

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

_____	)	
Duc Minh Tran,	)	
	)	
<i>Petitioner,</i>	)	
	)	Civ. Action No. 1:25-cv-00548
v.	)	
	)	
Warden, Aurora Detention Center,	)	
	)	
Field Office Director,	)	
Immigration and Customs Enforcement,	)	
Denver Field Office,	)	
	)	
<i>Respondents.</i>	)	
_____	)	

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner Duc Minh Tran (“Mr. Tran”) is a noncitizen who, based on information and belief, allegedly agreed to be removed to his native Vietnam sometime in July 2024. He is currently being held in federal immigration detention until such removal can be carried out. A federal statute, 8 U.S.C. § 1231(a)(1)(A), gives the government three months to effectuate such removal; yet over seven (7) months later, the government has failed to do so and has failed to provide a date certain when such removal can be expected. Under such circumstances, continued detention violates the statute as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) and as explained in the U.S. District Court for the Central District of California decision in *Trinh v. Homan*, 466 F.Supp.3d 1077 (C.D. Cal. 2020) (ICE detainees could not be sent back to Vietnam under an agreement between the two countries because they had arrived in the U.S. before 1995 as refugees), and Mr. Tran must be released from custody on an Order of Supervision until such time as a removal date is secured.

2. As the District Court in *Trinh v. Homan* explained:

After the Vietnam War, the North Vietnamese government established the current Socialist Republic of Vietnam (“Vietnam”). Around that time, waves of people from the former Republic of Vietnam (South Vietnam) fled the country to escape political prosecution. Under various humanitarian programs, the United States accepted hundreds of thousands of Vietnamese refugees, including Petitioners.

Between the end of the Vietnam War and 2008, Vietnam refused to repatriate any Vietnamese immigrants who had been ordered removed from the United States. Before a Vietnamese immigrant without a passport or travel document can be repatriated, Vietnam must issue a passport or other travel document in response to a request from ICE. In 2008, the United States and Vietnam reached a diplomatic agreement pursuant to which Vietnam agreed to start considering repatriation requests for certain Vietnamese immigrants. Specifically, the agreement obligated Vietnam to consider repatriation requests for Vietnamese immigrants who arrived in the United States after July 12, 1995. **The agreement also provided that “Vietnamese citizens are not subject to return to Vietnam under this agreement if they arrived in the United States before July 12, 1995.”** Relying on this provision, Vietnam maintained its policy of non-repatriation for pre-1995 Vietnamese immigrants after signing the 2008 agreement.

See Trinh, at page 1083 (internal citations omitted and emphasis added)

Mr. Tran arrived in the United States on August 18, 1988 as a political refugee from Vietnam. *See* Record of Deportable/Inadmissible Alien, Exhibit A.

JURISDICTION AND VENUE

3. This action arises under the Immigration and Nationality Act of 1952 (“INA”), as amended, 8 U.S.C. § 1101 *et seq.*, and the Due Process Clause of the Fifth Amendment to the United States Constitution. This Court has jurisdiction pursuant to Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241 (general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act); and 28 U.S.C. § 1651 (All Writs Act).

4. Venue is proper under 28 U.S.C. § 1391(e) because the Aurora Detention Center is located in Arapahoe County, within the District of Colorado. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 494–95 (1973).

PARTIES

5. Mr. Tran, the Petitioner, is a citizen and native of Vietnam and has lived in United States since around 1988. He allegedly signed a final order of removal, and is currently detained by Respondent at the Aurora Detention Center in Aurora, Colorado.

6. The Warden of the Aurora Detention Center is the immediate legal custodian of Petitioner for purposes of a federal habeas petition. *Braden*, 410 U.S. at 494–95.

7. The Field Office Director of the Immigration and Customs Enforcement (“ICE”) Denver Field Office is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, such as Mr. Tran, including detentions, enforcement, and removal operations.

