United States District Court
Western District of Texas
El Paso Division

Trinh Anh Hieu Nguyen, Petitioner, v. Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. 3:25-CV-00371-LS

Response to Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241

Respondents respectfully submit this response to Petitioner Trinh Anh Hieu Nguyen's petition for writ of habeas corpus under 28 U.S.C. § 2241 (the "Petition"), per this Court's Order for Service dated September 10, 2025 (ECF No. 5). In his petition, Tinh Anh Hieu Nguyen ("Petitioner"), requests the Court grant his writ of habeas corpus, order his immediate release, and enjoin his removal or transfer from the district, alleging that his continued detention is an unlawful violation of the immigration laws and regulations, due process, and the Administrative Procedure Act (APA). *See* ECF No. 1 at 6-9. Petitioner's claims fail. The only claims here that are redressable[1]

[1] Petitioner also challenges Federal Respondents' conduct as violating the APA, but he has not paid the filing fee associated with any claims outside of the scope of habeas relief. *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)). The $5 filing fee "relegates this action to habeas relief only," because one "cannot pay the minimal habeas fee and pursue non-habeas relief." *Id.* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3.

Finally, Petitioner claims entitlement to attorney fees under the Equal Access to Justice Act ("EAJA"), but the Fifth Circuit no longer recognizes EAJA fees in the habeas context. ECF No. 1 at 25; *see also Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

in habeas are: (1) unlawful application of the Immigration and Nationality Act (INA); (2) substantive and procedural due process. *Id.* These claims, however, fail as a matter of law, as outlined below. Petitioner is a convicted aggravated felon with a final order of removal to Vietnam. *See* Ex. A (Sarellano Declaration). Petitioner's supervised release was properly revoked and removal efforts to remove him to Vietnam are in process. *Id.* Petitioner's custody is lawful under the INA and the Constitution.

I. Relevant Facts and Procedural History.

Petitioner Nguyen filed this habeas petition on or about September 8, 2025, seeking release from civil immigration detention, claiming that he was ordered removed on March 7, 2002, and subsequently released from ICE custody on June 14, 2002. *See* ECF No. 1 at 2.[2] Petitioner claims that for the last 28 years, he has reported to "former INS and then it's predecessor [ICE]" in lieu of detention. *See id.* at 7. ICE avers that Petitioner was taken into custody on or about July 27, 2025, for the purpose of executing his final order of removal to Vietnam. Ex. A (Sarellano Declaration); 8 U.S.C. § 1231(a). *Id.*

Petitioner seeks release from civil immigration detention, claiming that his detention is unlawful because he believes he has been detained "beyond the 90-day removal period." ECF No. 1 at 7. Respondent, however, denies that Petitioner has been detained beyond the 90-day removal period and avers that even the Court were to find that the removal period has expired, ICE is permitted to continue Petitioner's detention unless or until Petitioner shows that his removal is not imminent. 8 U.S.C. § 1231(a)(6). Respondents are preparing to execute Petitioner's final removal order and have scheduled him for an interview with Vietnam on October 2, 2025, in furtherance of ICE's repatriation efforts. Ex. A (Sarellano Declaration).

[2] Petitioner alleges conflicting dates throughout his petition.

Petitioner's claims lack merit because he is lawfully detained with a final order of removal while ICE arranges his imminent removal to Vietnam. 8 U.S.C. § 1231(a); *see* Ex. A (Sarellano Declaration). Under § 1231(a), Petitioner's post-order detention is mandatory for the first 90 days of the removal period. *Id.* Even beyond the 90-day removal period, any constitutional challenge to continued detention is not ripe until the alien has been detained in post-order custody for at least the presumptively reasonable period of six months. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner's claims should be denied, because he is lawfully detained, and his constitutional claim is not ripe.

II. Petitioner's Claims Fail

A. Petitioner's Detention Is Mandatory Through October 25, 2025, and Permissible Beyond that Date in the Exercise of ICE's Discretion.

As an alien with a final order of removal, Petitioner is detained under 8 U.S.C. § 1231(a) on a mandatory basis. This Petition should be denied for three distinct reasons. First, Petitioner's detention is mandated by statute for at least 90 days and may be extended under certain circumstances. *Second,* this Court lacks jurisdiction to review Petitioner's claims because they arise from a decision and action by the Attorney General to execute a final order of removal. *See* 8 U.S.C. § 1252(g). *Third,* any constitutional challenge to Petitioner's custody is not ripe because he has not been in post-order custody for at least six months.

