

District Judge Tiffany M. Cartwright
Magistrate Judge Brian A. Tsuchida

1
2
3
4
5
6
7
8
9
10
11
12
13

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MONG TUYEN THI TRAN,

Petitioner,

v.

BRUCE SCOTT, *et al.*,

Respondents.

Case No. 2:25-cv-01886-TMC-BAT

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted: October 9, 2025

I. INTRODUCTION

This Court should deny Petitioner Mong Tuyen Thi Tran’s Petition for Writ of Habeas Corpus, Dkt. 4, and dismiss this proceeding. Tran challenges her post-order detention at the Northwest ICE Processing Center while she awaits removal from the United States. She alleges that her detention is unlawful because she believes that her removal to Vietnam is not likely in the reasonably foreseeable future, and because she was not afforded a pre-deprivation hearing. Both arguments fail, and Tran’s detention is lawful.

First, although it appears Tran’s earlier travel document request was not processed correctly, U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) has re-submitted Tran’s travel document request and has requested expedited processing. ICE ERO anticipates Tran’s removal is likely to occur in the near future. Second,

1 there is no requirement that non-citizens with final orders of removal receive a hearing before
2 they are taken into detention. Such a hearing would be a novel invention that is not recognized by
3 the immigration courts. Therefore, Federal Respondents respectfully request the Court deny the
4 Petition and dismiss this proceeding. This return is supported by the pleadings and documents on
5 file in this case and the Declaration of Deportation Officer Daniel R. Stzelczyk, with
6 accompanying exhibits. Federal Respondents do not believe a hearing is necessary.

7 II. FACTUAL AND PROCEDURAL BACKGROUND

8 A. Detention Authorities and Removal Procedures

9 The INA governs the detention and release of noncitizens during and following their
10 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
11 detention periods are generally referred to as “pre-order” (meaning before the entry of a final
12 order of removal) and, relevant here, “post-order” (meaning after the entry of a final order of
13 removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing
14 post-order detention).

15 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
16 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
17 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for
18 removal and to protect the community from noncitizens who may present a danger, Congress has
19 mandated detention while removal is being effectuated:

20 During the removal period, the [Secretary of Homeland Security]¹ shall detain the
21 [noncitizen]. Under no circumstance during the removal period shall the
22 [Secretary] release [a noncitizen] who has been found inadmissible under section

23 ¹ Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens,
24 the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this
authority to the Secretary of the Department of Homeland Security (“DHS”), of which ICE is a component. *See also*
6 U.S.C. § 251.

1 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or
2 1227(a)(4)(B) of this title.

3 8 U.S.C. § 1231(a)(2).

4 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration
5 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
6 and does not place any temporal limit on the length of detention under that provision:

7 [A noncitizen] ordered removed who is inadmissible under section 1182,
8 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or
9 who has been determined by the [the Secretary of Homeland Security] to be a risk
to the community or unlikely to comply with the order of removal, *may* be detained
beyond the removal period and, if released, shall be subject to the terms of
supervision in paragraph (3).

10 8 U.S.C. § 1231(a)(6) (emphases added).

11 During the removal period, ICE² is charged with attempting to effect removal of a
12 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit
13 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may
14 be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal
15 from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has
16 further identified six months as a presumptively reasonable time to bring about a noncitizen’s
17 removal. *Id.* at 701.

18 Here, Tran was placed in removal proceedings after three criminal convictions. Stzelczyk
19 Decl. ¶¶ 5–6, Exs. 1–2. As a result, Tran is the subject of an administrative order of removal that
20 became final on May 16, 2004. *Id.* ¶ 7, Ex. 3. Following her removal order, she was subject to
21 mandatory detention during the removal period and was released on an Order of Supervision after
22 that time. *See id.* ¶ 8, Ex. 4. Recently, ICE’s ability to effectuate removals for Vietnamese who

23
24 ² Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

1 entered the country before 1995 changed. *Id.* ¶¶ 10, 13. Therefore, in April 2025, ICE ERO in
2 Baltimore initiated a travel document packet for Tran’s removal to Vietnam. *Id.* ¶ 9. In May, at a
3 regular check-in, ICE ERO Baltimore took Tran into custody to effectuate removal. *Id.* ¶ 10.