FACTUAL ALLEGATIONS

8. Mr. Tran was born in 1972 in Hue, Vietnam. He is a native and citizen of Vietnam. *See Exhibit A.*

9. Mr. Tran entered the United States on August 18, 1988 as a political refugee from Vietnam. *See Exhibit A.*

10. Mr. Tran later adjusted status as a lawful permanent resident.

11. Over the past two decades, Mr. Tran was convicted of various felonies and misdemeanors involving controlled substances, aggravated assault, and violation of a protection order. *See Exhibit A*, pages 3-4.

12. The Department of Homeland Security – Immigration and Customs Enforcement (“DHS-ICE”) charged Mr. Tran with deportability under 8 U.S.C. § 1227(a)(2)(E)(ii) as a noncitizen who has been convicted of a crime of violation of a protection order.

13. On April 10, 2024, Mr. Tran was transferred from the custody of the Maricopa

County Sheriff's Office to DHS-ICE custody, and he was placed in immigration detention. He was later transferred from immigration detention in Arizona to the Aurora Detention Center in Aurora, Colorado, where he remains.

14. Based on information and belief, sometime in July 2024, Mr. Tran signed an allegedly voluntary agreement to be removed to his home country of Vietnam.

15. Mr. Tran remains in immigration custody, and DHS-ICE has so far not been able to secure a travel document or remove him to Vietnam.

16. Furthermore, DHS-ICE has not provided a date by which it believes it can deport Mr. Tran or any other indication that it believes removal will occur within the foreseeable future.

17. DHS-ICE has not made any efforts to remove Mr. Tran to any country other than Vietnam, because there are no articulable facts that would cause DHS-ICE to believe that he is removable to any country other than Vietnam. He possesses no claim to citizenship or residence in any other country, and there is no third country on earth generally willing to accept non-nationals for deportation from the United States (especially not those with criminal convictions like that of Mr. Tran).

LEGAL BACKGROUND

18. Title 8 U.S.C. §1231(a) permits DHS-ICE to detain noncitizens during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A). In this case, pursuant to 8 U.S.C. § 1231(a)(2)(B)(i), the removal period began when Mr. Tran removal order became administratively final, sometime in August 2024 (i.e., after the 30-day appeal period elapsed). The "removal period" therefore expired (or expires) sometime in February 2025.

19. After the expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that ICE shall release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be “released” if “subject to the terms of supervision” set forth in 8 U.S.C. § 1231(a)(3).

20. Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas*, 533 U.S. at 701. “[W]here detention’s goal is no longer practically attainable, detention no longer ‘bear[s][a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Additionally, cursory or pro forma findings of dangerousness do not suffice to justify prolonged or indefinite detention. *Zadvydas*, 533 U.S. at 691 (“But we have upheld preventative detention based on dangerousness only when limited to especially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.”)

21. The purpose of detention during and beyond the removal period is to “secure[] the alien’s removal.” *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court “read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien’s removal.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699).

22. As the Supreme Court explained, where there is no possibility of removal, immigration detention presents substantive due process concerns because “the need to detain the noncitizen to ensure the noncitizen’s availability for future removal proceedings is “weak or nonexistent.” *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when “necessary to bring

about that alien's removal." *See id.* at 689. See also *Trinh v. Homan*, at p. 1087-88.

23. To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a "reasonable period of detention" for noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to justify continued detention if the noncitizen provides a "good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

24. Where a petitioner has provided "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701. Due deference is owed to the government's assessment of the likelihood of removal and the time it will take to execute removal. *Id.* at 700. However, just as pro forma findings of dangerousness do not suffice to justify indefinite detention, pro forma statements that removal is likely should not satisfy the government's burden.

