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

SON TAN NGUYEN,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 26-cv-2815-JAO-JLB

**Traverse in
Support of
Petition for Writ of
Habeas Corpus**

INTRODUCTION

Having received the government's Return and supporting evidence, this Court may grant Mr. Nguyen's petition on the basis of either his regulatory or his *Zadvydas* claim. To do so, the Court need only follow recent decisions in this district and around the country.

First, this Court should grant the petition on Claim One because the government has not complied with 8 C.F.R. §§ 241.4, 241.13. For persons like Mr. Nguyen, those regulations permit re-detention only if ICE (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2), (2) makes that finding "on account of changed circumstances," *id.*, (3) provides "an initial informal interview promptly," *id.* §§ 241.4(l)(1), 241.13(i)(3), and (4) "affords the [person] an opportunity to respond to the reasons for revocation," *id.* Here, ICE provided Mr. Nguyen a Notice of Revocation of his supervised release stating that "ICE is seeking a travel document to effect your expeditious removal to Vietnam." ECF 4-1 at 7. But ICE has been "seeking a travel document" to Vietnam for 13 years. And nothing in the Notice alleges any "changed circumstances"—in fact, the section on the same page involving "changed circumstances" is *not* checked. ECF 4-1 at 7. Thus, ICE violated the regulations.

Second, this Court may grant the petition on Claim Two because the government provides no evidence to satisfy the success element ("a significant likelihood of removal") or timing element ("in the reasonably foreseeable future") of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Although Respondent's Response references a declaration from Deportation Officer Cole, no such declaration appears in Respondents' exhibits. Even if it had, Respondents never say (1) what proportion of Vietnamese citizens for whom travel documents are sought actually receive them, or (2) whether Mr. Nguyen qualifies for removal at all under the 2020 Memorandum of Understanding ("MOU"). (The government

1 does not dispute that he may not be removed under the 2008 treaty.) Nor do
2 Respondents give any indication of how long it takes to get travel documents for
3 pre-1995 Vietnamese citizens—no statistics, no estimations, no anecdotes, no
4 nothing. The government instead relies on ICE’s mere efforts to seek travel
5 documents without distinguishing these from the same efforts it made 13 years
6 ago. This Court should therefore grant the petition on either ground and order
7 Mr. Nguyen’s immediate release.

8 **ARGUMENT**

9 **I. Claim One: Respondents violated the regulations governing re-**
10 **detention.**

11 Because Respondents’ evidence is plainly insufficient to rebut the
12 regulatory violations alleged in Mr. Nguyen’s petition, this Court should order his
13 immediate release.

14 First, ICE has not complied with 8 C.F.R. §§ 241.4, 241.13. The
15 government does not deny that these regulations apply to Mr. Nguyen, that he
16 may challenge them in this habeas case, or that failure to comply with them is
17 grounds for release. *See* ECF 4 at 2–7. To the contrary, the government appears to
18 agree that Mr. Nguyen’s release was revoked under 8 C.F.R. § 241.4(1)(2)(iii) and
19 8 C.F.R. § 241.13(i)(2). Dkt. 4 at 2–7. But the government claims that ICE
20 complied with these regulations. *Id.* ICE did not.

21 Begin with 8 C.F.R. § 241.13(i)(2). That section provides that ICE may
22 “revoke an alien’s release under this section and return the alien to custody if, on
23 account of changed circumstances, the Service determines that there is a
24 significant likelihood that the alien may be removed in the reasonably foreseeable
25 future.” 8 C.F.R. § 241.13(i)(2) (emphasis added). That “regulation require[s]
26 (1) an individualized determination (2) by ICE that, (3) based on changed
27 circumstances, (4) removal has become significantly likely in the reasonably
28 foreseeable future.” *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023).

1 Here, the Notice of Revocation of Release simply states that “ICE has the
2 ability and means to effectuate your removal” because it is “seeking a travel
3 document to effect your expeditious removal to Vietnam.” ECF 4-1 at 7. But ICE
4 has been “seeking a travel document to effect [Mr. Nguyen’s] expeditious
5 removal” for 13 years, ever since he was ordered removed in 2013. So nothing
6 about these statements shows what circumstances have “changed” since 2013
7 under § 241.13(i).

