IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BAO PHONG HUU NGUYEN,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondent.

Civil Action No. 3:25-CV-01913-L-BT

RESPONSE IN OPPOSITION TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND AMENDED MOTION FOR TEMPORARY RESTRAINING ORDER

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I. Introduction

Petitioner seeks a temporary restraining order and habeas relief to require his immediate release from immigration detention. *See* ECF 19, 20. As explained herein, Petitioner shows no entitlement to neither a temporary restraining order nor habeas relief, as he is not entitled to immediate release. The Court should deny the amended request for a temporary restraining order and habeas relief.

II. Background

Petitioner is a native and citizen of Vietnam. App. p. 2. He was granted lawful permanent resident status on or about January 25, 1985. ECF 12, p. 5 at ¶ 4. On May 24, 2000, Petitioner was convicted of Possession with Intent to Distribute MDMA and was sentenced to four years' imprisonment. *Id.* at ¶ 5. On July 13, 2001, Petitioner was issued a Notice to Appear. *Id.* On September 10, 2001, Petitioner was ordered removed by an immigration judge. *Id.* at ¶ 6. Thereafter, on December 28, 2001, Petitioner was placed on an Order of Supervision because Enforcement and Removal Operations (ERO) was unable to remove Petitioner at that time. *Id.* at ¶ 7. On July 24, 2025, Petitioner was taken into custody because ERO now believes they can remove Petitioner to Vietnam. *Id.* at ¶ 8, 9.

On July 24, 2025, Petitioner filed a combined petition for a habeas corpus and request for preliminary injunction. ECF 1, 2. In connection with his habeas corpus claim seeking release, Petitioner alleged that there is no evidence of changed circumstances specific to him that makes his removal reasonably foreseeable and therefore his detention is impermissible. ECF 1, ¶ 67. He additionally asserted that ICE did not follow its own

regulations when re-detaining him and that he is therefore entitled to immediate release from custody. ECF 1, ¶68. In his motion for a preliminary injunction, Petitioner sought relief in connection with his habeas claims by arguing that he is likely to succeed in establishing that his re-detention is in violation of ICE regulations and Supreme Court precedent. *See* ECF 2 at 6-8.

On October 3, 2025, Petitioner filed an amended petition for a habeas corpus. ECF 19. In connection with his amended habeas corpus claim seeking release, Petitioner alleges that there is no evidence of changed circumstances specific to him that makes his removal reasonably foreseeable and therefore his detention is in violation of the Constitution. ECF 19, ¶ 4. He additionally asserts that ICE did not follow its own regulations when re-detaining him, violating procedural due process under the Fifth Amendment. ECF 19, ¶ 90. He further claims his re-detention is unlawful, violations of the Administrative Procedure Act, ultra vires, third-country removal, and punitive third-country banishment. ECF 19, pp. 33-37.

In his amended motion for a temporary restraining order, Petitioner seeks relief in connection with his habeas claims, arguing that he is likely to succeed in establishing that his re-detention is unconstitutional and unlawful. *See* ECF 20 at 4-11. Petitioner also argues he is likely to establish that he is entitled certain procedures prior to third-country removal. ECF. 20, pp. 12-18. Petitioner's amended motion for a preliminary injunction and amended habeas petition are both improper and should be denied.

III. Legal Standard

A preliminary injunction is an "extraordinary and drastic remedy." *Canal Auth. v.*

Callaway, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is "not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion." *Black Fire Fighters Ass'n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). "The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest." *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has "clearly" carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

IV. Argument and Authorities

A. Petitioner's Detention Comports with the Fifth Amendment's Due Process Clause and is Lawful (Counts I, II, and III)

1. The *Zadvydas* standard is due process.

Petitioner faces a fundamental flaw in his request for the Court to order that he be given more process than what he has received in this case: The Supreme Court has already decided what constitutional due process is required for persons in Petitioner's circumstances. The *Zadvydas* standard *is* due process: a § 1231 detainee who fails the *Zadvydas* test fails to prove a due process violation." *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)(emphasis in the original).

In *Zadvydas*, the Supreme Court determined what "limits" the "Constitution's

demands" imposed on "post-removal-period detention" pursuant to § 1231. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). After determining that the Constitution "does not permit indefinite detention," the Court held that a habeas court "should hold continued detention unreasonable" only "if removal is not reasonably foreseeable." *Id.* at 689, 699. But the Supreme Court did not stop there—it went on to detail the process by which that determination would be made. After the end of the presumptively reasonable six-month detention period, an alien must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If that showing is made, "the Government must respond with evidence sufficient to rebut that showing." *Id.* This process was sufficient, the Court reasoned, to avoid the "serious constitutional concerns" that "indefinite detention" would raise. *Id.* at 682.