Petitioner is detained in ICE custody under 8 U.S.C. § 1231(a), because he has a final order of removal. *See* Ex. A (Sarellano Declaration). ICE's detention authority under § 1231 is well-settled. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Once the order is final, the statute affords ICE a 90-day mandatory detention period within which to remove the alien from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). ICE avers that although Petitioner was previously detained in the removal period and subsequently released, the removal period

restarts upon his rearrest. CITE. The point of the 90-day period is to allow ICE a reasonable opportunity to execute the removal order without the potential of the detention becoming unreasonably prolonged. That Petitioner was previously released after 90 days of detention in post-removal custody does not forever bar ICE from re-detaining him for the purpose of executing his removal order. Such a prohibition would be contrary to the intent of Congress to provide ICE with broad discretion to execute final orders of removal. Once the 90-day period has elapsed from the date of Petitioner's most recent arrest, Petitioner will be given a post-order custody review to determine whether continued detention is necessary beyond the removal period.

DHS has no obligation to release Petitioner during this 90-day period until the DHS Headquarters Post-Order Detention Unit has had the opportunity, during a six-month period, to determine whether there is a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. §§ 241.13(b)(2)(ii); 241.13(f).

B. This Honorable Court Lacks Jurisdiction to Review Petitioner's Claims because they arise from a Decision and Action by the Attorney General to Execute Petitioner's Final Order of Removal.

As set forth below, the Petition should be denied for lack of jurisdiction to the extent Petitioner challenges the basis for his removal order or the decision to execute it. The REAL ID Act of 2005 divests district courts of jurisdiction over claims arising from a decision or action by the Attorney General to execute a removal order. 8 U.S.C. § 1252(g) (stating, in part, that "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"). As the Supreme Court has explained, this jurisdiction-stripping provision applies to three discrete actions that the Attorney General may take: the "'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal

orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

Here, Petitioner is subject to a final order of removal, *see* Ex. A, and he essentially seeks this Court's review of a decision and action by the Attorney General to execute that order. Evaluating the merits of the Petition would require this Court to review "claim[s] . . . arising from the decision or action by the Attorney General to . . . execute [a] removal orders," 8 U.S.C. § 1252(g). *See also Duron v. Johnson*, 898 F.3d 644, 647 (5th Cir. 2018). Under both statutory text and judicial precedent, § 1252(g) bars judicial review of ICE's decisions in this context. *See Reno*, 525 U.S. at 482; *Velasquez v. Nielsen*, No. 18–40140, 2018 WL 5603610, at *4 (5th Cir. Oct. 29, 2018); *see also, generally, Idokogi v. Ashcroft*, 66 F. App'x 526 (5th Cir. 2003) (per curium); *Fabuluje v. Immigration & Naturalization Agency*, 244 F.3d 133 (5th Cir. 2000) (per curium); *Hidalgo-Mejia v. Pitts*, 343 F.Supp.3d 667, 673 (W.D. Tex. 2018). Because Petitioner's claims arise from a decision and action by the Attorney General to execute a removal order, this Court lacks jurisdiction to review the Petition.

C. Petitioner's Due Process Claim Is Premature, as He has Not Been Detained in Post-Order Custody for the Presumptively Reasonable Period of Six Months.

Petitioner alleges that his arrest and detention violate his liberty and Fifth Amendment rights under the Constitution. ECF No. 1 at 8-9. Respondents construe this statement as a substantive due process claim. Respondents are actively seeking removal to Vietnam. Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas*, 533 U.S. at 701. Under § 1231, the removal period can be extended in a least three circumstances. *See Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien fails to comply with

removal efforts or presents a flight risk or other risk to the community. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). Where the alien challenges the discretionary basis for detention authority, that decision is protected from judicial review. 8 U.S.C. § 1252(a)(2)(B). An alien may be held in confinement until there is "no significant likelihood of removal in a reasonably foreseeable future." *Zadvydas*, at 533 U.S. at 680.

