

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Trinh Anh Hieu Nguyen,	)	
	)	
Petitioner,	)	Case No. 3:25-CV-00371-LS
	)	
v.	)	REPLY TO RESPONDENT'S
	)	RESPONSE TO PETITION FOR
	)	WRIT OF HABEAS CORPUS
Todd Lyons, Acting Director Immigration and	)	PURSUANT TO 28 USC § 2241
Customs Enforcement; Mary De Anda-Ybarra,	)	
Field Office Director for Enforcement and	)	
Removal Operations, Kristi Noem, Secretary of the	)	
U.S. Department of Homeland Security;	)	
in their official capacities,	)	
	)	
Respondents.	)	
	)	

Petitioner respectfully submits this reply to Respondents' response to the petition for writ of habeas corpus 28 U.S.C. § 2241. Respondents argue that Petitioner's claims¹ fail on four grounds: 1) Petitioner's detention is mandated by statute for at least 90 days and may be extended under certain circumstances; 2) the Court lacks jurisdiction to review Petitioner's claims under 8 U.S.C. § 1252(g); 3) Petitioner's constitutional challenge to his detention is not ripe because he has not been detained post-order for at least six months; and 4) that there was no procedural due process violation. Petitioner submits this reply to address each of the issues raised by the Respondents.

¹ Respondents state that Petitioner claims for entitlement to attorney fees under the Equal Access to Justice Act ("EAJA"). This is factually incorrect. Petitioner never claimed entitlement to attorney fees in his petition.

I. Introduction

Noncitizens, even those subject to a final Order of Removal, have constitutional rights just like everyone else in the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). And while the new administration may have changed how it prioritizes the removals of noncitizens, it may not do so at the expense of fairness and due process. *See Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *2 (Apr. 7, 2025) (per curium) ("It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings."). It also may not do so in violation of its own regulations. *See Gulf States Mfrs., Inc. v. Nat'l Labor Relations Bd.*, 579 F.2d 1298, 1308 (5th Cir. 1978) ("It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid."); *see also Bonitto v. Bureau of Immigr. & Customs Enf't*, 547 F. Supp. 2d 747, 755 (S.D. Tex. 2008) ("Where individual interests are implicated, the Due Process clause requires than an executive agency adhere to the standards by which it professes its action to be judged." (citing *Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959))).

II. 90-Day Removal Period

Under 8 U.S.C. § 1231(a), the government may detain a noncitizen for removal only during the 90-day "removal period," which begins when the removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(A)-(B)(i). This period may be extended only if the noncitizen "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal." 8 U.S.C. § 1231(a)(1)(C). The Supreme Court has also recognized a constitutional limitation on post-removal- period detention: such detention is permissible only when there is a

“significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 70.

Respondents contend that Petitioner’s post-order detention is mandatory for the first 90 days of the removal period and therefore, lawful. However, Petitioner’s 90-day removal period has expired. Petitioner was released on July 14, 2002 because he could not be removed from the United States. His order became final in 2002, when his 90-day period ended in July 15, 2002. His 180-day *Zadvydas* presumptively reasonable period expired October 3, 2002. Contrary to Respondents argument, the statute and regulation is clear: the 90-day removal period runs from the latest of the date of the Order of Removal becomes final, the date on which a court-ordered stay of removal expires, or the date the noncitizen is released from detention. *See* 8 U.S.C. § 1231 (a)(1)(B); 8 C.F.R. §241.4(g)(1)(i). Petitioner’s 90-day detention post removal period ran 23 years ago; his detention is unlawful.

III. Jurisdiction

Respondents broadly claim that this Court cannot entertain challenges to executive actions or decisions. (Dkt. 6 at 4). Respondents claim that 8 U.S.C. § 1252(g) strips this Court of jurisdiction. But, 8 U.S.C. § 1252 (g), is narrow and only applies to claims “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.” 8 U.S.C. §1252 (g). The Supreme Court previously characterized § 1252(g) as a narrow provision, applying “only to three discrete actions that the Attorney General may take: her ‘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). The Supreme Court found it “implausible that the mention of three discrete events

along the road to deportation was a shorthand way to referring to all claims arising from deportation proceedings.” *Id.*

