

Chief District Judge David G. Estudillo

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

PHUNG THI THANH VO,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02244-DGE

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
December 4, 2025

I. INTRODUCTION

The Court should dismiss Phung Thi Thanh Vo's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). Petitioner challenges her post-order re-detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional while she awaits removal from the United States. Contrary to her allegations, Petitioner's detention is lawful. She is a noncitizen, with no legal immigration status, subject to an administratively final order of removal, who violated the conditions of her prior release. Petitioner is lawfully detained under Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner's detention also is not indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). With increased cooperation from the government of Vietnam, ICE is working to effectuate Petitioner's removal to Vietnam, and a travel document request is

1 pending. ICE anticipates that Petitioner will be removed to Vietnam in the reasonably foreseeable
2 future.

3 Accordingly, Federal Respondents respectfully request that the Court deny the Petition.
4 The return is supported by the pleadings and documents on file in the case, the Declaration of
5 Deportation Officer Jiarong (“Du Decl.”) and the Declaration of Katherine G. Collins (“Collins
6 Decl.”) with accompanying exhibits. Federal Respondents do not believe any 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 order
12 of removal) and, relevant here, “post-order” (meaning after the entry of a final order of removal).
13 Compare 8 U.S.C. § 1226 (authorizing pre-order detention) with § 1231(a) (authorizing post-order
14 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
21 detain the [noncitizen]. Under no circumstance during the removal period
22 shall the [Secretary] release [a noncitizen] who has been found inadmissible
23 under section 1182(a)(2) or 1182(a)(3)(B) of the title or deportable under
section 1227(a)(2) or 1227(a)(4)(B) of the title.

24 8 U.S.C. § 1231(a)(2).

25
26 ¹ Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens,
27 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 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration
2 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
3 and does not place any temporal limit on the length of detention under that provision:

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

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

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

16 Here, Petitioner is the subject of an administrative order of removal that became final on
17 December 14, 2017. Du Decl. ¶ 10. Since that order was issued, and while released on an Order of
18 Supervision (OSUP) pending her removal, Petitioner was convicted of possession of drug
19 paraphernalia in 2019, and in April 2025, was arrested again for possession of drug paraphernalia
20 and for use of controlled substance. *Id.* ¶ 4. Petitioner also repeatedly failed to comply with her
21 OSUP reporting requirements, and her location was unknown to ICE from October 2018 until her
22 arrest in April 2025. *Id.* ¶ 14. Since Petitioner was recently located and detained, she has been in
23 custody 219 days as of the date of this submission. As such, the “presumptively reasonable” six-
24 month custody period has expired. *Zadvydas*, 533 U.S. at 701.

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26
27 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.

B. Petitioner Phung Thi Thanh Vo

Petitioner is a native and citizen of Vietnam. Du Decl. ¶ 3. She was lawfully admitted to the United States as a permanent resident in 1980. *Id.* As an adult, Petitioner engaged in repeated criminal activity. Between 2008 and 2016, Petitioner was arrested for and convicted of multiple theft-related offenses. Du Decl. ¶ 4., Collins Decl., Exh. A (2016 I-213).

Because of her criminal convictions, on July 13, 2016, immigration officials detained Petitioner and served her with a Notice to Appear, charging her with being removeable based on having been convicted of two crimes constituting crimes of moral turpitude. Du Decl. ¶ 5; Collins Decl., Exhs. A (2016 I-213), B (NTA). On January 18, 2016, the Immigration Judge ordered Petitioner released from custody upon payment of bond and participation in the Alternatives to Detention (ATD) Program, which required reporting requirements and GPS monitoring. Du Decl. ¶ 7; Collins Decl., Exhs. C (Custody Order), D (OREC).

Petitioner thereafter failed to adhere to the conditions of her release by the Immigration Judge by not complying with her reporting and GPS monitoring requirements. Du Decl. ¶ 9. On December 14, 2017, Petitioner failed to attend her hearing before the immigration court, and was ordered removed by the Immigration Judge in absentia. Du Decl. ¶ 10; Collins Decl., Exh. F (Order of Removal). On June 15, 2018, Petitioner was again taken into ICE custody, but on September 13, 2018, ICE released Petitioner on an Order of Supervision because at the time there was not a significant likelihood of removal. Du Decl. ¶ 13; Collins Decl. Exhs. G (2018 I-213), H (OSUP). Therefore, Petitioner's post-removal order detention in 2018 totaled 90 days.

The OSUP placed several conditions on Petitioner's release, including: "That you appear in person at the time and place specified, upon each and every request of the agency, for identification and for deportation or removal," and "That you do not commit any crimes while on the Order of Supervision." Collins Decl., Exh. H at 1, 3. The OSUP included an advisal that "Any violation of these conditions may result in being taken into Service custody[.]" *Id.* at 3. Petitioner signed this order containing these advisals. *See id.* ICE additionally served her with a separate notice advising that her release was "pending your removal from the United States" and was

1 subject to conditions. Collins Decl., Exh. I (Release Notification). The notice advised Petitioner
2 that any violation of the conditions may result in her being taken into custody, and that “[a]t any
3 time, you may be taken back into ICE custody should your removal become practicable.” *Id.*

4 Petitioner thereafter failed to comply with the terms of release. Du Decl. ¶ 14. Beginning
5 in October 2018, for more than six years, Petitioner failed to report to ICE as required. *Id.* Her
6 whereabouts remained unknown to ICE until Petitioner was arrested by local law enforcement in
7 April 2025. *Id.*; Collins Decl., Exhs. J (2025 I-213), K (2025 I-200).