The decision is straightforward. "[T]he Supreme Court . . . had occasion to consider the constitutional implications of indefinite detention under § 1231(a) ," and it "offered [courts] a standard through which to judge indefinite-detention cases— the *Zadvydas* standard." *Martinez v. Larose*, 968 F.3d 555, 566 (6th Cir. 2020); *see Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) (*Zadvydas* "articulates the outer bounds of the Government's ability to detain aliens . . . without jeopardizing their due process rights"). Yet Petitioner now urges the Court to conclude that *Zadvydas*, in essence, was wrong by requesting that something more than the process set out in *Zadvydas* is required to vindicate his constitutional rights—namely, notice prior to revoking Petitioner's order of supervision ("OSUP") or evidence that Petitioner can be removed to Vietnam.

The Court should decline this invitation. When, as here, the Supreme Court has

spoken on the issue at hand, "[t]his Court is bound like all lower courts to apply [that] precedent." *United States v. Williams*, No. 1-09-cr-414, 2010 WL 3909480, at *4 (E.D. Va. Sept. 23, 2010); *see Payne v. Taslimi*, 998 F.3d 648, 654 (4th Cir. 2021) ("It is beyond our power to disregard a Supreme Court decision . . . ."). There is accordingly no basis for the Court to hold that due process demands more than what the Supreme Court already held it requires in Petitioner's circumstance. *See Hernandez-Esquivel v. Castro*, No. 5-17-cv-0564-RBF, 2018 WL 3097029, at *8 (W.D. Tex. June 22, 2018)(stating that to the extent petitioner sought periodic bond hearings in federal court, "*Zadvydas* addressed the extent to which due process demands relief in the § 1231(a) setting"); *M.P. v. Joyce, No.1:22-cv-06123*, 2023 WL 5521155, at *5-6 (W.D. La. Aug. 10, 2023)(finding petitioner was not in custody in violation of his procedural due-process rights where petitioner received requisite custody review panels, where petitioner's detention was not "indefinite" or "potentially permanent," and, "to the extent the *Mathews* factors" applied, the government's interests outweighed petitioner's); *cf. Roman v. Garcia*, No. 6:24-cv-01006, 2025 WL 1441101, at *3 (W.D. La. Jan. 29, 2025) (finding that petitioner's detention did not violate due process because the government could detain her beyond the 90-day removal period pursuant to § 1231(a)(6), and § 1231(a)(6) does not require a bond hearing). Petitioner has received all the process to which he is entitled.

2. Even if this Court were to find that Petitioner warrants additional process, the *Mathews* factors weigh in favor of continued detention.

Even if *Zadvydas* did not squarely govern Petitioner's claim, as it does, he would not be entitled to the immediate release that he seeks. Courts across the country have applied different approaches to determine the constitutionality of continued detention under various immigration statutes. *See, e.g., Rimtobaye v. Castro*, No. SA-23-CV-1529-FB (HJB), 2024 WL 5375786, at *2–3 (W.D. Tex. Oct. 29, 2024), *report and recommendation adopted*, No. SA-23-CV-1529-FB, 2025 WL 377722 (W.D. Tex. Jan. 31, 2025) (collecting cases and comparing approaches). Some courts, but not all, utilize the three-factor balancing test Petitioner urges here, which is set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), a case involving the termination of a citizen's social security benefits. *Id.* The Supreme Court, however, "when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*," *Rodriguez Diaz*, 53 F.4th at 1206–07.

Other circuits have applied the *Matthews* test to due-process challenges brought under section 1231(a)(6). The Fifth Circuit, however, has not applied *Matthews* to due-process challenges to section 1231. Petitioner makes no argument as to why this Court should apply the *Matthews* test and offers no reason his procedural due-process claim should not be subject to the same standard as other due process challenges to section 1231 in this Circuit. *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). Petitioner has been adjudicated removable and had the benefit of the attendant processes. But even

if the Court were to find that *Matthews* applies, the conclusion would nevertheless be the same—Petitioner's detention is constitutional even under *Matthews*.

Mathews outlines a three-part "flexible" test to determine whether due process complies with the Constitution. *Mathews*, 424 U.S. at 321. Under *Mathews*, courts consider: (1) the individual's interest; (2) the risk of erroneous deprivation of the right absent further procedures; and (3) the government's interest. *Id.* at 334. Any analysis of these factors in the immigration context must "weigh heavily" the fact that "control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). A correct application of the *Mathews* test weighs against ordering the immediate release Petitioner requests.