4 After Tran filed this habeas petition, on October 1, 2025, local ICE ERO checked on the
5 status of her travel document request and learned that ICE Headquarters for Removal and
6 International Operations (HQ-RIO) had not received the April travel document packet. *Id.* ¶ 12.
7 HQ-RIO requested that the packet be resubmitted, and local ICE ERO resubmitted it the same
8 day. *Id.* HQ-RIO then confirmed that the ERO attaché in Vietnam has submitted the travel
9 document packet to the government of Vietnam with a request for expedited processing. *Id.*
10 Vietnam has been processing travel document requests within thirty days, so ICE ERO expects
11 to have Tran’s travel documents shortly. *Id.* ¶ 13.

12 Tran’s current period of detention is five months. If considered in conjunction with the
13 mandatory detention period in 2004, she has been detained approximately eight months, and the
14 “presumptively reasonable” six-month custody period recently expired. *Zadvydas*, 533 U.S. at
15 701.

16 **B. Petitioner Tran**

17 Tran is a native and citizen of Vietnam. Stzelczyk Decl. ¶ 4. She was admitted to the
18 United States as a lawful permanent resident in 1993. *Id.* In 2001, Tran was convicted in the
19 Circuit Court of Fairfax County, Virginia, of three felony crimes: Uttering and Delivering a
20 Forged Check, Obtaining Money by False Pretense, and Grand Larceny by Check. *Id.* ¶ 5, Ex. 1.
21 For the three crimes, the court sentenced Tran to three years’ confinement. *Id.* All but four months
22 was suspended. Ex. 1 at 2, 5, 7.

23 Because of these criminal convictions, removal proceedings commenced, and Tran was
24 served a Notice to Appear (NTA) in immigration court. Stzelczyk Decl. ¶ 6, Ex. 2. The NTA

1 charged Tran as removable under Section 237(a)(2)(A)(ii) of the Immigration and Nationality Act
2 (INA) as an alien who, at any time after admission, was convicted of two crimes involving moral
3 turpitude not arising out of a single scheme of criminal misconduct, and under Section
4 237(a)(2)(A)(iii) as an alien who, at any time after admission, was convicted of an aggravated
5 felony relating to a theft or burglary offense for which a term of imprisonment of at least one year
6 was imposed. Ex. 2 at 3. With counsel, Tran conceded both changes of removability. Ex. 3 at 2.

7 On April 16, 2004, an immigration judge ordered Tran removed from the United States to
8 Vietnam. Ex. 3. The removal order became final thirty days later on May 16, 2004, because Tran
9 did not appeal. Stzelczyk Decl. ¶ 7. Following her removal order, Tran was taken into custody
10 under 8 U.S.C. § 1231(a)(2) for the 90-removal period that calls for mandatory detention, after
11 which time ICE released her on an Order of Supervision after that period. *See id.* ¶ 8, Ex. 4.

12 In April 2025, due to increased cooperation with the government of Vietnam, ICE ERO
13 Baltimore sought to effectuate Tran's final removal order, and it initiated a travel document
14 packet for Tran's removal to Vietnam. Stzelczyk Decl. ¶¶ 9–10. The following month, on May
15 12, 2025, ICE ERO Baltimore placed Tran under arrest. *Id.* ¶ 10. ERO Baltimore issued Tran a
16 notice of Revocation of Release informing her that her Order of Supervision had been revoked
17 because of changed circumstances. *Id.* ¶ 10, Ex. 5. The notice stated that Tran's case was under
18 review by the government of Vietnam for the issuance of a travel document and that she was
19 being taken into custody under 8 C.F.R. § 241.4. Ex. 5.

20 On July 1, 2025, at the request of ICE ERO Baltimore, Deportation Officer Stzelczyk
21 served Tran the revocation notice issued in Baltimore in May to obtain Tran's signature. Stzelczyk
22 Decl. ¶ 11. Officer Stzelczyk made no changes to the document and does not recall telling Tran
23 that she could not change the pre-filled date next to her signature or that doing so would result in
24 any consequences. *Id.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

III. ARGUMENT

Tran advances two arguments in favor of her release: she challenges the length of her detention, and she challenges the legality of her arrest. Both arguments fail. First, Tran’s detention is not indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Between the current five-month period of detention and a three-month mandatory detention period following her 2004 removal order, she has been detained for approximately eight months in total. With increased cooperation from the government of Vietnam, ICE is working to effectuate Tran’s removal to Vietnam. Because the April travel document packet that ICE ERO Baltimore prepared seems not to have been processed correctly, local ICE ERO re-submitted the request on October 1 with a request that it be expedited. Vietnam is processing travel document requests quickly, so ICE ERO anticipates that Tran’s request will be granted quickly, and that she will be removed to Vietnam in the reasonably foreseeable future. Therefore, Tran’s detention is not unconstitutionally indefinite. *See Zadvydas*, 533 U.S. at 701.