Here, Petitioner does not challenge the “decision or action to ‘commence proceedings, adjudicate cases, or execute removal orders.” Respondents inaccurately state in their response that Petitioner “essentially seeks this Court’s review of a decision and action by the Attorney General to execute that order.” (Dkt. 6 at 5). Petitioner is not challenging ICE officials’ decision to revoke his supervised release or execute his order of removal. Petitioner challenges the manner in which the government has re-detained him under this order. This Court unquestionably has jurisdiction to review Petitioner’s claims that the government has violated his statutory and constitutional rights to due process by re-detaining him. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (citing 28 U.S.C. § 2241(c)(3)); *Baez v. Bureau of Immigr. & Customs Enft*, 150 F. App’x 311,312 (5th Cir. 2005) (per curiam) (courts retain the power to hear statutory and constitutional challenges to immigration detention when those claims do not challenge the final order of removal). Nothing in 8 U.S.C. § 1252(a)(2)(B)(ii) prevents the Court from considering Petitioner’s challenge to the manner in which the government revoked his Order of Supervision or considering whether the government followed its own regulations in doing so. *See Zadvydas*, 533 U.S. at 687-88 (holding that a § 2241 petition is the proper vehicle for a petitioner to use to challenge the legality and constitutionality of post-removal period detention); *Oyelude v. Chertoff*, 125 F. App’x 543,546 (5th Cir. 2005) (courts have jurisdiction to review detention “insofar as that detention presents constitutional issues, such as those raised in a habeas petition”); *Mantena v. Johnson*, 809 F.3d 721, 728-29 (2d Cir. 2015) (even when a “statute strips jurisdiction over a substantive discretionary decision, [it] does not strip jurisdiction over procedural challenges” and when procedural

requirements bind an official's exercise of discretion, "courts retain jurisdiction to review whether those requirements have been met").

Petitioner's petition does not challenge his removal; he challenges the manner in which the government revoked his release, which he contends was done without due process and in violation of ICE's own regulations. Petitioner's due process and statutory claims are not barred by 8 U.S.C. §1252(g).

IV. Ripeness of Constitutional Challenge

Respondents contend that Petitioner's detention does not violate *Zadvydas* because he has not yet been detained for more than six months. Petitioner was ordered removed on March 7, 2002 and released from ICE custody on July 14, 2002. The government does not provide any authority to support its position that the 90-day removal period restarts upon his arrest or that it can arbitrarily detain the Petitioner without due process. The government contends that because it re-detained the Petitioner on July 27, 2025, it may hold him for six months from that date before running afoul of *Zadvydas*. But nothing in *Zadvydas* precludes a challenge to detention before the presumptively constitutional time period has elapsed. *Zadvydas* specifically holds that continued detention is proper only when the noncitizen's removal is reasonably foreseeable. "[I]f removal is not reasonably foreseeable; the court should hold continued detention is unreasonable and no longer authorized by statute." *Id.* at 699- 700. The government's contention that it may avoid the holding of *Zadvydas* and re-start the six-month presumptively constitutional detention clock by simply releasing and then re-detaining a noncitizen has no basis in either the statutes, the regulations, or *Zadvydas* itself. *See, e.g., Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025) (rejecting the government's argument that the six-month-period resets when the government re-detains a noncitizen); *Sied v. Nielsen*, No. 17-cv-06785-LB,

2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); *Chen v. Holder*, No. 6:14-2530, 2015 WL 132366635, at *2 (W.D. La. Nov. 20, 2015) ((rejecting the government's argument that a petition was premature under *Zadvydas* and noting that "[s]urely, under the reasoning of *Zadvydas*, a series of releases and re-detentions by the government, while technically not in violation of the presumptively reasonable jurisprudential six month removal period, in essence results in an indefinite period of detention, albeit executed in successive six month intervals.")). Petitioner does not argue that ICE is forever barred from executing his removal order. However, Petitioner asks this Court to reject the government's contention that he must remain in detention for six months before this Court may consider whether his continued detention violates his due process rights.

Respondents argue that removal is reasonably foreseeable because Petitioner was scheduled for an interview with the embassy of Vietnam on October 2, 2025. However, an interview with the consulate does not translate to Petitioner being granted a travel document. Moreover, Petitioner's interview with the embassy of Vietnam does not excuse Respondents violations of Petitioner's due process rights. Petitioner has been living in the United States under his Order of Supervision for 23 years. He reported to ICE as required. He has not been arrested, charged with, or convicted of any criminal offense, with the exception of minor traffic violations, since his release in 2002. The government never requested Petitioner to take any actions to obtain travel documents from Vietnam. On July 20, 2025, ICE officials arrested Petitioner without notice, and he has been detained ever since. Respondents do not provide any evidence of any changed circumstances in Petitioner's Order of Supervision that warranted re-detention or provide any explication why Petitioner was not asked to obtain travel documents while he was released. The process the government is using to attempt to remove him violates his Fifth Amendment due process rights and his due process rights under *Zadvydas*.

V. Procedural Due Process Violation

Respondents contends that there was no procedural due process violation because on September 29, 2025, ICE served the Notice of Revocation of Release, thereby completing substitute process in Petitioners case. See Exhibit B (Notice of Revocation of Release.) Petitioner disagrees with the government's characterization of Petitioner's claim. Petitioner argues that ICE violated his rights in connection with the revocation of his Order of Supervision and his rights have been violated in connection with his right to challenge the revocation. The government violated his due process rights by revoking his Order of Supervision without complying with the regulations governing revocations under 8 C.F.R. §241.4 (l)(2). That subsection specifically limits which government officials have the authority to revoke an Order of Supervision:

The Executive Associate [Director] shall have authority, in the exercise of discretion, to revoke release and return to [ICE] custody a [noncitizen] previously approved for release under the procedures in this section. A district director may also revoke release of a "noncitizen] when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].

