

District Judge Kymberly K. Evanson

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

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

XUAN PHAT DUONG,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02095-KKE

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
November 28, 2025

I. INTRODUCTION

This Court should deny Petitioner Xuan Phat Duong'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 Vietnam has increased cooperation with the United States this fiscal year.

Following Petitioner's criminal history from 1986 to 2002, he was issued a Notice to Appear ("NTA") based on being charged with an aggravated felony under INA § 237(a)(2). In

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 December of 2002, Petitioner was ordered removed by an immigration judge, which has since
2 become administratively final. Petitioner was later released on an Order of Supervision on March
3 24, 2003.

4 U.S. Immigration and Customs Enforcement (“ICE”) revoked Petitioner’s order of
5 supervision on May 28, 2025. ICE is working to effectuate Petitioner’s removal to Vietnam.
6 While the vast majority of his Petition discusses removal to a third country, Petitioner presents
7 *no evidence* of any intention to do so. The facts here demonstrate that ICE is actively working to
8 complete the necessary travel documents request to Vietnam and ICE anticipates that a travel
9 document will be issued shortly after the request is forwarded to the Vietnamese consulate. As a
10 result, ICE believes that Petitioner’s removal is reasonably foreseeable. ICE has no intention of
11 removing Petitioner to a third country.

12 Petitioner’s detention is lawful. He is a noncitizen subject to an administratively final
13 order of removal, and he is lawfully detained under Section 241 of the Immigration and
14 Nationality Act (“INA”). *See* 8 U.S.C. § 1231. Petitioner’s detention also is not indefinite under
15 *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). With increased inter-governmental cooperation,
16 ICE is actively working to effectuate Petitioner’s removal to Vietnam and expects to be able to
17 do so in the reasonably foreseeable future.

18 Accordingly, Federal Respondents respectfully request the Court deny the Petition. This
19 return is supported by the pleadings and documents on file in this case, the Declaration of
20 Deportation Officer Daniel Strzelczyk (“Strzelczyk Decl.”) and the Declaration of Alixandria K.
21 Morris (“Morris Decl.”), with accompanying exhibits. Federal Respondents do not believe any
22 hearing is necessary.

23

24

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. Detention Authorities and Removal Procedures**

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

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

14 During the removal period, the [Secretary of Homeland Security]² shall detain the
15 [noncitizen]. Under no circumstance during the removal period shall the
16 [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.

17 8 U.S.C. § 1231(a)(2).

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

21 [A noncitizen] ordered removed who is inadmissible under section 1182,
22 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or

23 ² 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 who has been determined by the [the Secretary of Homeland Security] to be a risk
2 to the community or unlikely to comply with the order of removal, *may* be detained
3 *beyond the removal period* and, if released, shall be subject to the terms of
supervision in paragraph (3).

4 8 U.S.C. § 1231(a)(6) (emphasis added).

5 During the removal period, ICE³ is charged with attempting to effect removal of a
6 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit
7 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may
8 be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal
9 from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six
10 months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.* at 701. The
11 *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is
12 applied to assess the continuing lawfulness of a noncitizen’s post-order detention. *Id.* (stating that
13 “for detention to remain reasonable, as the period of post-removal confinement grows, what
14 counts as the ‘reasonably foreseeable future’ conversely would have to shrink”). Thus, the
15 Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen’s
16 detention could raise constitutional issues. *Id.*

17 **B. Petitioner Xuan Phat Duong**

18 Petitioner is a native and citizen of Vietnam. *See* Pet., pg. 4. He entered the United States
19 in 1982. Strzelczyk Decl. ¶ 3. Petitioner later adjusted status to that of a lawful permanent resident
20 in 1982. *Id.* Four years later, on August 30, 1986, the Fort Smith Police Department arrested
21 Petitioner for aggravated robbery. *Id.* ¶ 4(a). On February 27, 1987, Petitioner was again arrested
22 for attempted theft by threat, and the disposition listed indicates Petitioner was sentenced to two
23

24 ³ 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 years confinement. *Id.* ¶ 4(b). On October 04, 2002, the United States District Court in the
2 Western District of Washington convicted Petitioner for possession of marijuana with intent to
3 distribute. *Id.* ¶ 4(c). As a result of this criminal activity, Petitioner was placed in removal
4 proceedings and issued a Notice to Appear (“NTA”). *Id.* ¶ 5; Morris Decl., Exs. 1, 2 (Notice to
5 Appear; I-213). On December 30, 2002, Petitioner was ordered removed to Vietnam by an
6 immigration judge, which is now administratively final. Strzelczyk Decl. ¶ 5; Morris Decl. Ex. 3
7 (Order of Removal).