25. The government may only rebut a detainee's showing that there is no significant likelihood of removal in the reasonably foreseeable future with "evidence of progress...in negotiating a petitioner's repatriation." *Gebrelibanos v. Wolf*, No. 20-cv-1575-WQH-RBB, 2020 U.S. Dist. LEXIS 185302, at *9 (S.D. Cal., Oct. 6, 2020) (citing *Kim v. Ashcroft*, 02cv1524-J(LAB) (S.D. Cal., June 2, 2003), ECF No. 25 at 8 (citing *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002)); *see also Carreno v. Gillis*, No. 5:20-cv- 44-KS-MTP, 2020 U.S. Dist. LEXIS 248926, at *5 (S.D. Miss., Dec. 16, 2020) (granting petitioner's habeas claim because the government failed to show that removal would be imminent after obtaining a travel document and failing to remove petitioner within the document's validity period) (emphasis added).

26. Factors courts consider in analyzing the likelihood of removal include “the existence of repatriation agreements with the target country, the target country’s prior record of accepting removed aliens, and specific assurances from the target country regarding its willingness to accept an alien.” *Hassoun v. Sessions*, 2019 WL 78984 at *4 (W.D.N.Y., Jan. 2, 2019) (citing *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436-37 (S.D.N.Y. 2017)); *see also Nma v. Ridge*, 286 F. Supp. 2d 469, 475 (E.D. Pa. 2003).

27. Other courts have denied habeas petitions primarily where the U.S. government has already procured petitioner’s travel documents and only travel arrangements are outstanding, which is not the case here. *See Berhe*, 2019 WL 3734110 at *4 (denying Petitioner’s habeas petition because “Eritrea has issued a travel document and Petitioner has presented no evidence to suggest there are other barriers to his removal”); *Tekleweini-Weldemichael v. Book*, No. 1:20-CV-660-P, 2020 WL 5988894, at *5 (W.D. La., Sept. 9, 2020), *report and recommendation adopted*, No. 1:20-CV-660-P, 2020 WL 5985923 (W.D. La., Oct. 8, 2020) (denying without prejudice Petitioner’s habeas petition because he possessed a travel document valid through December 19, 2020, and noting that he is not precluded from filing a new petition upon the expiration or cancellation of his travel document).

28. In this case, DHS-ICE has not yet obtained a travel document for Mr. Tran to travel to Vietnam. Moreover, DHS-ICE has not shown any meaningful progress in doing so. This is insufficient evidence for the government to meet its burden that there is a significant likelihood of removal in the reasonably foreseeable future. *See Gebrelibanos*, 2020 WL 5929487, at *3; *Tekleweini-Weldemichael*, 2020 WL 5988894 (finding significant likelihood of removal in reasonably foreseeable future *only because* government had already obtained a valid travel document).

29. Mr. Tran has been detained for 180 days (or more) following his final order of removal, beyond the 6-month period of presumptively reasonable detention. *Zadvydas*, 533 U.S. at 700-01. *See also Hassoun*, 2019 WL 78984, at *4; *Alexander*, 495 Fed. Appx. at 277. With neither a travel document nor an indication from Vietnam that one is soon to be forthcoming, several more months of detention is unreasonable, as removal is not imminent.

30. In addition, federal regulations dictate that where ICE detains an individual under 8 U.S.C. § 1231(a)(6), an individualized determination must be carried out, with the following criteria taken into account:

- (1) The nature and number of disciplinary infractions or incident reports received when incarcerated or while in Service custody;
- (2) The detainee's criminal conduct and criminal convictions, including consideration of the nature and severity of the alien's convictions, sentences imposed and time actually served, probation and criminal parole history, evidence of recidivism, and other criminal history;
- (3) Any available psychiatric and psychological reports pertaining to the detainee's mental health;
- (4) Evidence of rehabilitation including institutional progress relating to participation in work, educational, and vocational programs, where available;
- (5) Favorable factors, including ties to the United States such as the number of close relatives residing here lawfully;
- (6) Prior immigration violations and history;
- (7) The likelihood that the alien is a significant flight risk or may abscond to avoid removal, including history of escapes, failures to appear for immigration or other proceedings, absence without leave from any halfway house or sponsorship program, and other defaults; and
- (8) Any other information that is probative of whether the alien is likely to—
 - (i) Adjust to life in a community,
 - (ii) Engage in future acts of violence,
 - (iii) Engage in future criminal activity,

(iv) Pose a danger to the safety of himself or herself or to other persons or to property, or

(v) Violate the conditions of his or her release from immigration custody pending removal from the United States.

