

District Judge Kymberly K. Evanson
Magistrate Judge Theresa L. Fricke

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

THO VAN HUYNH,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02093-KKE-TLF

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

I. INTRODUCTION

This Court should dismiss Petitioner Tho Van Huynh's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). Petitioner challenges his post-order detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional and unlawful while he awaits removal from the United States. Petitioner is a citizen of Vietnam, he was ordered removed to Vietnam, and this fiscal year Vietnam has increased its cooperation with the United States in the repatriation of its citizens.

While the vast majority of his Petition discusses removal to a third country, Petitioner presents no evidence of any intention to remove him to a third country. On the contrary, ICE has just this week obtained the necessary translations for a travel document request and is in the process of finalizing and submitting the request to government officials in Vietnam. ICE is not

1 currently attempting to remove Petitioner to any country other than Vietnam. Vietnam is currently
2 issuing travel documents within 30 days after receiving the request and ICE has obtained hundreds
3 of travel documents from Vietnam this year, so Petitioner lacks sufficient facts to establish that
4 his removal to Vietnam is not attainable.

5 Contrary to his allegations, Petitioner's detention is lawful. He is a noncitizen subject to
6 an administratively final order of removal, and he is lawfully detained under Section 241 of the
7 Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner's detention also is not
8 indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Between the current period of
9 detention (under two months as of the date of this filing) and a three-month period following his
10 release after completing his criminal sentence, he has been detained for less than five months in
11 total. With increased cooperation from the government of Vietnam, U.S. Immigration and
12 Customs Enforcement ("ICE") is working to effectuate Petitioner's removal to Vietnam. His
13 detention is not unconstitutionally indefinite. *See Zadvydas*, 533 U.S. at 701.

14 Accordingly, Federal Respondents respectfully request the Court deny and dismiss the
15 Petition. Respondents' Return is supported by the pleadings and documents on file in this case,
16 as well as the Declaration of Supervisory Detention and Deportation Officer Brett Booth ("Booth
17 Decl."), with accompanying exhibits. Federal Respondents do not believe a hearing is necessary.

18 II. FACTUAL AND PROCEDURAL BACKGROUND

19 A. Detention Authorities and Removal Procedures

20 The INA governs the detention and release of noncitizens during and following their
21 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
22 detention periods are generally referred to as "pre-order" (meaning before the entry of a final
23 order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of
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1 removal). Compare 8 U.S.C. § 1226 (authorizing pre-order detention) with § 1231(a) (authorizing
2 post-order detention).

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

8 During the removal period, the [Secretary of Homeland Security]¹ shall detain the
9 [noncitizen]. Under no circumstance during the removal period shall the
10 [Secretary] release [a noncitizen] who has been found inadmissible under section
1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or
1227(a)(4)(B) of this title.

11 8 U.S.C. § 1231(a)(2).

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

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

21 8 U.S.C. § 1231(a)(6) (emphasis added).

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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 During the removal period, ICE² is charged with attempting to effect removal of a
2 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit
3 on detention pursuant to Section 1231(a)(6), the Supreme Court in *Zadvydas* clarified that there
4 is a point at which Congress's interest in detaining a noncitizen to facilitate his removal may
5 eventually give way to the noncitizen's liberty interest. This shift occurs when detention becomes
6 potentially indefinite – not merely when removal appears unlikely. *Id.*, at 690 (“A statute
7 permitting indefinite detention of an [noncitizen] would raise a serious constitutional problem.”).
8 Thus, the Supreme Court held that a noncitizen may be detained only “for a period reasonably
9 necessary to bring about that [noncitizen's] removal from the United States.” *Id.* at 689. The
10 Supreme Court implicitly recognizes that six months is the *earliest* point at which criminal
11 noncitizens' detention could raise constitutional issues. *Id.* at 701 (“This 6-month presumption,
12 of course, does not mean that every [noncitizen] not removed must be released after six months.”).

13 **B. Petitioner Tho Van Huynh**

14 Petitioner is a native and citizen of Vietnam who originally entered the United States in
15 1978 and subsequently adjusted to lawful permanent resident status. Booth Decl. ¶ 4. On
16 November 20, 1987, Petitioner was convicted of the offenses of Malice Murder and Armed
17 Robbery in violation of Georgia Criminal Code Sections 16-5-1 and 16-8-41 and sentenced to life
18 imprisonment for both. *Id.* at ¶ 5.