8 The Government of Vietnam has recently increased cooperation with the United States and
9 increased the issuance of travel documents in less than 30 days. Du Decl. ¶ 19. Following the
10 increased cooperation, and on Petitioner’s release from jail, ICE took Petitioner immediately into
11 custody from the Ventura County Jail on April 23, 2025. Du Decl. ¶ 19; Collins Decl., Exh. J (I-
12 213). On November 1, 2025, ICE completed the requisite forms to apply for travel documents
13 from Vietnam, and on November 4, 2025, local management approved the application to be sent
14 to a headquarters division, which is the office charged with communicating with the government
15 of Vietnam. Du Decl. ¶ 16-17. Though Petitioner states in her petition that she believes ICE may
16 be trying to remove her to a third country, Petitioner provides no facts to support for this claim.
17 *See Pet.*, pp. 15-21, 23-25. Petitioner is a citizen of Vietnam, she was ordered removed to Vietnam
18 in 2017, and ICE is currently working to execute her removal to Vietnam. Du Decl. ¶¶ 3, 15-23.

19 III. ARGUMENT

20 A. Petitioner’s detention is not indefinite or unconstitutionally prolonged

21 Petitioner has not demonstrated that her detention has become “indefinite” or
22 unconstitutional. In *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended
23 duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit
24 limitation of post-removal detention “to a period reasonably necessary to bring about that alien’s
25 removal from the United States.” *Zadvydas*, 533 U.S. at 689. It was further specified that Section
26 1231(a)(6) does not permit indefinite detention. *Id.* Thus, “once removal is no longer reasonably
27 foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

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

13 Here, ICE has detained Petitioner for 219 days since they were able to relocate her after 6
14 years, and detain her from jail. Du Decl. ¶ 15. While this does exceed six months, Petitioner's
15 detention is not constitutionally indefinite. ICE has taken active and concrete steps to remove
16 Petitioner to Vietnam. Since Petitioner has been detained, she has been cooperative in getting ICE
17 the application materials needed to secure her a travel document to Vietnam, and a travel document
18 request is pending at this time. Du Decl. ¶ 16-17.

19 Petitioner's claim that removal to Vietnam is de facto unlikely is not accurate. Since
20 February 2025, Vietnam has not formally denied any ICE requests for travel documents. Du Decl.
21 ¶ 20. As of September 11, 2025, this fiscal year there have been 569 removals of Vietnamese
22 citizens to Vietnam. Du Decl. ¶ 21. These removals include at least 154 Vietnamese citizens who
23 entered the United States before July 12, 1995. *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL
24 2419288, at *17 (W.D. Wash. Aug. 21, 2025). ICE anticipates that from the time a travel document
25 request is made for a Vietnamese citizen, Vietnam will issue travel documents within one to three
26 months. Du Decl. ¶ 22. Because of the increased cooperation with the government of Vietnam,
27 Petitioner's removal will likely occur in the reasonably foreseeable future. Du Decl. ¶ 23.

1 The fact that Petitioner 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.* There is no reason to believe that is the situation here.
 5 Consequently, Petitioner has failed to demonstrate a good reason to believe that there is no
 6 significant likelihood of her removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at
 7 701.

8 **B. Petitioner’s re-detention comported with due process**

9 “Due process is flexible and calls for such procedural protections as the particular situation
 10 demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that
 11 Petitioner’s detention is consistent with her due process rights. Under *Mathews*, “[t]he fundamental
 12 requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful
 13 manner.” *Id.*, at 333 (internal quotation marks omitted). This calls for an analysis of (1) “the private
 14 interest that will be affected by the official action,” (2) “the risk of an erroneous deprivation of
 15 such interest through the procedures used, and probable value, if any, of additional or substitute
 16 procedural safeguards,” and (3) the Government’s interest. *Id.*, at 334-35.

17 Respondents recognize the “weighty liberty interests implicated by the Government’s
 18 detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y.
 19 Aug. 20, 2021). However, Petitioner’s interest in her liberty *generally* does not mean that she
 20 possesses a separate or heightened liberty interest in the continuation of her conditional release on
 21 OSUP.³ The recognized liberty interests of U.S. citizens and aliens are not coextensive: the
 22 Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress may make rules
 23 as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz*, 53 F.4th at 1206
 24 (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, “[i]n
 25 the exercise of its broad power over naturalization and immigration, Congress regularly makes
 26

27 ³ Federal Respondents acknowledge that courts in this District have found that noncitizens have a liberty interest in their release on OSUP but respectfully disagree with those decisions.