8 On October 24, 2003, ICE released Petitioner on an order of supervision because there
9 was not a significant likelihood of removal at that time. Strzelczyk Decl. ¶ 7; Morris Decl. Ex. 4
10 (Order of Supervision).

11 The Government of Vietnam has agreed to increase cooperation with the United States
12 and issue travel documents for its citizens. Strzelczyk Decl. ¶¶ 13-18. Following this agreement
13 increasing cooperation with the government of Vietnam, Petitioner was taken into ICE custody
14 on May 28, 2025. *Id.* ¶¶ 7-8. As of November 4, 2025, ICE had completed the necessary travel
15 documents for Petitioner’s removal to Vietnam and submitted them for approval. *Id.* ¶ 14. Once
16 approved, the documents will be forwarded to the necessary government contacts in Vietnam. *Id.*
17 ¶ 14.

18 Though Petitioner stated in his petition that he believes ICE may be trying to remove him
19 to a third country, that is not the case and Petitioner provides no evidence ICE is seeking to remove
20 him to a third country. *See* Pet., pgs. 6-12, 14-16. Petitioner is a citizen of Vietnam, he was ordered
21 removed to Vietnam in 2002, Petitioner’s travel documents have only been completed for the
22 country of Vietnam, Vietnam has been cooperating in removal proceedings and agreed to issue
23 travel documents for its citizens, and ICE is currently working to remove Petitioner solely to
24 Vietnam. Pet., pg. 4; Strzelczyk Decl. ¶¶ 8, 10-18; Morris Decl., Ex. 3.

1 Petitioner's argument that he could be removed to a third country is without merit,
2 speculative, and not ripe for review. There is no case or controversy because there is no concrete
3 indication that such removal to a third country will occur. The record contains no evidence
4 supporting this claim. ICE is currently seeking a travel document solely to Vietnam, and there is
5 no ongoing effort to remove Petitioner to any third country. Accordingly, this claim should be
6 dismissed as premature.

7 ICE anticipates Petitioner's removal to Vietnam will occur in the reasonably foreseeable
8 future due to Vietnam's increased cooperation. ICE further believes that Petitioner's travel
9 document will be issued in 1-3 months. Strzelczyk Decl. ¶¶ 17-18.

10 III. ARGUMENT

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

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

19 The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of
20 burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.*
21 (stating that "for detention to remain reasonable, as the period of post-removal confinement
22 grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink").
23 However, the Supreme Court determined that it is "presumptively reasonable" for the
24 Government to detain a noncitizen for six months following entry of a final removal order, while

1 it worked to remove the noncitizen from the United States. *Id.* at 701. Thus, the Supreme Court
2 implicitly recognized that six months is the *earliest* point at which a noncitizen’s detention could
3 raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption
4 “does not mean that every [noncitizen] not removed must be released after six months. To the
5 contrary, [a noncitizen] may be held in confinement until it has been determined that there is no
6 significant likelihood of removal in the reasonably foreseeable future.” *Id.*

7 While the Government does not concede that Petitioner’s presumptively reasonable period
8 has ended⁴, even assuming *arguendo* that it has, Petitioner fails to demonstrate that there is good
9 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
10 future. Although he is correct that Vietnam has not yet issued him a travel document, ICE is
11 actively working to obtain a travel document to remove him to Vietnam. Strzelczyk Decl., ¶¶ 13-
12 18. Vietnam has clearly engaged in issuing travel documents for its citizens, which demonstrate
13 a good faith discussion and intention to issue travel documents in this case. *Id.* Further, Vietnam
14 is accepting individuals for removal from the United States and ICE believes there is a significant
15 likelihood of Petitioner’s removal to Vietnam in the reasonably foreseeable future. *Id.* ¶ 18.