19 While serving his criminal sentence, Petitioner was placed in deportation proceedings
20 pursuant to the issuance of an Order to Show Cause (“OSC”) charging him with deportability
21 pursuant to former INA § 241(a)(2)(A)(iii) (aggravated felony crime of violence). *Id.* at ¶ 5 and
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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 Exhibit A. Proceedings were conducted through the Institutional Hearing Program (“IHP”) while
2 Petitioner remained in criminal custody. *Id.*

3 On January 11, 1996, an Immigration Judge ordered Petitioner removed to Vietnam.
4 Petitioner waived appeal of that decision and the removal order became administratively final. *Id.*
5 at ¶ 6 and Exhibit A

6 On or about January 27, 2016, Petitioner was released from criminal custody and taken
7 into ICE custody in Georgia. Petitioner was released from ICE custody on an Order of Supervision
8 (“OSUP”) on April 28, 2016, because, at that time, the government of Vietnam did not cooperate
9 in the returns of its citizens. *Id.* at ¶¶ 7-8 and Exhibit C.

10 Petitioner’s OSUP contained requirements that he report to ICE upon each and every
11 request of the agency for identification and deportation; that he provide information concerning
12 his nationality or other information the agency deemed appropriate; and that Petitioner cooperate
13 with ICE in obtaining a travel document to effect his deportation. *Id.* at ¶ 9 and Exhibit C.

14 On December 12, 2024, Petitioner failed to appear for a scheduled check in at the ERO
15 Office in Yakima, Washington, which was required under the terms of his OSUP. *Id.* ¶ 10. On his
16 next reporting date of September 11, 2025, Petitioner was asked to complete a travel document
17 request application so that ICE could obtain a travel document to effectuate his removal to
18 Vietnam. Petitioner refused to cooperate, which was a second violation of his OSUP. *Id.* at ¶ 11
19 and Exhibit D (Form I-213 Record of Deportable/Inadmissible Alien, at page 3). ICE then
20 revoked Petitioner’s OSUP, serving him a written notice that his OSUP had been revoked under
21 8 C.F.R. § 241.4 for two violations of his OSUP, i.e. failure to report to ICE on December 12,
22 2024, and failure to complete a travel document application to obtain a travel document to
23 Vietnam. An information interview was conducted at the time of OSUP revocation. *Id.* ¶ 12 and
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1 Exhibit E. Petitioner was transferred to the Northwest ICE Processing Center (“NWIPC”), where
2 he remains detained under INA § 241. *Id.* at ¶ 13.

3 Although the Petition implies that ICE may be trying to remove Petitioner to a third
4 country, that is not the case and Petitioner provides no evidence to the contrary. Petitioner is a
5 citizen of Vietnam, was ordered removed to Vietnam, and ICE is currently working to effectuate
6 his removal to Vietnam. As the Booth Declaration explains, “ICE is not currently attempting to
7 remove Petitioner to any country other than Vietnam.” *Id.* at ¶ 17.

8 Petitioner’s implication that he could be removed to a third country is without merit,
9 speculative, and not ripe for review. There is no case or controversy because there is no concrete
10 indication that such removal to a third country will occur. The record contains no evidence
11 supporting this claim. ICE is currently seeking a travel document to Vietnam, and there is no
12 ongoing effort to remove Petitioner to any third country. Accordingly, this claim should be
13 dismissed as premature.

14 ICE is currently in the process of preparing a travel document request (TDR) to provide
15 to the government of Vietnam. The process includes obtaining a full Vietnamese translation of
16 the documents in the TDR by an outside professional translation service. ICE received the
17 translation just this week and is currently completing the remainder of the TDR packet. Once the
18 packet is complete, ICE will forward the TDR to ERO Headquarters International and Removal
19 Operations for review and further elevation to the ERO Attache in Vietnam. Booth Decl. ¶¶ 15-
20 16. Vietnam is currently issuing travel documents within 30 days or less after the TDR is
21 provided to the government of Vietnam by the ERO Attache in Vietnam. *Id.* at ¶ 14.

