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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LINH KHANH NGUYEN,

Petitioner,

v.

JEREMY,MY CASEY, *et al.*,

Respondent.

Case No.: 26-cv-4380-BJC-GC

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Linh Nguyen ("Petitioner") has filed a petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner requests the Court to order their immediate release from custody or a bond hearing. Respondent therefore requests the Court deny the habeas petition.

II. BACKGROUND

Petitioner is a citizen and national of Vietnam. *See* Declaration of Deportation Officer Adrian Gonzalez (Gonzalez Decl.) at ¶ 5. Petitioner attempted to enter the United States at the San Ysidro port of entry concealed in a vehicle on December 21, 2025. *Id.* at ¶ 6. On December 22, 2025, Petitioner was paroled as a material witness in an alien smuggling case. *Id.* at ¶ 7. On January 14, 2026, Petitioner was taken into custody and placed in the expedited removal process. *Id.* at ¶ 8. Petitioner was issued a Notice to Appear (NTA) under § 212(a)(7)(A)(i) of the Immigration and Nationality Act (INA) as an alien present in the United States. *Id.* at ¶ 10. Although originally receiving a positive credible fear finding, an immigration judge denied Petitioner's application for asylum and ordered the Petitioner removed to Vietnam but granted withholding of removal to Vietnam. *Id.* at ¶ 9-11. Petitioner did not file an appeal of the removal order; thus, the order became administratively final as of April 23, 2026. *Id.* at ¶ 12. On June 8, 2026, Enforcement and Removal Operations (ERO) sent a request to Removal and International Operations (HQ RIO) to initiate removal. *Id.* at ¶ 13. On July 7, 2026, ERO followed up with HQ RIO as to the status of the third country removal request. *Id.* at ¶ 15. On July 8, 2026, HQ RIO advised ERO that the removal request remains pending. *Id.* at ¶ 16-17. On August 4, 2026, ERO sent another follow up email and HQ RIO advised that the third-country removal request remains pending. *Id.* at ¶ 18. Once a third country for removal is secured, ICE will remove Petitioner. *Id.*

III. ARGUMENT

A. Petitioner's Detention is Lawful and He Has Not Established That There is No Significant Likelihood of Removal in the Reasonably Foreseeable Future

Petitioner's petition should be denied because he is properly detained under 8 U.S.C. § 1231(a). Respondent is working expeditiously to identify a third country and acquire the necessary travel document in order to effectuate Petitioner's removal. Accordingly, Petitioner has not met their burden of rebutting the presumptively reasonable period of detention.

"Section 241(a) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered removed from the United States." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022). The INA provides that an alien ordered removed must be detained for 90 days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period under subsection (a)(1)).

Section 1231(a)(6) "authorizes further detention if the Government fails to remove the alien during those 90 days." *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). Detention authority under this statute, however, is limited to "a period reasonably necessary to bring about the alien's removal from the United States" and "does not permit indefinite detention." *Id.* at 689. The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 701. Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

If an individual ordered removed "is not removed to his or her country of choice or citizenship, he or she shall be removed to any of the following countries" listed in 8

U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007). The enumerated countries are:

> (i) The country from which the alien was admitted to the United States.
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
> (iv) The country in which the alien was born.
> (v) The country that had sovereignty over the alien's birthplace when the alien was born.
> (vi) The country in which the alien's birthplace is located when the alien is ordered removed.

Id. (quoting § 1231(b)(2)(E)(i)–(vi)). "If removal to any of these countries is 'impracticable, inadvisable, or impossible,' the individual shall be removed to 'another country whose government will accept the alien into that country.'" *Id.* (quoting § 1231(b)(2)(E)(vii)).

Here, Petitioner was granted withholding of removal to Vietnam. Apart from Vietnam, there appears to be no other country that would meet the definitions under subsections (i) through (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) ("A prisoner bears the burden of demonstrating that 'he is in custody in violation of the Constitution or laws or treaties of the United States.'") (quoting 28 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above enumerated countries is "impracticable, inadvisable, or impossible," ICE may remove Petitioner to a third country that will accept Petitioner's removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

As illustrated in various habeas filings in this district, recent developments in international relations between the United States and several other countries has facilitated ICE's removal of immigrants, like Petitioner, that it previously was unable to remove to third countries. *See, e.g.*, *Varona v. Noem et al.*, 25-cv-3328-JES-SBC, ECF No. 1 at 6 (S.D. Cal. Nov. 26, 2025) ("The Trump administration reportedly has

negotiated with at least 58 countries to accept deportees from other nations."). Against this backdrop and invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE continues to detain Petitioner for purposes of executing their removal order to a third country. *See* Gonzalez Decl.

Here, Petitioner has been in post-final order detention since April 23, 2026, just under 5 months. (Gonzalez Decl.) at ¶ 12. This duration is within the six months of post-final order of removal confinement that *Zadvydas* found to be presumptively reasonable. *See Zadvydas*, 533 U.S. at 700–01.

On this record, Petitioner cannot show that there is no significant likelihood of removal in the reasonably foreseeable future, and it would be premature to reach that conclusion before permitting ICE an opportunity to complete its diligent efforts to affect their removal. "[E]vidence of progress, albeit slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy." *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB) slip op., at 7 (S.D. Cal. June 2, 2003) (finding that petitioner's one-year and four-month detention does not violate *Zadvydas* given respondent's production of evidence showing governments' negotiations are in progress and there is reason to believe that removal is likely in the foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No. 19cv1250 WQH AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) ("the record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.") [Exs. 35-39.]; *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3 (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal").

To the extent Petitioner is challenging ICE's decision to detain Petitioner for the purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*

corpus provision, . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of commencing proceedings, adjudicating cases, and executing removal orders—which represent the initiation or prosecution of various stages in the deportation process.") (simplified); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding that the district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

IV. CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court deny the relief requested in the petition.

DATED: August 12, 2026

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