Although Petitioner's removal order became final in 2002, the 90-day removal period may be extended, for example, where ICE determines the alien is unlikely to comply with the removal order. *See Johnson v. Guzman-Chavez*, 594 U.S. 523, 528–29, 544 (2021); *see also* 8 C.F.R. § 1231(a)(6); 8 C.F.R. § 241.4. Continued detention under this provision is the "post-removal-period." *Guzman-Chavez*, 594 U.S. at 529. The statute does not specify a time limit on this post-removal period, but the Supreme Court has read an implicit limitation into the statute and held that the alien may be detained only for a period reasonably necessary to remove the alien from the United States. *Id.*; 8 C.F.R. § 241.13. Six months is the presumptively reasonable timeframe in the post-removal context. *Zadvydas*, 533 U.S. at 701. Although the Court recognized this presumptive period, *Zadvydas* "creates no specific limits on detention . . . as 'an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (quoting *Zadvydas*, 533 U.S. at 701).

To state a claim for relief under *Zadvydas*, Petitioner must show that: (1) he is in DHS custody; (2) he has a final order of removal; (3) he has been detained in *post*-removal-order detention for six months or longer; and (4) there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 700. Petitioner does not and cannot make this showing, as he has been detained less than six months in post-order custody. Any due process

claim under *Zadvydas* is, therefore, premature. *See Chance v. Napolitano*, 453 F. App'x 535, 2011 WL 6260210 at *1 (5th Cir. Dec. 15, 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 2011 WL 891071 at *1 (5th Cir. Mar. 15, 2011); *Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 929 n.33 (W.D. Tex. 2018); *Kasangaki v. Barr*, 2019 WL 13221026 at *3 (W.D. Tex. July 31, 2019).

In *Zadvydas*, the U.S. Supreme Court held that § 1231(a)(6) "read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States" but "does not permit indefinite detention." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute." *Id.* at 699. The Court designated six months as a presumptively reasonable period of post-order detention but made clear that the presumption "does not mean that every alien not removed must be released after six months." *Id.* at 701.

Once the alien establishes that he has been in post-order custody for more than six months at the time the habeas petition is filed, the alien must provide a "good reason" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade*, 459 F.3d at 543–44; *Gonzalez v. Gills,* No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien establishes the requisite "good reason," the burden will not shift to the government to prove otherwise. *Id.* Petitioner has not been in custody for six months. *See* Exhibit A (Sarellano Declaration).

Even if his claim were ripe, Petitioner has a final order of removal that authorizes his detention under 8 U.S.C. § 1231(a). ICE denies that there is no likelihood of removal in the reasonably foreseeable future. *Id.* § 1231(a)(6). The "reasonably foreseeable future" is not a static concept; it is fluid and country-specific, depending in large part on country conditions and

diplomatic relations. *Ali v. Johnson*, No. 3:21– CV–00050-M, 2021 WL 4897659 at *3 (N.D. Tex. Sept. 24, 2021).

Additionally, a lack of visible progress in the removal process does not satisfy the petitioner's burden of showing that there is no significant likelihood of removal. *Id.* at *2 (collecting cases); *see also Idowu v. Ridge*, No. 3:03-CV-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003). Conclusory allegations are also insufficient to meet the alien's burden of proof. *Nagib v. Gonzales*, No. 3:06-CV-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-CV-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004)). One court explained:

> To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that "the circumstances of his status" or the existence of "particular individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4 (citation omitted).

Even if Petitioner were to successfully meet his burden once the claim is ripe, there is significant likelihood of removal in the reasonably foreseeable future. *See* Ex. A (Sarellano Declaration). Petitioner's substantive due process claim fails here as a matter of law.

D. No Procedural Due Process Violation

To establish a procedural due process violation, Petitioner must show that he was deprived of liberty without adequate safeguards. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). While an agency is required to follow its own procedural regulations, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). In any event, a remedy for a procedural due process violation is substitute process. *Mohammad v.*

Lynch, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990). On September 29, 2025, ICE served the Notice of Revocation of Release, thereby completing substitute process in this case. *See* Exhibit B (Notice of Revocation of Release).