8 Nevertheless, Respondents claim that the Notice “explain[s] that his release
9 on an order of supervision was being revoked due to changed circumstances (i.e.,
10 that ICE has the ability and means to effectuate removal).” ECF 4 at 2. But ICE
11 only has the “ability and means to effectuate removal” once it *receives* a travel
12 document—not merely when it is “seeking” a travel document, which it has been
13 doing for 13 years. Indeed, Respondents’ own Notice of Revocation of Release
14 form confirms this, since there is a separate box on the form that is *not* checked
15 that states: “Circumstances have changed such that there is a significant likelihood
16 of removal in the reasonably foreseeable future.” ECF 4-1 at 7. In other words, the
17 structure of Respondents’ own Notice form confirms that merely seeking a travel
18 document is different than showing changed circumstances.

19 Courts have held that this a violates the regulations. “Simply to say that
20 circumstances had changed or there was a significant likelihood of removal in the
21 foreseeable future is not enough.” *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL
22 2533673, at *3 (D. Minn. Sept. 3, 2025). Rather, “Petitioner must be told *what*
23 circumstances had changed or *why* there was now a significant likelihood of
24 removal in order to meaningfully respond to the reasons and submit evidence in
25 opposition, as allowed under § 241.13(i)(3).” *Id.* By “identif[ying] the category—
26 ‘changed circumstances’—but fail[ing] to notify [Petitioner] of the reason—the
27 circumstances that changed and created a significant likelihood of removal in the
28 reasonably foreseeable future—[ICE] failed to follow the relevant regulation.” *Id.*

1 In *Rokhfirooz*, Judge Huie found a regulatory violation on a record similar
2 to this one. 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025). There, the
3 government failed to produce “any documented determination, made prior to
4 Petitioner's arrest, that his release should be revoked.” *Id.* at *3. The only
5 documentation was “an arrest warrant, issued on DHS Form I-200, merely
6 recit[ing] that there is probable cause to believe that Petitioner is ‘removable from
7 the United States,’ that is, subject to removal, which would be accurate whether or
8 not Petitioner's release was revoked.” *Id.*

9 Judge Huie held in *Rokhfirooz* that the government had produced “no
10 record constitut[ing] a determination even after Petitioner's arrest that there is a
11 significant likelihood that Petitioner can be removed in the reasonably foreseeable
12 future.” 2025 WL 2646165, at *3. “In connection with defending [that] lawsuit,
13 Respondents prepared and filed a declaration from a Supervisory Detention and
14 Deportation Officer assigned to the detention center where Petitioner is housed,”
15 which stated that “[ICE Enforcement and Removal Operations] determined that
16 there is a significant likelihood of removal and resettlement in a third country in
17 the reasonably foreseeable future and re-detained Petitioner to execute his warrant
18 of removal.” *Id.* Judge Huie deemed that post-hoc determination insufficient,
19 because the declarant did not produce underlying documentation showing that any
20 such determination had actually been made—let alone that it had been made pre-
21 arrest. *Id.* The Court therefore “decline[d] to rely on” those statements. *Id.*

22 Here, the evidence is even weaker. Not only does the Notice of Revocation
23 fail to point to any “changed circumstances,” Respondents have not submitted a
24 declaration from a deportation officer—or any other evidence—showing that they
25 actually submitted a new request for a travel document. So as in *Rokhfirooz*, there
26 is “no evidence that DHS has made such a determination as to the revocation of
27 Petitioner's release even after the fact of arrest, up to the present day.” *Rokhfirooz*,
28 2025 WL 2646165, at *4. And “Respondents have not provided any details about

1 why a travel document could not be obtained in the past, nor have they attempted
2 to show why obtaining a travel document is more likely this time around.” *Hoac*
3 *v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal.
4 July 16, 2025). Respondents have announced only their “intent to eventually
5 complete a travel document request for Petitioner,” which “does not constitute a
6 changed circumstance.” *Id.*

7 “When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it
8 explained that the regulation was intended to provide aliens procedural due
9 process, stating that § 241.4 ‘has the procedural mechanisms that . . . courts have
10 sustained against due process challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d
11 626, 641 (D. Mass. 2018) (quoting *Detention of Aliens Ordered Removed*, 65 FR
12 80281-01). And “[s]ection 241.13(i) includes provisions modeled on § 241.4(*I*)
13 to govern determinations to take an alien back into custody,” *Continued Detention*
14 *of Aliens Subject to Final Orders of Removal*, 66 FR 56967-01, meaning that it
15 addresses the same due process concerns as 241.4(*I*). “The procedures in § 241.4”
16 and § 241.13 therefore “are not meant merely to facilitate internal agency
17 housekeeping, but rather afford important and imperative procedural safeguards to
18 detainees.” *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R.
19 §§ 241.4, 241.13 are “intended to provide due process to individuals in
20 [Mr. Nguyen’s] position,” *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC,
21 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable. Thus, this
22 Court should order Mr. Nguyen released on the basis of Claim One alone.

