IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

LUONG, KIEU OANH THI Petitioner v. SCOTTY RHODEN, Sheriff of Baker County; TODD LYONS, Acting Director of the U.S. ICE; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, Attorney General of the United States. Respondents	Case No. 3:25-cv-1203-JEP-PDB

PETITIONER'S RESPONSE TO THE GOVERNMENT'S ANSWER TO PETITION OF HABEAS CORPUS

Kieu Oanh Thi Luong ("Petitioner") by and through undersigned counsel, respectfully submits this reply to Respondents' opposition to her Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. 2241. Petitioner was abruptly taken into the Department of Homeland Security's Immigration and Customs Enforcement ("ICE") custody on September 19, 2025, in violation of her Substantive Due Process Rights under the Fifth Amendment.

Factual Background

Since her release on OSUP more than a decade ago, Petitioner has complied fully with all conditions of supervision. She has attended scheduled check-ins and has not committed any violations. Despite this compliance, ICE placed Petitioner on a GPS monitoring device on August 15, 2025, after a routine OSUP appointment. On September 19, 2025, Petitioner was instructed to report to ICE in Miramar to address a malfunction in her GPS device. Instead of repairing the device, ICE

abruptly detained her that day, even though she had a scheduled OSUP appointment for November 17, 2025.

ICE has not provided any evidence that Petitioner violated her OSUP conditions, posed a danger to the community, or presented a risk of flight. Nor has ICE demonstrated that Vietnam has agreed to issue travel documents for Petitioner or that her removal is significantly likely in the reasonably foreseeable future. Petitioner's detention is therefore arbitrary and capricious, as it is not tied to any imminent removal and violates 8 U.S.C. § 1231(a)(6) and the Fifth Amendment of the United States Constitution.

Argument

Respondents argue that the Court lack jurisdiction and ICE properly detained Petitioner on September 19, 2025, to effectuate her final order of removal pursuant to their authority under 8 U.S.C. § 1231. *See* DE 6, p. 3-4. Petitioner respectfully disagrees with both contentions. First, the limitations of judicial review imposed by 8 U.S.C. § 1252 must be construed narrowly and do not apply here. Second, ICE has not met their burden to show that it is significantly likely for her to be returned to Vietnam now, when they previously were unable to. They have not introduced any specific evidence showing that Petitioner's circumstances meet Vietnam's criteria for repatriation, or how or when the criteria have changed so that Petitioner now meets them after at least 12 years of not doing so.

I. 8 U.S.C. § 1252(g) Does Not Bar This Court's Jurisdiction Because It Must Be Construed Narrowly

Respondents may argue that 8 U.S.C. § 1252(g) strips this Court of jurisdiction over Petitioner's habeas petition. That argument fails because the Supreme Court has made clear that § 1252(g) is a narrow provision that applies only to three discrete actions: "the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." *Reno v. American-Arab Anti-Discrimination Comm.* ("AADC"), 525 U.S. 471, 482 (1999). The Court in AADC emphasized that § 1252(g) does not cover "all claims arising from deportation proceedings"

and should not be read as a "zipper clause" that closes off judicial review of every immigration-related action. *Id.* At 482–83.

Petitioner does not challenge ICE's decision to commence removal proceedings, adjudicate her case, or execute her removal order. Instead, she challenges her prolonged and unlawful detention under 8 U.S.C. § 1231(a)(6) and the Fifth Amendment, where removal is not reasonably foreseeable. She also challenges ICE's revocation of her OSUP, which resulted in her abrupt detention. Courts have consistently held that habeas petitions challenging detention, rather than the execution of removal, fall outside the scope of § 1252(g). *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (recognizing habeas jurisdiction to review post-removal-order detention under § 2241); s*ee also Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (reaffirming that § 1252(g) applies only to the three discrete actions identified in AADC). Both claims are properly before this Court as courts have recognized habeas as appropriate to challenge the legality of detention, including revocation of supervised release. *See Zadvydas*, 533 U.S. at 688; *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017) ("The Supreme Court has recognized that an alien may no doubt be returned to custody upon a violation of [supervision] conditions, but it has never given ICE carte blanche to re-incarcerate someone without basic due process protection.").

Because Petitioner's petition does not seek to halt her removal or review its merits, but rather challenges ICE's authority to detain her indefinitely without a significant likelihood of removal and the revocation of her OSUP, § 1252(g) does not apply.

