petitioner. *Id.* ¶ 10. ICE
23 is not seeking to remove Petitioner to a third country. *Id.* ¶ 13.

24 **III. ARGUMENT**

25 An alien ordered removed must be detained for ninety (90) days pending the
26 government's efforts to secure the alien's removal through negotiations with foreign
27 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien
28 during the 90-day removal period). The statute "limits an alien's post-removal detention

1 to a period reasonably necessary to bring about the alien's removal from the United
2 States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678,
3 689 (2001). The Supreme Court has held that a six-month period of post-removal
4 detention constitutes a "presumptively reasonable period of detention." *Id.* at 683.
5 Release is not mandated after the expiration of the six-month period unless "there is no
6 significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

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

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

25 Here, the Petition should be denied as premature. Petitioner brings this challenge
26 less than two months into a detention period that the Supreme Court held is presumed
27 reasonable until the six-month-mark. The Ninth Circuit has also emphasized, "*Zadvydas*
28 places the burden on the alien to show, *after a detention period of six months*, that there

1 is ‘good reason to believe that there is no significant likelihood of removal in the
2 reasonably foreseeable future.’” *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003)
3 (quoting *Zadvydas*, 533 U.S. at 701) (emphasis added); *see also Xi v. INS*, 298 F.3d
4 832, 840 (9th Cir. 2003). Petitioner’s presumptively reasonable removal period here
5 should extend into September of 2026, before any challenge should be entertained. *See*
6 *Ali v. Barlow*, 446 F.Supp. 2d 604, 609–10 (E.D. Va. 2006) (finding habeas petition
7 was unripe for review where *Zadvydas* six-month period had not expired; dismissing
8 petition without prejudice); *Gonzales v. Naranjo*, No. EDCV 12–1392 DSF (FFM),
9 2012 WL 6111358, at *4–5 (C.D. Cal. Nov. 5, 2012) (same); *Waraich v. Ashcroft*, No.
10 CVF051036RECSMSHC, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same).
11 *But see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“At no point did
12 the *Zadvydas* Court preclude a noncitizen from challenging their detention before the
13 end of the presumptively reasonable six-month period.”).

14 Even if the removal period had extended beyond six months, Petitioner cannot
15 show that there is no significant likelihood of removal in the reasonably foreseeable
16 future. It is true that previously the government was not able to remove Petitioner to
17 Vietnam, as with other similarly situated individuals, because the prior political
18 relationship between the United States and Vietnam prevented their removals. That
19 produced significant litigation from detainees who argued that they could not be
20 removed to their home nations due to the lack of cooperation, and so their detentions
21 were indefinite. But that barrier to removal was removed. This issue was exhaustively
22 addressed in more recent litigation addressing detainees facing removal to Vietnam. In
23 2020, the *Trinh* court explained the then-current state of affairs:

24 The parties now agree that Vietnam does not maintain a blanket policy of
25 refusing to repatriate pre-1995 immigrants. ... Instead, Vietnam now
26 considers each request from ICE on a case-by-case basis. (*Id.*) ICE
27 frequently requests travel documents from Vietnam for pre-1995
28 immigrants, and Vietnam issues them in a non-negligible portion of cases.
..... Petitioners do not appear to dispute that once Vietnam issues a travel
document, removal becomes significantly likely, rendering class members

1 unable to meet their initial burden under *Zadvydas*.

2 *Trinh, supra*, 466 F. Supp. 3d at 1090.

3 Petitioner may complain that the government is still requesting his travel
4 documents, and that it did not already obtain such documents before taking him back
5 into detention. *Zadvydas* does not require the government to pre-arrange a noncitizen's
6 removal travel before arresting them, which would often be extremely difficult if not
7 impossible. The constitutional standard is whether there is "a significant likelihood of
8 removal" in the "reasonably foreseeable future"—not whether a removal will occur
9 "imminently." The law does not require that "every [noncitizen] not removed must be
10 released after six months." *Id.* Instead, the Supreme Court was clear that the
11 Constitution prevents only "indefinite" or "potentially permanent" detention. *Id.* at 689–
12 91.