Clearly Petitioner has a liberty interest in freedom from lengthy imprisonment. However, Petitioner's liberty interest is diminished because he is subject to an order of removal. *See, e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022). The Supreme Court has emphasized that "detention during deportation proceedings [remains] a *constitutionally valid* aspect of the deportation process." *Demore v. Kim*, 538 U.S. at 523 (emphasis added). Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings and, in fact, has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure.").

Regarding the second *Mathews* factor, applicable statutes and regulations already provide extensive protections to all aliens detained pursuant to § 1231, including those in withholding-only proceedings. There is no basis in law for imposing yet more procedures that neither Congress nor the relevant agencies have adopted.

As a threshold matter, § 1231(a)(6) provides that DHS "may" detain an alien beyond the 90-day removal period—in other words, the decision is discretionary. And federal regulations set forth a framework for the exercise of that discretion. *See* 8 C.F.R. § 241.4. Under that framework, ICE may release the alien if he demonstrates to the satisfaction of the responsible official that he will not pose a danger to the community or a significant flight risk pending his removal from the United States. *Id.* at § 241.4(d)(1). Federal regulations also set out a separate set of "special review procedures" derived from *Zadvydas*. 8 C.F.R. § 241.13(a). Under those procedures, the regulation provides that a noncitizen's release may be revoked "if, on account of changed circumstances," it is determined that "there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). At that point: "[T]he alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly *after* his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* § 241.13(i)(3). The regulations expressly provide that those special review procedures supplement, rather than supplant, the discretionary framework discussed in the preceding paragraph. *Id.* § 241.13(b).

Though Petitioner tries to impugn the quality of these procedures, the Supreme Court concluded in *Zadvydas* that the process established in that case overcomes any constitutional concerns the applicable procedures might raise. *See* 533 U.S. at 692, 699-701; *see also Wang*, 320 F.3d at 146 (rejecting claim for bond hearing to justify continuing detention). Petitioner's chief complaint is that Respondents did not give notice and an opportunity to respond prior to revoking his OSUP. ECF 1, ¶ 67. Petitioner did not cite any authority for the proposition that a pre-detention interview was somehow required. It was not, because as discussed above, the regulation instead provides for an interview of the alien "after his or her return to [the agency's] custody." 8 C.F.R. § 241.13(i)(3).

Finally, as to the third factor and final *Mathews* factor, the government's interests in maintaining the existing procedures are legitimate and significant. As a general matter, the Supreme Court has stressed that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Accepting Petitioner's position would flout this directive by injecting that very rigidity into the discretionary detention regime Congress adopted.

In determining what process is due in immigration proceedings, "it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). "[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power,

and the maintenance of a republican form of government." *Mathews*, 426 U.S. at 81 n.17 (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952)). "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal [noncitizen]s—to be a vital public interest." *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022). It is thus clear that, in the removal process, "the government interest includes detention." *Id.* And the Supreme Court has stated removal proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character." *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Further, "[t]here is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Landon*, 459 U.S. at 34 ("The government's interest in efficient administration of the immigration laws . . . is weighty.").

Therefore, all three *Mathews* factors favor the Respondent, and this Court should accordingly dismiss the Petition.

3. Petitioner's Re-Detention is Lawful.

The authority to detain Petitioner derives from 8 U.S.C. § 1231, which directs the Attorney General to detain and effect the removal of any alien from this country within 90 days of any order of removal, while also authorizing an additional period of detention for certain aliens who have been ordered removed due to a criminal offense or who otherwise present a risk to the community. 8 U.S.C. § 1231(a)(1), (6). Construing the

post-90-day-removal-period detention provision of this statute, the Supreme Court held in *Zadvydas* that the statute does not authorize permanent, indefinite detention, and that instead, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699.

Upon release, an alien subject to a final order of removal must comply with certain conditions of release. 8 U.S.C. § 1231(a)(3), (6). And the release can be revoked for various reasons, including, under 8 C.F.R. § 241.13(i), for purposes of executing the alien's removal order. Specifically, a noncitizen's release may be revoked "if, on account of changed circumstances," it is determined that "there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

Here, the revocation of Petitioner's release and his current detention are both legally permissible because of the change in circumstances relating to the ability to remove Vietnamese Nationals from the United States. The United States has during the past year been successfully removing pre-1995 Vietnamese Nationals from the United States to Vietnam. ECF 12, p. 6, at ¶ 12. These efforts have been successful: ERO has removed 20 Vietnamese Nationals to Vietnam as recently as July 2025. ECF 12, p. 6, at ¶ 12. ERO requested a travel document from Vietnam for Petitioner and on October 8, 2025, Petitioner was interviewed by the Government of Vietnam as part of the request for travel documents. App. p. 3, at ¶ 5. There is a charter flight to Vietnam scheduled for November 4, 2025. Given the number of individuals removed to Vietnam recently, ERO believes that Petitioner will receive his travel papers any day and will be removed on the

next charter flight to Vietnam. *Id.* at ¶ 10.