23 **II. Claim Two: The government has not proved a significant likelihood of**
24 **removal in the reasonably foreseeable future.**

25 Even if no regulatory violations had occurred, Respondents have failed to
26 show that Mr. Nguyen will likely be removed to Vietnam at all, let alone in the
27 reasonably foreseeable future.
28

1 To begin, Respondents claim that Mr. Nguyen’s petition should be “denied
2 as premature” because he “brings this challenge less than two months into a
3 detention period that the Supreme Court held is presumed reasonable until the six-
4 month-mark.” ECF 4 at 3. But Respondents admit that Mr. Nguyen was ordered
5 removed on January 22, 2013. ECF 4 at 2. And as Judge Sabraw recently held in
6 held in *Baythavong v. Noem*, 26-cv-1138-DMS-MSB (S.D. Cal. Apr. 6, 2026), the
7 plain language of the statute states that the six-month removal period began on
8 that date, regardless of the length of time Mr. Nguyen was detained.

9 The Immigration and Nationality Act states that the government “shall
10 detain” a noncitizen ordered removed during the 90-day “removal period.” 8
11 U.S.C. 1231(a)(2)(A). This removal period “begins on the latest of the
12 following”:

- 13 (i) The date the order of removal becomes administratively final.
- 14 (ii) If the removal order is judicially reviewed and if a court orders a stay
15 of the removal of the alien, the date of the court’s final order.
- 16 (iii) If the alien is detained or confined (except under an immigration
17 process), the date the alien is released from detention or confinement.

18 8 U.S.C. 1231(a)(1)(B). Here, neither (ii) nor (iii) apply because Mr. Nguyen’s
19 removal order is not being “judicially reviewed” and he is being detained “under
20 an immigration process.” Because Mr. Nguyen’s order of removal became
21 “administratively final” on January 22, 2013, the plain language of the statute
22 mandates a finding that the six-month removal period elapsed over five years ago,
23 in July 2020. *See also* 8 C.F.R. § 235.3(b)(7) (stating that an expedited removal
24 order that is “reviewed and approved by the appropriate supervisor” is
25 “considered final”).

26 That is precisely what Judge Sabraw recently held in *Baythavong v. Noem*,
27 26-cv-1138-DMS-MSB (S.D. Cal. Apr. 6, 2026). There, the noncitizen was
28 ordered removed and then released on an order of supervision for approximately

1 seven years. When ICE redetained him, Judge Sabraw noted that “Respondents
2 failed to cite any authority to support their position that the presumptively
3 reasonable period of detention only applies when the individual is actually in
4 detention, i.e., that the nearly seven-year period in which Petitioner was on
5 supervision is not relevant to the *Zadyvdas* argument.” *Id.* at *2. “On the
6 contrary,” Judge Sabraw explained, “courts have held the presumptively
7 reasonable six-month period of detention does not stop and re-start if the
8 individual is released and later re-detained.” *Id.* at *2–3 (citing cases). Thus, the
9 six-month period here has elapsed.

10 Moreover, Respondents have submitted *no* evidence that there is a
11 significant likelihood of removal in the reasonably foreseeable future under
12 *Zadvydas*. Respondents cite statistics of the number of people purportedly
13 removed to Vietnam in the past year and claim that they have “worked
14 expeditiously to obtain a travel document (TD) from the Vietnamese government,
15 to include submitting a travel document request on May 6, 2026.” ECF 4 at 2, 5.
16 But both of these claims relied exclusively on a declaration that Respondents
17 referred to—but never submitted—as part of their exhibits. *See* ECF 4-1. Even if
18 they had, Respondents state only that ICE “submit[ed] a travel document request
19 on May 6, 2026” but do not say whether this request was made to Vietnam or
20 ICE’s own internal agency. ECF 4 at 2.