1 rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80
2 (1976).

3 First, as Petitioner was taken into ICE custody directly from jail, as a practical matter,
4 Petitioner was not at liberty prior to her re-detention. Furthermore, Petitioner’s release on OSUP
5 was always subject to many conditions, including that she and adhere to ICE reporting
6 requirements and not commit any crimes. Collins Decl., Exhs. H, K. Petitioner was notified of
7 these requirements upon her release. *See id.* Additionally, when released on OSUP, Petitioner was
8 notified that her release was “pending [her] removal from the United States[,]” and that “[a]t any
9 time, [she] may be taken back into ICE custody should [her] removal become practicable.” Collins
10 Decl., Exh. I. Accordingly, Petitioner cannot now claim that the Respondents promised her
11 ongoing, limitless, indefinite freedom from detention while she remained in the United States.

12 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
13 of Petitioner’s liberty here is minimal. Congress established a clear statutory framework in
14 8 C.F.R. § 241.13(i) that sets forth the requirements for affecting an OSUP revocation. When an
15 alien has violated any condition of their release, as Petitioner did here in failing to report as
16 required over the course of six years, or ICE determines that there is a “significant likelihood” an
17 alien can be removed from the United States within the “reasonably foreseeable future,” ICE is
18 clearly permitted to revoke the OSUP and take the alien into custody; nothing else is required for
19 revocation under these circumstances. *Id.* § 241.13(i)(1) and (2); *see also Nizar Esmail v. Noem,*
20 *et al.*, 2025 WL 3030590, at *2 (C.D. Cal. Sept. 12, 2025). Here, ICE properly took custody of
21 Petitioner directly from jail, based on its individualized determination that Petitioner could be
22 removed expeditiously, that Petitioner violated of conditions of her release. Du Decl., ¶¶ 14-15.
23 Collins Decl., Exhs. H, I. As discussed, Petitioner was on notice that this was a possibility since
24 she was released from ICE custody in 2018.

25 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
26 test “must account for the heightened government interest in the immigration detention context.”
27 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth

1 Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
2 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,
3 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). The government likewise has an interest in
4 enforcing compliance with its orders of release and returning individuals to custody who violate
5 their terms. This is especially the case here, given Petitioner’s failure to comply her prior reporting
6 requirements for more than *six years* and her repeat criminal offenses while on OSUP. Petitioner
7 has proven that she is not willing to comply with ICE orders and that she is a significant flight risk.
8 From her history, it is likely that she will not appear for future proceedings or her removal if
9 released. The government’s interest in detaining Petitioner pending her removal is therefore
10 heightened.

11 In sum, the three *Mathews* factors demonstrate that Petitioner’s detention comports with
12 due process.

13 **C. Petitioner’s arguments relating to third-country removal are not ripe for review.**

14 Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing
15 cases or controversies. *Deakins v. Monaghan*, 484 U.S. 193, 199, 108 S.Ct. 523, 528, 98 L.Ed.2d
16 529 (1988). “Ripeness is an Article III doctrine designed to ensure that courts adjudicate live cases
17 or controversies and do not ‘issue advisory opinions [or] declare rights in hypothetical cases.’”
18 *Bishop Paiute Tribe v. Inyo Cty.*, 863 F.3d 1144, 1153 (9th Cir. 2017) (alteration in original)
19 (quoting *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1138 (9th Cir. 2000) (en
20 banc)). The Supreme Court has stated that to meet the ripeness standard, plaintiffs must show
21 either a specific present objective harm or the threat of specific future harm. *Laird v. Tatum*, 408
22 U.S. 1, 14 (1972). “A claim is not ripe for adjudication if it rests upon contingent future events that
23 may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S.
24 296, 300 (1998) (internal citations omitted). “For a case to be ripe, it must present issues that are
25 definite and concrete, not hypothetical or abstract.” *Bishop*, 863 F.3d at 1153.

26 Here, Petitioner’s argument that she could be removed to a third country is without merit,
27 speculative, and not ripe for review. There is no case or controversy because there is no concrete

1 indication that such removal to a third country will occur. The record contains no evidence
2 supporting the claim. ICE is currently seeking a travel document to Vietnam. Accordingly, the
3 claim should be dismissed as premature. *Cf. Spencer v. Kemna*, 523 U.S. 1, 16 (1998) (rejecting
4 habeas petitioner's alleged consequences as "a possibility rather than a certainty or even a
5 probability" and as "purely a matter of speculation").

6 IV. CONCLUSION

7 With her removal pending, the government has significant legitimate interests in
8 Petitioner's continued detention to ensure she will appear for removal and to keep the public safe.
9 Petitioner's detention has not become unconstitutionally "indefinite." Furthermore, Petitioner's
10 third country claim is premature and speculative and should be denied. Accordingly, the Court
11 should not order that she be released or otherwise order that Petitioner cannot be removed to a
12 third country.

13 DATED the 28th day of November, 2025.

14 Respectfully submitted,

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*I certify that the memorandum contains 3,279
words, in compliance with the Local Civil Rules*