16 Since Petitioner has been detained, after awaiting his cooperation, ICE has completed
17 travel document forms for Petitioner, had them translated into Vietnamese, worked to obtain
18 additional documentation, and will submit the documents to government contacts in Vietnam
19 upon receipt of the additional documents. Strzelczyk Decl. ¶¶ 10-12. ICE anticipates receiving
20 travel documents expeditiously because the government of Vietnam has agreed to issue travel
21 documents within 30 days of a request being made. *Id.* ¶ 14. Indeed, it has issued travel documents

22
23 ⁴ Federal Respondents acknowledge that Courts in this district have found that the presumptively reasonable period
24 expires six months after a final order, regardless of detention. *See e.g., Tran v. Bondi*, No. CV-25-01897-JLR, 2025
WL 3140462 (W.D. Wash. Nov. 10, 2025). For the reasons set forth in their briefing in that case, Federal
Respondents do not agree with this decision and are still weighing their options on how to proceed. In any event,
Petitioner’s detention is still lawful even past the presumptively reasonable period for the reasons stated herein.

1 in hundreds of cases just this fiscal year, including for at least 154 Vietnamese citizens who
2 entered the United States before July 12, 1995. *Nguyen*, 2025 WL 2419288, at *17. Because of
3 this increased cooperation with the government of Vietnam, Petitioner's removal will likely occur
4 in the reasonably foreseeable future. *See* Strzelczyk Decl. ¶ 18.

5 Vietnam has clearly engaged in issuing travel documents, which demonstrates a good faith
6 intention to issue travel documents in this case. *Id.* The Court can take notice of the many cases
7 in this district alone where Vietnamese citizens have been removed on a relatively short timeframe
8 once the travel document request has been submitted. *See e.g., Nguyen v. Bondi et al.*, 2:25-cv-
9 01833-JNW, Dkt. 19 (removal approximately 36 days following travel document submission to
10 Vietnam); *and see Van Le v. Bondi et al.*, 2:25-cv-02084-JNW-SKV, Dkt. 7. Further, Vietnam is
11 accepting individuals for removal from the United States and ICE believes there is a significant
12 likelihood of Petitioner's removal to Vietnam in the reasonably foreseeable future. Strzelczyk
13 Decl. ¶ 18.

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

21 **B. Increased cooperation with Vietnam supports the timing of Petitioner's arrest**

22 To the extent Petitioner challenges his detention because he believes ICE provided no
23 lawful rationale for the decision to rearrest him, the record shows Petitioner was detained to
24 effectuate removal given the recent increased cooperation with Vietnam. Strzelczyk Decl. ¶¶ 7-

1 9. While Petitioner may believe he should have been arrested later or after a travel document was
2 obtained from Vietnam, there is no question that ICE was within its authority to arrest him as a
3 result of increased cooperation with Vietnam which constitutes a change of circumstances in his
4 removal proceedings pursuant to his signed Order of Supervision. Morris Decl., Ex. 4.

5 Petitioner was released on his express assent to the conditions of his Order of Supervision,
6 and those provisions state his release was conditioned on his agreement to assist the Immigration
7 Service in obtaining a travel document to return to his country and immediately surrender to an
8 officer of the Service for deportation upon being ordered to do so. *Id.*, pg. 2. Petitioner does not
9 allege any temporal limitation to this authority. Moreover, the timing of his rearrest is supported
10 by the increased cooperation between the United States and Vietnam in the repatriation of
11 Vietnamese citizens, particularly those who entered the United States before 1995. *See Nguyen*,
12 2025 WL 2419288, at *17 (“[T]here is no dispute that this is a meaningful increase in the total
13 number of removals compared to historical practice.”); Strzelczyk Decl. ¶ 13-16.

14 With his removal pending, the government has significant legitimate interests in
15 Petitioner’s continued detention to ensure he will appear for removal. Petitioner poses a risk of
16 flight because he alleges no avenue to seek relief from removal. Moreover, his detention has not
17 become “indefinite,” and his removal is significantly likely in the reasonably foreseeable future.
18 This Court should not order that he be released.

19 **IV. CONCLUSION**

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

22 //

23 //

24 //

1 Dated this 21st day of November, 2025.

2 Respectfully submitted,

3 CHARLES NEIL FLOYD
4 United States Attorney

5 s/ Alexandria K. Morris

6 ALIXANDRIA K. MORRIS, TX No. 24095373

7 Assistant United States Attorney

8 United States Attorney's Office

9 Western District of Washington

10 700 Stewart Street, Suite 5220

11 Seattle, Washington 98101

12 Phone: 206-553-7970

13 Fax: 206-553-4067

14 Email: alixandria.morris@usdoj.gov

15 *Attorneys for Federal Respondents*

16 I certify that this memorandum contains 2,636
17 words, in compliance with the Local Civil Rules.