If the Court disagrees and holds that Tran’s detention is unlawfully prolonged and that there is no reasonably likelihood of removal in the reasonably foreseeable future under 8 U.S.C. § 1231, as interpreted in *Zadvydas*, it need not consider Tran’s constitutional arguments regarding the circumstances of her arrest. Indeed, it should not. *See Zadvydas*, 533 U.S. at 689 (invoking principle of constitutional avoidance). In the absence of a reasonable likelihood of removal, the Court should grant release under Section 1231 and *Zadvydas* alone.

If, however, the Court holds that Tran’s removal is likely, the circumstances of her arrest were lawful and do not warrant release. Tran argues that her arrest was unlawful because, in her view, Section 1231 and the regulations implementing it are unconstitutional. According to Tran, and contrary to the regulations, some recent district-court decisions gave her a due process right to receive “pre-deprivation notice and hearing” before ICE could lawfully revoke her release and

1 bring her into custody. Dkt. 3-1 at 19; Dkt. 4 at 18. Aside from a handful of district-court rulings
2 (and inapplicable rulings outside of the context of post-final-order immigration detention), there
3 is no legal support for any sort of pre-deprivation process before ICE may revoke the release of a
4 person with a final removal order, and the existing procedural safeguards meet the Constitution's
5 requirements. *See generally* 8 U.S.C. § 1231(a)(6); 8 C.F.R. §§ 241.4, 241.13.

6 **A. Tran's detention is not indefinite or unlawfully prolonged**

7 Tran has not demonstrated that her detention has become "indefinite" or unconstitutional.
8 In *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended duration of
9 detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit limitation
10 of post-removal detention "to a period reasonably necessary to bring about that alien's removal
11 from the United States." *Zadvydas*, 533 U.S. at 689. It was further specified that Section
12 1231(a)(6) does not permit indefinite detention. *Id.* Thus, "once removal is no longer reasonably
13 foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

14 The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of
15 burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.*
16 (stating that "for detention to remain reasonable, as the period of post-removal confinement
17 grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink").
18 However, the Supreme Court determined that it is "presumptively reasonable" for the
19 Government to detain a noncitizen for six months following entry of a final removal order, while
20 it worked to remove the noncitizen from the United States. *Id.* at 701. Thus, the Supreme Court
21 implicitly recognized that six months is the *earliest* point at which a noncitizen's detention could
22 raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption
23 "does not mean that every [noncitizen] not removed must be released after six months. To the
24

1 contrary, [a noncitizen] may be held in confinement until it has been determined that there is no
2 significant likelihood of removal in the reasonably foreseeable future.” *Id.*

3 Here, ICE has detained Tran for approximately eight months in total since her order of
4 removal became administratively final. *See Stzelczyk Decl.* ¶¶ 7–8, 10. And the current detention
5 period is five months to date. *See id.* ¶ 10. The presumptively reasonable detention period under
6 *Zadvydas*, 533 U.S. at 701, only recently expired. By contrast, this Court recently granted relief
7 to a Vietnamese national who had spent approximately twenty months in ICE custody over three
8 periods of detention. *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *13 (W.D. Wash.
9 Aug. 21, 2025). Tran’s detention is much shorter than the petitioner’s in *Nguyen*.