1 **III. ARGUMENT**

2 **A. Petitioner's detention is not indefinite or unconstitutionally prolonged**

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

10 The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of
11 burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.*
12 (stating that "for detention to remain reasonable, as the period of post-removal confinement
13 grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink").
14 However, the Supreme Court determined that it is "presumptively reasonable" for the
15 Government to detain a noncitizen for six months following entry of a final removal order, while
16 it worked to remove the noncitizen from the United States. *Id.* at 701. Thus, the Supreme Court
17 implicitly recognized that six months is the *earliest* point at which a noncitizen's detention could
18 raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption
19 "does not mean that every [noncitizen] not removed must be released after six months. To the
20 contrary, [a noncitizen] may be held in confinement until it has been determined that there is no
21 significant likelihood of removal in the reasonably foreseeable future." *Id.*

22 Here, ICE has detained Petitioner for less than five months in total since his order of
23 removal became administratively final in 1996. *See* Booth Decl. ¶¶ 6-8, 11-12. While the
24 Government does not concede that Petitioner's detention should be measured in the aggregate,

1 even assuming arguendo that it is, Petitioner's total detention after his final removal order remains
2 less than five months. Petitioner's detention therefore is presumptively reasonable under
3 *Zadvydas*, 533 U.S. at 701. Because Petitioner's detention has not exceeded the six-month
4 timeframe, the presumption of reasonableness applies, and there is no basis for release at this
5 time.

6 Since Petitioner was detained due to non-compliance with his OSUP, ICE has obtained
7 translations of the documents for the TDR and is in the process of submitting the request to
8 government contacts in Vietnam. ICE anticipates receiving a response expeditiously because the
9 government of Vietnam is currently issuing travel documents within 30 days. Booth Decl. ¶¶ 14.
10 Indeed, it has issued travel documents in hundreds of cases just this fiscal year, including for 154
11 Vietnamese citizens who entered the United States before July 12, 1995. *Nguyen v. Scott*, No.
12 2:25-cv-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025).³ Because of this
13 increased cooperation with the government of Vietnam, Petitioner's removal will likely occur in
14 the reasonably foreseeable future.

15 The fact that Petitioner does not yet have a specific date of anticipated removal does not
16 make his detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008). Detention
17 becomes indefinite in situations where the country of removal refuses to accept the noncitizen or
18 if removal is legally barred. *Id.* There is no reason to believe that is the situation here.
19 Consequently, Petitioner has failed to demonstrate a good reason to believe that there is no
20 significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at
21 701.

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24 ³ Although the Court in *Nguyen* granted preliminary relief, the petitioner in that case had been detained for twenty-
months. *Nguyen*, 2025 WL 2419288, at *13.

1 **B. The violation of his OSUP supports Petitioner’s re-detention.**

2 Although the Petition does not address this issue, Respondents anticipate Petitioner may
3 argue for an entitlement to additional process with respect to the revocation of his OSUP, which
4 occurred because Petitioner failed to report to ICE on December 12, 2024, as required by the
5 OSUP, and failed to comply with completing required travel document applications to obtain a
6 travel document to Vietnam. Booth Decl. ¶¶ 10-12.

7 To the extent Petitioner seeks to pursue this argument, it falls flat given the justification
8 for the revocation and the process he was afforded – specifically, written notification of the
9 revocation and an interview conducted the same day. *Id.* at ¶ 12 and Exhibit E. The circumstances
10 of Petitioner’s detention also distinguish him from the *Nguyen* case in this regard. There, the
11 revocation notice stated the petitioner was being detained because her case was under review by
12 the government of Vietnam. *Nguyen*, 2025 WL 2419288, at *14. The Court characterized this
13 statement as false because the petitioner was not asked to complete travel document forms until
14 weeks later. *Id.* By contrast, here, Petitioner was not arrested due to any review by the government
15 of Vietnam. Instead, against the backdrop of increased cooperation from Vietnam, Petitioner was
16 arrested because he violated the terms of his release.

17 With his removal pending, the government has significant legitimate interests in
18 Petitioner’s continued detention to ensure he will appear for removal. His detention has not
19 become “indefinite,” and his removal is significantly likely in the reasonably foreseeable future.
20 This Court should not order that he be released.

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IV. CONCLUSION

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

Dated November 3, 2025.

Respectfully submitted,

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I certify this memorandum contains 2,572 words,
in compliance with the Local Civil Rules.