In light of these changed circumstances, the Respondents had reason to revoke Petitioner's release and detain him in anticipation of a likely removal to Vietnam. Moreover, as shown by the declarations submitted in support of this response, there is a significant likelihood that Petitioner can be removed in the reasonably foreseeable future, based on the United States' recent experience with Vietnam's willingness to accept Vietnamese citizens. App. p. 3, at ¶ 10. For these reasons, Petitioner is entitled to no relief on his challenges to the revocation of his release and detention. The relevant circumstances have changed, and therefore revocation and detention at this time for the purpose of attempting to execute Petitioner's removal order are constitutionally permissible.

B. Petitioner's Remaining Claims are Improper.

1. Petitioner cannot seek APA review in a Habeas Petition.

In this proceeding, Petitioner expressly challenges his civil detention. *See, e.g.*, ECF 19. Such a challenge must be brought in the form of a petition for a writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that when a detainee "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus"); *see also, e.g.*, *Miller v. Commw. of Pa.*, 588 F. App'x 96, 97 n.1 (3d Cir. 2014) ("Relief in the form of . . . release from custody indicates a challenge to 'the very fact or duration of [one's] physical imprisonment' and may be sought *only* through a petition for a writ of habeas

corpus[.]" (emphasis added) (quoting *Preiser*, 411 U.S. at 500)). Put simply, "release from ICE custody . . . is a remedy that is *only* available through a habeas petition." *Armando C. G. v. Tsoukaris*, No. 20-5652, 2020 WL 4218429, at *7 (D.N.J. July 23, 2020) (emphasis added). And indeed, a "Petition for a Writ of Habeas Corpus" is exactly what Petitioner filed. ECF 19.

In the Amended Petition, Petitioner purports to assert a claim under the Administrative Procedure Act ("APA")—a civil claim. *Id.* ¶¶ 98-108. This he may not do, as a civil APA claim is not cognizable in the habeas context. *See, e.g.*, *Mesina v. Wiley*, 352 F. App'x 240, 241-42 (10th Cir. 2009) (holding that petition asserting APA claim "does not state a habeas claim").

2. Petitioner's Third Country Removal Claims are Not Ripe for Review.

Petitioner makes claims about potentially being removed to a country not designated on his removal order. ECF. 1, ¶ 94. Petitioner further claims that he must receive notice or opportunity to be heard prior to third-country removal. *Id.* at ¶115. This is pure conjecture. Accordingly, his claim challenging a potential third-country removal is not ripe for judicial review. *See Texas v. United States*, 523 U.S. 296, 300 (1998) (a "claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated or indeed may not occur at all." (cleaned up)).

Whether Petitioner will be removed to a third country is contingent on many things, none of which have happened. Most importantly, Respondents have requested a travel document from Vietnam. App. p. 3, at ¶ 4. That request has not been denied. Until and unless that occurs, there are no plans for third-country removal. Moreover, there is no

evidence ICE suggested or told Petitioner he would be removed to a third country. Simply put, Petitioner's claims are all hypothetical with no indication when or whether they will even occur. As such, they are not ripe for adjudication.

C. Petitioner is Not Entitled to a Temporary Restraining Order or Preliminary Injunction.

Petitioner's amended request for a temporary restraining order is premised on his amended habeas claim that his re-detention is unlawful and that he cannot be removed to Vietnam. ECF 20. ICE has authority to re-detain noncitizens such as Petitioner when there are changed circumstances such that there is a significant likelihood that the noncitizen may be removed in the reasonable future. Circumstances have changed and therefore there is a significant likelihood that Petitioner will be removed to Vietnam soon. App. p. 3, ¶ 10. Petitioner's re-detention is proper, and his detention is not unconstitutional. But for all the reasons already discussed above in connection with the consideration of these issues in the context of Petitioner's amended habeas petition, these claims fail on the merits and therefore Petitioner also is not entitled to any temporary or preliminary relief on them. Petitioner cannot show that these claims are likely to succeed on the merits because, in fact, they fail on the merits as outlined herein. *See Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

V. Conclusion

Petitioner's amended motion for temporary restraining order and amended petition for habeas should be denied.

Respectfully submitted.

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CERTIFICATE OF SERVICE

On October 24, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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