II. Prematurity Argument Fails Because Detention Is Already Unreasonable Under Zadvydas

Under 8 U.S.C. § 1231(a)(1), the government is required to remove a noncitizen within 90 days of a final order of removal. The Supreme Court in *Zadvydas* interpreted § 1231(a)(6) to permit detention beyond that period only for a "reasonable time" necessary to effectuate removal,

establishing a presumptively reasonable six-month period. 533 U.S. at 701. The Eleventh Circuit has clarified that this six-month period includes the initial 90-day removal period plus 90 days thereafter. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) ("Although not expressly stated, the Supreme Court appears to view the six-month period to include the 90–day removal period plus 90 days thereafter.").

Petitioner's removal order became final on March 8, 2010. Accordingly, the 90-day removal period expired in June 2010, and the additional 90 days ended that same year. The statutory and constitutional limits on detention have long expired. ICE cannot restart the clock by re-detaining Petitioner after fifteen years of non-removability. Moreover, Petitioner was previously detained following her removal order and now has been detained for over 90 days since September 19, 2025. Even if the Court were to consider only her current detention, the government's authority under § 1231(a)(6) is constrained by *Zadvydas* and *Akinwale*, and the prolonged history of failed removal efforts renders her detention unreasonable immediately upon re-detention. Respondents' attempt to treat this as a fresh six-month period ignores the Supreme Court's interpretation and the Eleventh Circuit's acknowledgment that the presumptive period includes the original removal period and subsequent detention. For these reasons, Petitioner's claim under *Zadvydas* is not premature.

III. Petitioner's OSUP was unlawfully revoked as Respondents' did not follow their own policy or regulations thus Petitioner's claim is not moot.

A noncitizen may be placed under an Order of Supervision ("OSUP") if she "demonstrates to the satisfaction of the Attorney General . . . her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending [her] removal from the United States." 8 C.F.R. § 241.4(d)(1). Release may be revoked in the exercise of discretion when, in the opinion of the revoking official: (1) the purposes of release have been served, (2) alien violates any condition of release; (3) it is appropriate to enforce a removal order; or other

circumstances indicate release is no longer appropriate. 8 C.F.R. § 241.4(l)(2).

Additionally, 8 C.F.R. § 241.4(g)(3) provides procedural protections: before revocation, ICE must consider "all relevant factors, including the alien's compliance with conditions of release, criminal history, and any other information indicating whether continued release is appropriate." The regulation also requires that the alien be given notice and an opportunity to present information to rebut ICE's determination. 8 C.F.R. § 241.13(i)(3) (requiring opportunity to rebut when ICE asserts removal is reasonably foreseeable).

ICE's revocation of Petitioner's OSUP did not comply with the substantive and procedural requirements of 8 C.F.R. §§ 241.4 and 241.13. Although ICE issued a Notice of Revocation on September 19, 2025, the record shows that none of the permissible grounds for revocation under § 241.4(l)(2) were satisfied. Petitioner did not violate any condition of release, nor did ICE allege that she posed a danger to the community or a flight risk. Instead, ICE relied on a generalized statement from Headquarters Removal and International Operations ("HQ RIO") that removal was "significantly likely in the reasonably foreseeable future." ECF 7-1, p. 2.

This conclusory assertion falls short of the individualized determination required by the regulations. Under § 241.4(g)(3), ICE must consider "all relevant factors, including the alien's compliance with conditions of release, criminal history, and any other information indicating whether continued release is appropriate." Here, Petitioner had complied with her OSUP for over twelve years, attended all scheduled check-ins, and was detained during a routine GPS repair appointment despite having a future appointment scheduled for November 17, 2025. ICE provided no evidence that her conduct or circumstances indicated release was inappropriate.

Further, ICE's own timeline undermines its claim of foreseeability. Although Petitioner was detained on September 19, ICE did not submit a travel-document request to HQ RIO until October 9, three weeks later, and that request remains pending as of today. Courts have held that mere initiation

of a travel-document request does not establish that removal is significantly likely in the reasonably foreseeable future. *See Kong v. U.S.*, 62 F.4th 608, 619–20 (1st Cir. 2023); *Pouev v. Smith*, 169 F. Supp. 3d 297, 300–02 (D. Mass. 2016). The delay and lack of progress demonstrate that ICE's determination was speculative, not based on concrete evidence or changed circumstances.

