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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Hau Bao Tran,

Petitioner,

v.

David R. Rivas, *et al.*

Respondents.

No. CV-25-04220-PHX-DJH (DMF)

RESPONSE TO ORDER TO SHOW CAUSE AND PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Respondents, by and through counsel, respond to the Court's Order to Show Cause (Doc. 4), and accordingly to the Petition for a Writ of Habeas Corpus (Doc. 1). Petitioner Hau Bao Tran is a citizen and national of Vietnam and a criminal alien convicted of assault with a deadly weapon. An immigration judge ordered that he be removed to Vietnam after his conviction. He was most recently detained by U.S. Immigration and Customs Enforcement ("ICE") on June 5, 2025, to effectuate his removal. In this habeas petition, Petitioner seeks a Court order directing ICE to release him immediately from immigration detention. The Court should deny the Petition. Petitioner' detention is statutorily authorized and constitutionally permission because he has failed to meet his burden to establish that his removal is not likely to occur in the reasonably foreseeable future.

II. FACTUAL BACKGROUND

Petitioner entered the United States on December 3, 1997. Declaration of Jose Ruiz, Deportation Officer, ICE Enforcement and Removal Operations, attached as Exhibit A, at ¶ 4. Petitioner was convicted of assault with a deadly weapon on April 6, 2006. *Id.* at ¶ 5. Because of this conviction, ICE began removal proceedings against Petitioner on December 29, 2011, under Immigration and Nationality Act ("INA") section 212(a)(6)(A)(i), as an alien unlawfully present in the United States without being admitted, inspected or paroled, and under INA section 237(a)(2)(A)(iii) as an alien convicted of an aggravated felony [1]. *Id.* at ¶ 6. An immigration judge ordered him removed to Vietnam on August 20, 2012. *Id.* at ¶ 9. On April 8, 2013, Petitioner was granted release on an order of supervision. *Id.* at ¶ 10. Petitioner was out of immigration custody until ICE detained him on June 5, 2025. *Id.* at ¶ 11. ICE is currently processing Petitioner's travel document request. *See id.* at ¶ 13.

III. THE HABEAS PETITION SHOULD BE DENIED

A. Petitioner's detention is statutorily authorized and constitutional.

Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not "reasonably foreseeable." Petitioner argues that he may not be detained longer than 90 days because the statute that authorizes longer detentions does not apply to him. However, Petitioner misrepresents both his own situation and the holding of *Zadvydas*. Petitioner qualifies for detention beyond 90 days because he was removed due to a conviction for an aggravated felony, which qualifies him for detention beyond 90 days. Further , Petitioner cannot establish, as *Zadvydas* requires to be entitled to release, that his removal is not likely to occur in the reasonably foreseeable future.

An alien who is ordered removed must be detained for 90 days once their removal order becomes administratively final.[2] 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). If the alien

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[1] INA § 212 is codified at 8 U.S.C. § 1227.

[2] A removal order may become administratively final in a number of different circumstances, including upon an alien's waiver of appeal rights or the expiration of their

has not left the United States voluntarily or been removed during this 90-day period, the alien will generally be granted supervised release. 8 U.S.C. § 1231(a)(3). However, an alien ordered removed under 8 U.S.C. § 1227(a)(2) may be detained for a longer period. 8 U.S.C. § 1231(a)(6). The INA does not authorize indefinite detention. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). An alien may be detained for up to six months pursuant to a final order of removal, after which, the alien may be released if they can "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" and the Government fails to show otherwise. *Id.* at 701. At this time, an alien is not presumed to be entitled to release; the alien must show that their detention is "indefinite—i.e., that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at 701) (internal quotation marks removed).

Petitioner was ordered removed under 8 U.S.C. § 1227(a)(2). *See* Exhibit A at ¶ 6, *see also supra* fn. 1. As discussed above, an alien ordered removed under this section may be detained beyond the initial 90-day period. 8 U.S.C. § 1231(a)(6). Thus, Petitioner's argument that he may only be detained for 90 days is legally unsound.

Rather, Petitioner may only be granted release from detention if he can show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Courts have held that Petitioners have met this bar when no country would agree to accept the alien or when the alien's home country had no repatriation treaty with the United States, *id.* at 686, when the government "concede[d] that it [was] no longer even involved in repatriation negotiations" with the alien's home country, *Clark v. Suarez Martinez*, 543 U.S. 371, 386 (2005), and when the alien had been detained for five years and had "won relief at every administrative level." *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). The Supreme Court clarified that its holding in *Zadvydas* was concerned with detention that is "indefinite and potentially permanent," and for aliens whose removal is "no longer practically attainable." *See*

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time to appeal. 8 C.F.R. § 1241.1.