21 Even if Respondents *had* submitted a declaration with the statements it
22 relies on, the mere assertion that ICE routinely obtains travel documents for
23 Vietnamese citizens does not show that a high proportion of Vietnamese citizens
24 are successfully removed. “[I]f the total number of requests that were made to
25 Vietnam was disclosed, [this Court] might be able to gauge how likely it is that
26 Petitioner would be removed to Vietnam. If DHS submitted 350 requests and
27 Vietnam issued travel documents for 328 individuals, Respondents may very well
28 have shown that removal is significantly likely in the reasonably foreseeable

1 future. On the other hand, if DHS submitted 3,500 requests and only 328
2 individuals received travel documents, Respondents would not be able to meet
3 their burden.” *Nguyen*, 2025 WL 1725791, at *4; *accord Hoac*, 2025 WL
4 1993771, at *5. Respondents provide no ratio of requests to travels documents
5 issued, precluding this kind of analysis.

6 Just as importantly, courts have “demanded an individualized analysis” of
7 why *this* person—Mr. Nguyen—will likely be removed. *Nguyen*, 2025 WL
8 2419288, at *17 (citing *Nguyen*, 2025 WL 1725791, at *4). This Court cannot
9 know if Mr. Nguyen qualifies at all under the MOU, because (1) the MOU applies
10 only to persons meeting certain criteria, but (2) the government has never
11 disclosed in full what those criteria are. *Id.* at *6. And even for those who qualify,
12 the MOU provides only that Vietnam has “discretion whether to issue a travel
13 document,” which it exercises “on a case-by-case basis.” *Hoac*, 2025 WL
14 1993771, at *5. By itself, then, “the MOU has repeatedly been deemed
15 insufficient to show a significant likelihood of removal[l] in the reasonably
16 foreseeable future.” *Nguyen*, 2025 WL 2419288, at *17. Because “[t]he
17 government has not provided any evidence of Vietnam's eligibility criteria or why
18 it believes Petitioner now meets it,” the government’s evidence is insufficient. *Id.*
19 at *18.

20 What’s more, good faith efforts to secure a travel document do not
21 themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a “Fifth
22 Circuit h[olding] [that] [the petitioner’s] continued detention [was] lawful as long
23 as good faith efforts to effectuate deportation continue and [the petitioner] failed
24 to show that deportation will prove impossible.” 533 U.S. at 702 (cleaned up).
25 The Supreme Court reversed, finding that the Fifth Circuit’s good-faith-efforts
26 standard “demand[ed] more than our reading of the statute can bear.” *Id.*

27 Thus, “under *Zadvydas*, the reasonableness of Petitioner's detention does
28 not turn on the degree of the government's good faith efforts. Indeed, the

1 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of
2 Petitioner's detention turns on whether and to what extent the government's efforts
3 are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL
4 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, "the Government is required
5 to demonstrate the likelihood of not only the *existence* of untapped possibilities,
6 but also of a probability of success in such possibilities." *Elashi v. Sabol*, 714 F.
7 Supp. 2d 502, 506 (M.D. Pa. 2010).

8 Here, then, "[w]hile the respondent asserts that [Mr. Nguyen's] travel
9 document requests with [the Vietnamese] Consulate[]" will be lodged, "this is
10 insufficient. It is merely an assertion of good-faith efforts to secure removal; it
11 does not make removal likely in the reasonably foreseeable future." *Gilali v.*
12 *Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis.
13 Oct. 15, 2019). Many courts have agreed that requesting travel documents does
14 not itself make removal reasonably likely. *See, e.g., Andreatyan v. Gonzales*, 446
15 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's
16 case was "still under review and pending a decision" did not meet respondents'
17 burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D.
18 Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205
19 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate
20 that the travel document request is pending does not provide any insight as to
21 when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d
22 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document
23 request, where "[t]he government offers nothing to suggest when an answer might
24 be forthcoming or why there is reason to believe that he will not be denied travel
25 documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1
26 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document
27 request).

1 For these reasons, the six-month presumptively-reasonable period has
2 passed, and Respondents have not shown a significant likelihood of removal in
3 the reasonably foreseeable future.

4 **CONCLUSION**

5 For these reasons, this Court should grant Mr. Nguyen's petition and order
6 his immediate release.

7
8 Respectfully submitted,

9 Dated: May 18, 2026

s/ Kara Hartzler

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