Lastly, ICE failed to provide Petitioner with a meaningful opportunity to rebut its determination, as required by § 241.13(i)(3). The Notice of Revocation did not include any explanation beyond HQ RIO's statement, nor has ICE conducted the informal interview to determine if Petitioner should be re-released. Courts have consistently held that failure to comply with these regulations render revocation unlawful and violates due process. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (agency must follow its own regulations); *R.O.A. v. Lewis*, 2025 WL 2553394, at 3–4 (W.D. Ky. Dec. 18, 2025) (revocation unlawful where ICE failed to follow regulatory and constitutional requirements).

In sum, ICE's revocation of Petitioner's OSUP was arbitrary and capricious. The agency did not satisfy the regulatory criteria, failed to provide procedural protections, and relied on speculative assertions rather than individualized evidence. These deficiencies render the revocation unlawful under 8 C.F.R. §§ 241.4 and 241.13 and violate Petitioner's Fifth Amendment right to due process. Petitioner's

IV. ICE Must Sufficiently Establish the Existence of a Significant Likelihood that Removal is Foreseeable.

Under *Zadvydas*, the government bears the burden of demonstrating that removal is significantly likely in the reasonably foreseeable future. 533 U.S. 678, 701. The Supreme Court explicitly rejected the notion that reasonable foreseeability could be determined solely based on "good faith efforts" by the government to effectuate deportation. *Id.* at 702 (remanding Fifth Circuit decision that had upheld detention "as long as 'good faith efforts to effectuate . . . deportation

continue'"). Mere speculation or generalized assertions do not satisfy this standard. *See Kong v. U.S.*, 62 F.4th 608, 619–20 (1st Cir. 2023); *Pouev v. Smith*, 169 F. Supp. 3d 297, 300–02 (D. Mass. 2016); *Ahmed v. Freden*, 744 F. Supp. 3d 259, 267 (W.D.N.Y. 2024).

ICE's determination here falls far short of this requirement. Petitioner was prematurely detained under the belief that ICE could soon deport her to Vietnam based on a generalized notice from Headquarters Removal and International Operations ("HQ RIO") and the assumption that travel documents would be obtained. However, ICE has provided no concrete timeline or even an estimate for removal, only that the request is "under review." Neither Vietnam nor HQ RIO has approved issuance of a passport. There is nothing indicating that Vietnam is significantly likely to repatriate Petitioner based on her individualized immigration or criminal history. The declaration submitted reflects investigatory intent, not a concrete ability to effectuate removal. All ICE has is a pending travel document request—no timeline, no proof that Vietnam has agreed to issue a passport, and no evidence that ICE is prepared to execute removal. Petitioner has complied with her Order of Supervision for over twelve years, during which ICE could have pursued these steps without resorting to abrupt detention.

Other courts have similarly found that more evidence is needed beyond ICE's conclusory statements to justify detention. *See Pouev*, 169 F. Supp. 3d at 300 (denying motion to dismiss because the Court required additional information beyond a travel document request and consular interview); *Ahmed*, 744 F. Supp. 3d at 267 (finding that "DHS's active efforts to obtain travel documents from Pakistan are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued").

Additionally, ICE's obligations under *Trinh v. Homan* underscore the lack of foreseeability here. The final Order on Joint Motion for Entry of Stipulated Dismissal, filed October 7, 2021,

required ICE to notify Petitioners promptly, no later than one month after any policy change, if ICE altered its policy of generally finding pre-1995 Vietnamese immigrants are not likely to be removed in the foreseeable future and generally releasing them within 90 days of a final removal order. This term remains in effect for 60 months from approval. *See* ECF 1-12. Up-to-date, ICE should inform pre-1995 Vietnamese immigrants if they are likely to be removed. Thus, ICE is bound to inform pre-1995 Vietnamese immigrants about their likelihood of removal.

In sum, ICE has not sufficiently established the existence of a significant likelihood of removal in the reasonably foreseeable future that would justify Petitioner's re-detention. Detention under these circumstances is arbitrary, capricious, and unlawful under 8 U.S.C. § 1231(a)(6) and the Fifth Amendment.

Respectfully submitted,

/s/Alexandra P. Friz Garcia
Alexandra P. Friz Garcia, Esq.
Florida Bar No. 0111496
Fonte Friz- Garcia Immigration Firm
901 Ponce de Leon Blvd, Suite 402
Coral Gables, FL 33134
(305) 446-1151
afriz@visadoctors.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 5, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/Alexandra P. Friz Garcia
Alexandra P. Friz Garcia, Esq.
Florida Bar No. 0111496
Fonte Friz- Garcia Immigration Firm
901 Ponce de Leon Blvd, Suite 402
Coral Gables, FL 33134
(305) 446-1151
afriz@visadoctors.com