Demore v. Kim, 538 U.S. 510, 527–28 (2003) (internal quotations omitted). The mere fact that an alien's detention "lacks a certain end date" does not render their detention unlawfully indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008). Further, "mere delay in the issuance of a travel document is insufficient" to justify relief under *Zadvydas* "particularly where . . . efforts to obtain the travel document are ongoing." *Nasr v. Larocca*, 2016 U.S. Dist. LEXIS 90343 at *11–12 (C.D. Cal. June 1, 2016).

Petitioner's removal is practically attainable, and his detention is not "potentially permanent." *Demore*, 538 U.S. at 528. Petitioner must show that there is some practical impediment to his removal, and Petitioner has presented this Court with absolutely nothing that suggests that he cannot be removed. Petitioner claims baldly that the sheer length of time that has passed since he was ordered removed constitutes a showing that his removal will not occur. Petition at ¶ 77. But this is not sufficient grounds for release under *Zadvydas* at all. *See Callender v. Shanahan*, 28 F. Supp. 3d 428, 435–36 (S.D.N.Y. 2017); *Nasr*, 2016 U.S. Dist. LEXIS 90343 at *11–12. Even if this Court were to disagree, ICE has recently succeeded in removing many Vietnamese nationals who were ordered removed over a decade ago, suggesting that any impediment which once existed no longer exists.[3] ICE has prepared a request for travel documents, and its "efforts to obtain the travel document are ongoing." Exhibit A at ¶ 13; *Nasr*, 2016 U.S. Dist. LEXIS 90343 at *11–12. In short, Petitioner has not provided "good reason" to question that his removal is likely to occur in the reasonably foreseeable future, and Respondents have shown that his removal is likely to occur in the reasonably foreseeable future, due to his pending request for travel documents. Thus, Petitioner has failed to show that his detention is unconstitutionally indefinite under *Zadvydas*, so his habeas petition should be denied. *See Zadvydas*, 533 U.S.

[3] *See, e.g.*, *Long Phi Do v. Rivas*, No. 2:25-cv-01885-KLM (ASB) Docs. 23-24 (case mooted by the petitioner's removal to Vietnam). The undersigned is also aware of several instances where this Court has found that a Vietnamese national ordered removed was not "significantly likely to be removed in the reasonably foreseeable future," only for Vietnam to issue travel documents anywhere from a week to about a month later. *See Bui v. Archambeault*, No. 2:25-cv-03774-KML (JFM); *Ho v. Archambeault*, No. 2:25-cv-03753-JJT (JZB); *Quan v. Martinez*, No. 2:25-cv-02407-PHX-DJH (JFM).

at 700–01.

B. The Government is not required to show changed circumstances prior to revoking an order of supervision nor is Petitioner entitled to a pre-detention hearing.

Petitioner asks this Court to declare that ICE must grant him a hearing and an opportunity to respond before it revokes his supervised release in the future. Petition at 18–25, 28. However, Petitioner is entitled to no such procedure under either statute or the pertinent regulations.

Petitioner asserts that ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual's release and that the noncitizen must be given a bond hearing before a neutral adjudicator prior to their rearrest or detention. In support of that assertion, Petitioner relies primarily on 8 U.S.C. § 1226(b), *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), and *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018), but Petitioner's reliance is misplaced because his detention is governed by 8 U.S.C. § 1231(a)(6). For example, 8 U.S.C. § 1226(b) states that "[t]he Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). However, Petitioner is detained under the post-final order statute, 8 U.S.C. 1231. Petitioner is not detained under 8 U.S.C. § 1226 which authorizes detention prior to a final removal order.