13 Since his re-detention, ICE has worked as expeditiously as possible to effectuate
14 Petitioner's removal to Vietnam, including submitting a travel document request on
15 May 6, 2026. Cole Decl. ¶¶7-8. Because Petitioner has been detained for less than six
16 months, it is premature for Petitioner to seek administrative or judicial review of that
17 process. Evidence of progress, even slow progress, in negotiating a petitioner's
18 repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably
19 lengthy. *See, e.g., Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5
20 (S.D. Cal. Aug. 15, 2019) ("The record at this stage in the litigation does not support a
21 finding that there is no significant likelihood of Petitioner's removal in the reasonably
22 foreseeable future."); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL
23 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because "Respondents have
24 set forth evidence that demonstrates progress and the reasons for the delay in
25 Petitioner's removal"). Here, Petitioner cannot show that there is no significant
26 likelihood of removal in the reasonably foreseeable future and the Court should deny
27 the petition. Courts therefore properly deny *Zadvydas* claims under such circumstances.
28 *See Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008)

1 (Martinez, J.) (denying *Zadvydas* petition where petitioner had been detained more than
2 14 months post-final order); *Nicia v. ICE Field Off. Dir.*, 2013 WL 2319402, at *3
3 (W.D. Wash. May 28, 2013) (Martinez, J.) (holding petitioner “failed to satisfy his
4 burden of showing that there is no significant likelihood of his removal in the reasonably
5 foreseeable future” where he had been detained more than seven months post-final
6 order).

7 As to the regulatory violation claims, Petitioner was provided with a written
8 Notice of Revocation of Release, and an informal interview was provided. *See* Exhibit
9 2-3. Even if the agency’s compliance with the regulations fell short, Petitioner has not
10 established prejudice nor a constitutional violation. *See Brown v. Holder*, 763 F.3d
11 1141, 1148–50 (9th Cir. 2014) (“The mere failure of an agency to follow its regulations
12 is not a violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174, 1178 (9th
13 Cir.2007) (“Compliance with . . . internal [customs] agency regulations is not mandated
14 by the Constitution”) (internal quotation marks omitted); *United States v.*
15 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that
16 the judge had violated the rule by failing to inquire into the alien’s background, any
17 error was harmless because there was no showing that the petitioner was qualified for
18 relief from deportation). As Petitioner cannot show prejudice under these
19 circumstances, the alleged violation of agency regulations does not warrant the relief he
20 seeks. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion*
21 *amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) (“While the
22 regulation provides the detainee some opportunity to respond to the reasons for
23 revocation, it provides no other procedural and no meaningful substantive limit on this
24 exercise of discretion as it allows revocation ‘when, in the opinion of the revoking
25 official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien,
26 or any other circumstance, indicates that release would no longer be appropriate.’”)
27 (emphasis in original) (citing 8 C.F.R. §§ 241.4(*I*)(2)(i), (iv)); *Carnation Co. v. Sec’y of*
28 *Labor*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“violations of procedural regulations

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

10 To the extent Petitioner is challenging ICE's decision to detain him for the
11 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
12 ("Except as provided in this section and *notwithstanding any other provision of law*
13 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
14 *corpus provision*, and sections 1361 and 1651 of such title, no court shall have
15 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
16 decision or action by the Attorney General to commence proceedings, adjudicate cases,
17 or *execute removal orders* against any alien under this chapter.") (emphasis added); *see*
18 *also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There
19 was good reason for Congress to focus special attention upon, and make special
20 provision for, judicial review of the Attorney General's discrete acts of "commenc[ing]
21 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent
22 the initiation or prosecution of various stages in the deportation process."); *Limpin v.*
23 *United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly
24 dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to
25 arrest and detain an alien at the commencement of removal proceedings are not within
26 any court's jurisdiction").

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5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court should deny Petitioner's request for
7 injunctive relief and dismiss the petition as premature under *Zadvydas*.

8 DATED: May 11, 2026

9 Respectfully submitted,

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