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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DIEU VINH HUYNH,

Petitioner,

v.

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

Respondents.

CIVIL CASE NO.: 26-cv-3257-JO-AHG

Traverse

[Civil Immigration Habeas, 28 U.S.C. § 2241]

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I. Introduction

Mr. Huynh is a man with significant cognitive and physical disability. He has very limited short-term to mid-term memory. He has a speech impediment that makes it very difficult for others to understand him.

Over fifteen months ago, he was re-detained by immigration officials. His family had been looking for him all this time. About a week ago, the family finally learned that Mr. Huynh was being detained by ICE. They were reconnected after another man detained by ICE was able to learn Ms. Huynh's speech pattern and captured glimpses into his life. The family is very concerned about Mr. Huynh's continued detention and deteriorating health.

With the government's Return in hand, this Court should now grant the petition and order Mr. Huynh's immediate release to a family member. First, the government concedes that Mr. Huynh did not receive notice of the reasons for his re-detention and was not given an opportunity to respond. 8 C.F.R. § 241.13(i). This, alone, warrants release as to the regulatory violation claim.

Second, the government acknowledges that 10 years after his order of removal became final, ICE has been detaining Mr. Huyhn for over 15 months. The government characterizes ICE efforts to remove Mr. Huyn as diligent yet there is no evidence presented as to what actions, if any, ICE took to remove during the first whole year of his re-detention. The government also does not provide any evidence as to when it is anticipated that Mr. Huynh will be put on a future flight. Thus, the government has not established that Mr. Huynh will be removed in the reasonably foreseeable future.

Thus, the petition should be granted and Mr. Huynh should be immediately released to his family.

II. Mr. Huynh's family is very concerned about his deteriorating cognitive and physical health while detained in ICE custody.

Since the filing of the petition, additional facts have come to light. Mr. Huynh's family had been looking for him since January of 2025. *See* Exhibit C, Declaration of Tom Quach, ¶¶ 4-6. After the death of Mr. Huynh's brother-in-law, family members, including his sister, brother, and nephew, were looking for him so that he could attend the funeral. *Id.* at ¶¶ 4-5. It was unusual for the family that they could not find him. *Id.* For over a year, every Sunday, the family would go to Temple and then drive around looking for Mr. Huynh. *Id.* They were especially concerned because Mr. Huynh is in a vulnerable and diminished physical condition after suffering from a stroke. *Id.* at ¶2. He has short-term and mid-term memory loss and speech impairment. *Id.* at ¶ 3. These conditions severely limit his ability to communicate, understand instructions, advocate for himself, or manage his own affairs independently. *Id.*

It was not until 10 days ago that the family finally learned that he had been in immigration detention for over a year. *Id.* at ¶ 6. Another man detained by ICE, Mr. Kem Tran, was able to take pieces of information from Mr. Huynh and eventually find his family. *Id.* Mr. Tran contacted the family and the next day, the family were able to drive from Los Angeles to the detention center to see Mr. Huynh. *Id.* They report that Mr. Huynh's speech and memory had become significantly worse since the last time they had seen him. *Id.* at ¶ 7.

The family is willing and able to pick up Mr. Huynh if released from detention. If Mr. Huynh is removed to Vietnam, the family hopes that they can escort him so that he could go live with his older brother in Ho Chi Minh City. *Id.* at ¶¶ 8-10.

They express that their only desire is for Mr. Huynh to be "safe, cared for, and surrounded by family who love him." *Id.* at ¶ 10.

III. In light of the government's response, Mr. Huynh succeeds on the merits.

Because the government's evidence is insufficient to justify Mr. Huynh's detention, his petition should be granted and he should be immediately released.

A. Claim One: As judges in this district have uniformly held, immigrants must be released when ICE does not adhere to the regulations governing re-detention.

The government concedes that there is no evidence that upon re-detention of Mr. Huynh, ICE either notified him of the reasons for his detention or gave him an opportunity to respond. Return, ECF at 4-1 at ¶ 13 ("ICE does not have a record that Petitioner was provided with written notice of revocation of release and informal interview.").

The government's Return does not dispute that this lack of notice and opportunity to contest violated 8 C.F.R. §§ 241.4 and 241.13. The government cannot dispute it because the regulations are clear. "Once ICE releases a non-citizen on supervised release, ICE's ability to re-detain that noncitizen is constrained by its own regulations." *Duong v. Noem*, 815 F. Supp. 3d 1155, 1160 (S.D. Cal. 2025) (internal quotation and citation omitted). These are the regulations that "govern release and revocation of release of noncitizens [like Mr. Huynh] subject to a final order of removal." *Tan-Gutierrez v. Noem*, No. 26-CV-00152-RBM-BJW, 2026 WL 194747, at *3 (S.D. Cal. Jan. 26, 2026). ICE may re-detain a non-citizen released on an order of supervised release if the non-citizen "violates any of the conditions of release" [§ 241.13(i)(1)] or "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future" [§ 241.13(i)(2)]. Regardless of the reason for re-detention, the noncitizen must "be notified of the reasons for revocation" and be afforded "an initial informal interview promptly after his return to . . . custody to afford the alien an opportunity to respond to the reasons for revocation stated in the

notification." § 241.13(i)(3).