Additionally, because Petitioner has failed the *Zadvydas* test, he has also failed to prove a due process violation. *See Linares v. Collins*, No. 1:25–CV–00584–RP, 2025 WL 2726549 at *3–*6 (W.D. Tex. Aug. 12, 2025), *report and recommendation adopted, Linares v. Collins*, 2025 WL 2726067 (Sept. 24, 2025) (collecting cases and analyzing *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (citing *Zadvydas v. Davis*, 533 U.S. 678 (2001))). In *Zadvydas*, the Supreme Court held that § 1231(a)(6), "read in light of the Constitution's demands, limits an alien's post removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." 533 U.S. at 689. As discussed above, the Supreme Court also determined that six months was a presumptively reasonable period of detention. *Id.* at 701. To state a due process claim under *Zadvydas*, therefore, Petitioner must first show that, after six months of detention, "his removal is not likely to occur in the reasonably foreseeable future." *See Castaneda*, 95 F.4th at 756. The Fourth Circuit interpreted *Zadvydas* as "largely ... foreclos[ing] due process challenges to § 1231 detention apart from the framework [*Zadvydas*] established." *Castaneda*, 95 F.4th at 760. In other words, the *Zadvydas* standard is not only the standard by which courts determine whether continued detention under § 1231 violates *substantive* due process, but it is also the

standard by which the courts should determine a *procedural* due process violation. *Id.*

The Sixth Circuit came to the same conclusion. *See Martinez v. Larose*, 968 F.3d 555, 565-66 (6th Cir. 2020) (stating that since the Supreme Court had "had occasion to consider the constitutional implications of indefinite detention under § 1231(a)" in *Zadvydas*, and had there "offered a standard through which to judge indefinite-detention cases," the Sixth Circuit saw "no cause to question" the *Zadvydas* decision by applying a different framework). In the words of the Fourth Circuit, courts have held that *Zadvydas* "*is* due process" when it comes to § 1231 detainees. *Castaneda*, 95 F.4th at 760 (emphasis original).

The Fifth Circuit has not adopted any clear standard, though district courts in the Fifth Circuit have applied *Zadvydas* to procedural due-process challenges. *See Hernandez-Esquivel*, 2018 WL 3097029, at *8 (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.*, 2023 WL 5521155, at *5-6 (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). Additionally, while the Fifth Circuit has not analyzed a procedural due process challenge under § 1231(a)(6) under the same framework as the Fourth Circuit, it has applied *Zadvydas* to constitutional claims by detainees held under § 1231. *See Andrade v. Gonzales*, 459 F.3d 538, 543-44 (5th Cir. 2006) (denying petitioner's due process claim on the grounds that he could not show

that there was "no significant likelihood of removal in the reasonably foreseeable future").

This Court should reach the same conclusion: that *Zadvydas* "largely…foreclose[d] due process challenges to § 1231 detention apart from the framework it established." *Castaneda,* 94 F.4th at 790. This standard is consistent with the practice of other district courts in the Fifth Circuit. *See Hernandez-Esquivel,* 2018 WL 3097029, at *8; *M.P.*, 2023 WL 552155, at *5-6. As the court in *Hernandez-Esquivel* stated, due process demands relief in the § 1231(a) setting "only once continued detention is unreasonable." 2018 WL 3097029, at *8.

In the instant case, Petitioner has been detained less than 90 days, and ICE is actively preparing to effectuate his removal to Vietnam. *See* Ex. A (Sarellano Declaration). Such detention is well short of the six-month reasonableness standard set out in *Zadvydas.* 533 U.S. at 700. Moreover, any procedural due process claim that Petitioner might have had regarding the sufficiency of process in revoking his supervised release has been cured by substitute process. Additionally, Petitioner is scheduled for a virtual interview with the Vietnamese Consulate in two days in support of his travel document request. *See* Ex. A (Sarellano Declaration). Finally, the pertinent post-order custody review regulations provide for custody reviews every 90 days while Petitioner remains detained. As such, any concern that Petitioner's detention is unreasonable or may become unreasonable can and will be addressed in 90-day increments after notice and an opportunity to be heard. For these reasons, Petitioner's claim fails to meet the *Zadvydas* standard, both substantively and procedurally. This petition should be denied.

Conclusion

Petitioner is lawfully detained by statute, and his detention comports with the limited due process he is owed as a convicted aggravated felon with a final order of removal. This Court should deny the Petition.

Respectfully submitted,

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