10 On October 1, 2025, after learning that Tran’s April travel document request may not have
11 been processed correctly, local ICE ERO resubmitted the request and asked for expedited
12 processing. *Stzelczyk Decl.* ¶ 12. Vietnam has been processing travel document requests within
13 approximately 30 days, so ICE ERO expects to receive Tran’s travel document relatively soon.
14 *Id.* ¶ 13. Indeed, in *Nguyen*, ICE ERO submitted the travel document request on July 31, 2025,
15 and it was forwarded to the ICE attaché for Vietnam on August 7, 2025. *See Second Declaration*
16 *of Deportation Officer Enrique Rodriguez*, ¶ 4, *Tang v. Bondi*, No. 2:25-cv-01473-RAJ-TLF,
17 Dkt. 25 (W.D. Wash. Sept. 10, 2025); *Nguyen*, 2025 WL 2419288, at *5. On August 25, four
18 days after *Nguyen* was ordered released, the attaché in Vietnam confirmed that Vietnam would
19 issue a travel document. *2nd Rodriguez Decl.* ¶ 4. On September 3, the travel document was
20 issued. *Id.* It took Vietnam 27 days to issue *Nguyen*’s travel document after the request reached
21 the ICE attaché for Vietnam. Here, Tran’s request has already gone through review by the attaché
22 and is with the government of Vietnam. *Stzelczyk Decl.* ¶ 12. There is no reason to believe it will
23 not be processed expeditiously.

1 And the fact that Tran does not yet have a specific date of anticipated removal does not
2 make her detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008). Detention
3 becomes indefinite in situations where the country of removal refuses to accept the noncitizen or
4 if removal is legally barred. *Id.* Currently, there is no reason to believe that is the situation here.
5 As a result, Tran has failed to demonstrate a good reason to believe that there is no significant
6 likelihood of her removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

7 **B. Tran’s arrest did not require a pre-deprivation hearing**

8 Tran alleges that her arrest was unlawful because she was not afforded a hearing before
9 she was taken into custody. The Court need not and should not reach this argument if it holds that
10 Tran’s detention is unlawful under 8 U.S.C. § 1231, as interpreted in *Zadvydas*. However, if the
11 Court holds that Tran’s detention is otherwise lawful and that there is a significant likelihood that
12 she will be removed in the reasonably foreseeable future, it should reject Tran’s request to create
13 a pre-deprivation hearing requirement for noncitizens with final removal orders.

14 *i. Procedural safeguards for post-final-removal-order re-detention*

15 Because Tran has a final removal order, her procedural due process rights are set forth in
16 8 C.F.R. § 241.13(i)(3). Under that section, “[u]pon revocation”—not *before* revocation—“the
17 alien will be notified of the reasons for revocation of his or her release.” Additionally, ICE “will
18 conduct an initial informal interview promptly after his or her return to . . . custody to afford the
19 alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R.
20 § 241.13(i)(3). At that time, “[t]he alien may submit any evidence or information that he or she
21 believes shows there is no significant likelihood he or she be removed in the reasonably
22 foreseeable future, or that he or she has not violated the order of supervision.” *Id.* If the noncitizen
23 remains in custody following this process, their detention is governed by 8 C.F.R. § 241.4.

1 Here, Tran disputes whether she received the revocation notice in May when she was
2 detained or in July when she spoke with (i.e., had an informal interview with) Officer Stzelczyk.
3 Regardless of the timing, any alleged regulatory noncompliance does not undermine the legality
4 of Tran’s detention because she does not argue that she has any evidence that she has been unable
5 to submit to ICE. Indeed, in this Court, her arguments have focused only on her beliefs about the
6 success or lack thereof of recent attempts to repatriate Vietnamese citizens.

7 *ii. The existing regulatory procedures are constitutionally adequate*

8 There is no reason for this Court to create a new pre-deprivation hearing requirement
9 because the existing regulatory procedures meet the Constitution’s requirements. “Procedural due
10 process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or
11 ‘property’ interests within the meaning of the [Fifth Amendment] Due Process Clause.” *Mathews*
12 *v. Eldridge*, 424 U.S. 319, 332 (1976). “The fundamental requirement of [procedural] due process
13 is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.* at 333
14 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). To determine whether procedural
15 protections satisfy the due process clause, courts consider three factors: (1) “the private interest
16 that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such
17 interest through the procedures used, and the probable value, if any, of additional or substitute
18 procedural safeguards”; and (3) “the Government’s interest, including the function involved and
19 the fiscal and administrative burdens that the additional or substitute procedural requirement
20 would entail.” *Id.* at 335.