8 C.F.R. §241.4 (l)(2). The same subsection limits the exercise of the discretion to revoke an Order of Supervision:

Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

- (i) The purposes of release have been served;
- (ii) The [noncitizen] violates any condition of release;
- (iii) It is appropriate to enforce a removal order or to commence removal proceedings against a[noncitizen]; or
- (iv) The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate.

8 C.F.R. § 241.4(1)(2). In Petitioner's case, the government did not comply with either of these binding regulations in revoking his Order of Supervision. Petitioner was detained encountered at an immigration checkpoint in Las Cruces, New Mexico and was taken into custody on July 27,

2025 without any notice that his Order of Supervision was revoked. It was not until September 29, 2025, that Deportation Officer Fernandez issued the Notice of Revocation of Release. The certificate of service shows that the Deportation Officer served Petitioner with the notice on September 29, 2025 at 5:57 p.m. The notice of revocation was issued 64 days later after Petitioner's detention. The issuance of the notice of revocation was issued in light of this petition and as an attempt to cure Respondents violation of Petitioner's due process rights.

Significantly, notice of revocation was not signed by the Executive Associate Director of ICE, someone to whom the Executive Associate Director has legally delegated authority or district director who has made specific findings that circumstances "do not reasonably permit referral of the case to the Executive Associate [Director]. 8 C.F.R. §241.4 (l)(2). Respondents have not shown evidence that Petitioner's Order of Supervision was lawfully revoked by someone with the authority to do so and for a reason lawfully permitted. As such, the government has failed to show that it has afforded Petitioner with due process in connection with the delayed notice of revocation of his Order of Supervision. Petitioner was not lawfully re-detained under a valid revocation of his Order of Supervision.

Furthermore, Petitioner has not been advised on the reasons for the revocation and was not provided with an informal interview required by §241.4 (l)(1). The regulation, in relevant part, requires that "the [noncitizen] will be afforded an initial informal interview promptly after his or her return to Service for custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification. 8 C.F.R. §241.4 (l)(1) (emphasis added). Respondent not only did not promptly issue a notice of revocation and served the Petitioner but it also failed to provide Petitioner with the opportunity to meaningfully challenge the revocation. By the time he was served with the notice, he had already been in detention for 64 days and even

after he was served with the notice, it was not revoked by someone with the authority to do so as it was signed by a deportation officer. Moreover, Petitioner was never given the opportunity to challenge the revocation. As of today's date, Petitioner has not been given an informal interview to give him an opportunity to respond to the reasons for revocation. Lastly, the notice of revocation does not state a reason described in the regulation that would warrant revocation under 8 C.F.R. §241.4 (I)(2). The notice of revocation cites to changed circumstances; however, the ICE official does not describe any changed circumstances that has not existed in the last 23 years.

"Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations." *Fed. Deft. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020); *see also Gulf States Mfrs., Inc. v. Nat'l Labor Relations Bd.*, 579 F.2d 1298, 1308 (5th Cir. 1978) ("It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid."); *Gov't of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970) (per curiam) ("It is equally well established that it is a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative processes before it."). Multiple courts have held that the government's failure to follow its own immigration regulations may warrant the release of a detained noncitizen. *See, e.g., Bonitto*, 547 F. Supp. 2d at 756; *Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Guillermo MR. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677 (N.D. Cal. July 17, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017). ("While ICE does have

significant discretion to detain, release, or revoke aliens, the agency must still follow its own regulations, procedures, and prior written commitments."). The government has violated Petitioner's due process rights by failing to comply with its own regulations. The regulations were promulgated to safeguard due process rights of noncitizens, and Respondents' violations severely prejudiced Petitioner had these regulations been followed, Petitioner would have had a meaningful opportunity to contest the revocation of his supervised released, demonstrate his compliance with the Order of Supervision, and prevent his unlawful detention.

Respondents attempt to cure its violations by substitute process failed as the notice itself further violates its own regulations.

VI. Conclusion

Respondents violated Petitioner's due process rights by re-detaining him without Complying with its own regulations and the law. Petitioner's continued detention violates due process. This Court should order his release from custody pursuant to the original conditions of the Order of Supervision of 2002.

/s/ Brenda M. Villalpando
Brenda M. Villalpando, Esq.
Villalpando Law Firm, PLLC
1119 N. Virginia St.
El Paso, Texas 79902
(915) 307-3496
bvillalpando@villalpandolaw.com

Counsel for Petitioner