Instead, the government argues that regardless of a violation on the part of ICE, there is no prejudice to Mr. Huynh. Return, ECF 4 at 6.[1] That argument has been repeatedly rejected by several courts in this and other districts. *See, e.g.*, *Rokhfirooz v. Larose*, 804 F. Supp. 3d 1095, 1099–1100 (S.D. Cal. 2025); *Tan-Gutierrez*, 2026 WL 194747, at *4. "Although not every violation of a regulation rises to the level of a due process violation, certain regulations may in fact be mandated by the Constitution or federal law. That is, some regulations protect due process." *United States v. Raya-Vaca,* 771 F.3d 1195, 1204 (9th Cir. 2014) (cleaned up), *abrogated on other grounds by Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). Courts have concluded that the re-detention regulations in § 241.4 and 241.13 are precisely those types of regulations intended to safeguard due process. *See Azzo v. Noem*, No. 3:25-CV-03122-RBM-BJW, 2025 WL 3535208, at *6 (S.D. Cal. Dec. 10, 2025). Thus, "[t]he great weight of district courts have determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered." *Id.* (internal quotation marks and citation omitted); *See also Arowosegbe v. Mullin*, 26-CV-3104 JAO (JLB), ECF 8 at *10-11 (June 8, 2026) (granting immediate release).

Moreover, even if Mr. Huynh did need to show prejudice, however, he could. Regardless of whether there were reasons for re-detention, that would give ICE only the *discretion* to detain him. Specifically, 8 C.F.R. § 241.13(i)(1) states that a noncitizen who violates a condition of his release "*may* be returned to custody" and "*may* be continued in detention for an additional six months in order to effect the

[1] Citing *Cervantes v. Bondi*, No. 26-CV-1446-RSH-MSB, 2026 WL 898301, at *1 (S.D. Cal. Mar. 30, 2026), the government claims that there is a lack of prejudice because Mr. Huynh's violations of the conditions of his release was sufficient notice that he would be re-detained. But *Cervantes* does not involve the mandatory requirements of notice and opportunity to respond "upon revocation" set forth in § 241.13 and that are at issue here. Instead, in that case, the petitioner alleged violations of violated 8 C.F.R. § 1236.1(c)(9), which have no due process requirements. 2026 WL 898301, at fn. 1.

alien's removal, if possible." The informal interview process gave Mr. Huynh a chance to persuade ICE not to exercise that option. This is especially true considering his severe cognitive and physical impairments along with the fact that ICE did not have travel documents to remove him for at least a 12 months. There is therefore a "plausible scenario[] in which the outcome of the proceedings would have been different if a more elaborate process were provided," *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up): A reasonable interviewer might well have decided not to detain Mr. Huynh.

This Court should therefore reject the government's reasons for opposing release.

B. Claim Two: Mr. Huynh's detention violates *Zadvydas* and 8 U.S.C. § 1231.

Second, the government does not establish a significant likelihood of removal in the reasonably foreseeable future. There are several "good reason[s]" to doubt Petitioner's reasonably foreseeable removal. Specifically, ICE has not been able to remove Mr. Huynh for a decade. Second, Mr. Huynh has been detained for over 15 months as they attempt to remove him. Third, Vietnam has a decades-long pattern of refusing to repatriate pre-1995 Vietnamese immigrants. The burden therefore shifts to the government to prove that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. The government meets neither.

Although it appears that the government intended to put Mr. Huynh on a chartered flight for June 1, 2026, the government provides no evidence as to the date of a future flight. ECF 4-1 at ¶¶ 17-25. Moreover, it is unclear whether the government currently has travel documents for Mr. Huynh. According to the deportation officer's declaration, Mr. Huynh's "travel document was to be issued upon arrival to Vietnam." *Id.* at ¶ 17. The declaration later states that "[s]ince ICE has a travel document for Petitioner, his removal can be effectuated promptly." *Id.*

at ¶ 25. Those two statements appear to be contradictory.

Regardless, the government provides no evidence as to the approximate time it will take to issue any necessary documents and put Mr. Huynh on another flight. *Zadvydas* requires the government to meet its burden "with evidence," 533 U.S. at 701, not an "unsubstantiated belief" that this Court has no way of evaluating, *McKenzie*, 2020 WL 5536510, at *3. The deportation officer's conclusory statement that removal can be done "promptly" [ECF 4-1 at ¶ 24] therefore does not meet the government's burden.

That deficiency is fatal. "[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *6 (W.D.N.Y. Jan. 2, 2019). "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). For this reason alone, *Zadvydas* demands release.

Furthermore, ICE's inexcusable lack of diligence in seeking removal reinforces this conclusion. ICE arrested Mr. Huynh over 15 months ago on March 5, 2025. ECF 4-1 at ¶ 13. As far as the deportation officer's declaration shows, ICE did not do a single thing to try to effectuate removal until a year later in March of 2026. *Id.* at ¶ 17. ICE's apparent "lack of effort only reinforces the conclusion that the Petitioner's removal is not likely to occur in the reasonably foreseeable future." *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002); *see also Conchas-Valdez v. Casey*, 25-CV-2469-DMS, Kt. No. 9 (S.D. Cal. Oct. 6, 2025) ("[T]he Government's minimal work on this case . . . do not

instill confidence that it will be able to secure Petitioner's removal in the reasonably foreseeable future.").

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

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Here, then, "[w]hile the respondent asserts that [Mr. Nguyen's] travel document request[] with [the Vietnamese] Consulate[] remain[s] pending . . ., this is insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty. Jail*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019).

Respectfully submitted,

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