21 Each of these factors weighs against Tran’s request that this Court create a new pre-
22 deprivation hearing requirement for noncitizens with final removal orders. As to the first, while
23 Tran has a liberty interest, it is limited because she is subject to a final removal order. *See Diouf*
24 *v. Napolitano*, 634 F.3d 1081, 1086–87 (9th Cir. 2011) (agreeing with the government that

1 § 1231(a)(6) detainees have a lesser liberty interest because they are closer to actual removal),
2 *abrogated on other grounds as recognized in Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1200–
3 01 (9th Cir. 2022); *see also Mathews*, 426 U.S. at 79–80 (“In the exercise of its broad power over
4 naturalization and immigration, Congress regularly makes rules that would be unacceptable if
5 applied to citizens.”). Tran’s diminished liberty interest does not weigh in favor of creating a pre-
6 deprivation hearing requirement.

7 The second *Mathews* factor also favors Federal Respondents. Under the existing
8 procedures, individuals with final removal orders (including Tran) face little risk of erroneous
9 deprivation. Tran is indisputably subject to a final removal order, and Section 1231(a)(6)
10 authorizes detention to effectuate that order. Tran is further afforded the procedural protections
11 provided by regulations, including those contained in 8 C.F.R. § 241.4 (requiring reasoned
12 custody determinations and listing factors to be considered in weighing detention or release) and
13 § 241.13 (requiring ICE to review whether there is a significant likelihood that the noncitizen will
14 be removed in the reasonably foreseeable future on account of changed circumstances). Section
15 241.13 specifically allows a detainee to submit “any evidence or information that he or she
16 believes shows there is no significant likelihood he or she be removed in the reasonably
17 foreseeable future.” 8 C.F.R. § 241.13(i)(3). These regulations explicitly provide Tran notice and
18 opportunity to be heard. As mentioned, Tran does not argue that she has any evidence that she
19 has been unable to submit to ICE, and in this Court, her arguments have focused only on her
20 beliefs about the success or lack thereof of recent attempts to repatriate Vietnamese citizens. On
21 these facts, there is no basis to rule that the longstanding procedural framework is constitutionally
22 deficient.

23 The final factor also weighs in Federal Respondents’ favor. The government has a strong
24 interest in effectuating final removal orders. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208

1 (9th Cir. 2022). “The Supreme Court has thus specifically instructed that in a *Mathews* analysis,
2 [courts] must weigh heavily in the balance that control over matters of immigration is a sovereign
3 prerogative, largely within the control of the executive and the legislature.” *Id.* (quotation
4 omitted). The achievement of this objective warrants not placing additional fiscal and
5 administrative hurdles through process that will provide no additional safeguards. Tran’s request
6 for a pre-deprivation hearing essentially seeks a judicially created stay (and opportunity to
7 abscond) that would impede execution of an indisputably lawful final removal order. Tran’s arrest
8 was lawful, and her arguments to the contrary fail.

9 While reasonable minds could debate whether it would be sound policy to have
10 immigration courts conduct pre-arrest hearings for noncitizens with final removal orders, such
11 hearings would be a novel invention. Because Section 241.13(i)(3) provides all the due process a
12 person is to be afforded when their post-removal-order release is revoked, it is unlikely that an
13 immigration court would find that it had jurisdiction to conduct a such hearing. *See Ahmad v.*
14 *Whitaker*, No. 18-cv-287-JLR-BAT, 2018 WL 6928540, at *5 (W.D. Wash. Dec. 4, 2018), *rep.*
15 *& rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019) (discussing requirements of section
16 241.13 and stating that “[t]he regulations do not require notice”). This Court should decline Tran’s
17 invitation to invent a new requirement for pre-deprivation notice and hearing for post-final-
18 removal-order re-detention.

19 IV. CONCLUSION

20 For these reasons, Federal Respondents respectfully request that this Court deny the
21 Petition and dismiss this matter.

1 Dated October 7, 2025.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Respectfully submitted,

CHARLES NEIL FLOYD
United States Attorney

s/ Annalisa L. Cravens
ANNALISA L. CRAVENS
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101
Phone: 206-553-7970
Fax: 206-553-4067
Email: annalisa.cravens@usdoj.gov

Counsel for Federal Respondents

I certify this document contains 3,715 words,
in compliance with the Local Civil Rules.