8 C.F.R. § 241.4(f).

**FIRST CLAIM FOR RELIEF:
Violation of 8 U.S.C. § 1231(a)(6)**

31. Mr. Tran re-alleges and incorporates by reference the preceding paragraphs.

32. Mr. Tran's continued detention by the Respondent violates 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*. Mr. Tran's 90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts have passed.

33. Under *Zadvydas*, the continued detention of someone like Mr. Tran is unreasonable and not authorized by 8 U.S.C. § 1231.

**SECOND CLAIM FOR RELIEF:
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution**

34. Mr. Tran re-alleges and incorporates by reference paragraphs 1 to 30.

35. Mr. Tran's detention during the removal period is only constitutionally permissible when there is a significant likelihood of removal in the reasonably foreseeable future. In Mr. Tran's case, Vietnam has not issued any travel documents for his removal; he has also not been recognized as a national of any other country. These factors lend support to the conclusion that there is no likelihood of Mr. Tran's removal in the reasonably foreseeable future. Respondent continues to detain Mr. Tran without evidence that Vietnam will ultimately issue a travel document and with no reason to believe that they will obtain a travel document within a reasonable amount of time.

36. Respondent's detention of Mr. Tran no longer bears any reasonable relation to a legitimate government purpose, and thus violates the Due Process Clause.

**THIRD CLAIM FOR RELIEF:
Violation of Regulations**

37. Mr. Tran re-alleges and incorporates by reference paragraphs 1 to 30.

38. As set forth above, Respondent continues to detain Mr. Tran in violation of 8 C.F.R. § 241.4, having not considered the substantive factors set forth in subsections (e) and (f) of that regulation. Were such factors to be properly weighed, it would be apparent that Mr. Tran is a candidate for release on an Order of Supervision pending removal.

39. Likewise, Respondent continues to detain Mr. Tran in violation of 8 C.F.R. §§ 241.4 and 241.13, since the proper procedures set forth in those regulations have not been carried out.

PRAYER FOR RELIEF

40. Mr. Tran respectfully requests that this Court assume jurisdiction over this matter and enter an order:

- a) Declaring that Mr. Tran's continued detention violates his due process rights;
- b) Granting the writ of habeas corpus and order Respondent to release Mr. Tran from detention on an Order of Supervision pursuant to 8 U.S.C. § 1231(a)(3);
- c) Ordering Respondent to reimburse Mr. Tran's costs of suit and reasonable attorneys' fees incurred in relation to this petition, under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- d) Granting any other relief that this Court deems just and proper.

Respectfully submitted,

Date: February 19, 2025

//s//Brian Scott Green
Brian Scott Green, Esq.
Colorado State Bar No. 56087
Law Office of Brian Green
9609 S University Boulevard
#630084
Highlands Ranch, CO 80130
Telephone: (443) 799-4225
BrianGreen@greenUSimmigration.com

Certificate of Service

I, Brian Scott Green, hereby certify that on this 19th day of February, 2025, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Warden, Aurora Detention Center
3130 North Oakland Street
Aurora, CO 80010

Civil Process Clerk
U.S. Attorney's Office for the District of Colorado
1801 California Street, Suite 1600
Denver, CO 80202

Pam Bondi, Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street SW, Mail Stop 5900
Washington, DC 20536-5900

Director, Denver Field Office
U.S. Immigration and Customs Enforcement
12445 E. Caley Avenue
Centennial, Colorado 80111

Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0485
Washington, D.C. 20528-0485

//s//Brian Scott Green
Brian Scott Green, Esq.
Colorado State Bar No. 56087
Law Office of Brian Green
9609 S University Boulevard
#630084
Highlands Ranch, CO 80130
Telephone: (443) 799-4225
BrianGreen@greenUSimmigration.com