Matter of Sugay stated that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director [of ICE] absent a change in circumstances." 17 I. & N. Dec. at 640. In Petitioner's case, no bond determination was ever made by an immigration judge, so *Matter of Sugay* is inapplicable. *Saravia* addressed ICE's authority to arrest unaccompanied minors without final removal orders who had previously been placed with sponsors by the Office of Refugee Resettlement ("ORR"). 280 F. Supp. 3d at 1177. There, the court held that "DHS must

have probable cause to believe that, notwithstanding ORR's prior determination, the minor is now a danger to himself or the community, or a flight risk." *Id.* at 1196 (citing 8 U.S.C. § 1232(c)(2)(A)). The court analogized the process due to the minors to that owed to aliens subject to 8 U.S.C. § 1226(b), which applies to aliens who have not yet been ordered removed. Since Petitioner is not an unaccompanied minor and has been ordered removed, *Saravia* is also inapplicable. Petitioner also cites *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017), but that case involved "a class of non-citizens in removal proceedings who are detained under 8 U.S.C. § 1226(a) . . . ." *Id.*

In addition, Petitioner string cites a number of cases many of which concern aliens subject to pre-final removal order detention in which the primary consideration is ensuring the alien's presence at their future removal proceedings and in which bond hearings are largely available by regulation. Doc. 1 at 17 (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 966 (N.D. Cal. 2019) (petitioner was awaiting Ninth Circuit review of removal order so detention was governed by 8 U.S.C. § 1226(a)); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *1 (N.D. Cal. Aug. 23, 2020) (involving alien who had not been ordered removed and considering whether he was subject to detention under 8 U.S.C. § 1226(a) or 8 U.S.C. § 1226(c)); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1053 (N.D. Cal. 2021) (same as Ortega); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025) (detention governed by 8 U.S.C. § 1226); *Guillermo M.R. v. Polly Kaiser*, No. 3:25-cv-05436-RFL (N.D. Cal. June 30, 2025) (detention governed under 8 U.S.C. § 1226). Here, Petitioner is subject to post final order detention under 8 U.S.C. § 1231(a)(6). The purpose of that detention is to effectuate removal—not to ensure presence at removal proceedings. Accordingly, the reasoning underlying the cases Petitioner cites is inapplicable to the case at hand.

Rather, here, the regulation governing the revocation of Petitioner's OSUP is 8 C.F.R. 241.13. The Government was not required to show changed circumstances to revoke an order of supervised release. *Id.* Indeed, by its plain terms, 8 C.F.R. § 241.13 does not

require a "change in circumstances." [4]

Petitioner's reliance on *Morrisey v. Brewer*, 408 U.S. 471 (1972) and its progeny is misplaced. Morrissey arose from the due process requirement for a hearing for revocation of parole. *Id.* at 472–73. It did not arise in the context of immigration. Moreover, in *Morrissey*, the Supreme Court reaffirmed that "due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 481. In addition, the "[c]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function." *Id.* With respect to the precise nature of the government function, the Supreme Court has long held that "Congress regularly makes rules" regarding immigration that "would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Under these circumstances, Petitioner does not have a cognizable liberty interest in a pre-detention hearing, but even assuming he had one, it would be reduced based on the immigration context.

The Due Process Clause did not prohibit ICE from re-detaining Petitioner. Moreover, there is no statutory or regulatory requirement that entitles Petitioner to a "pre-deprivation" hearing, much less one involving burden-shifting against the government. See generally 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.13. For this Court to read one into the immigration custody statute would be to create a process for which the current statutory and regulatory scheme do not provide. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022). Thus, Petitioner can cite no liberty or property interest to which due process protections attach.

The procedural process provided to Petitioner, if re-detained, is constitutionally adequate in the circumstances and no additional process is required. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the [Fifth Amendment] Due Process

[4] Respondents were unable to confirm whether Petitioner's supervised release was revoked according to the pertinent regulations.

1 Clause." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "The fundamental requirement
2 of [procedural] due process is the opportunity to be heard 'at a meaningful time and in a
3 meaningful manner.'" *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).
4 To determine whether procedural protections satisfy the Due Process Clause, courts
5 consider three factors: (1) "the private interest that will be affected by the official action";
6 (2) "the risk of an erroneous deprivation of such interest through the procedures used, and
7 the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the
8 Government's interest, including the function involved and the fiscal and administrative
9 burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.
10 The first factor favors Respondents. The Supreme Court has long recognized that
11 due process as applied to aliens in matters related to immigration does not require the same
12 strictures as it might in other circumstances. In *Mathews v. Diaz*, the Court held that, when
13 exercising its "broad power over naturalization and immigration, Congress regularly makes
14 rules regarding aliens that would be unacceptable if applied to citizens." *Diaz*, 426 U.S. at
15 79-80. In *Demore*, the Court likewise recognized that the liberty interests of aliens are
16 subject to limitations not applicable to citizens. 538 U.S. at 522 (citing *Zadvydas*, 533 U.S.
17 at 718 (Kennedy, J., dissenting)). Accordingly, while the Ninth Circuit has recognized the
18 individuals subject to immigration detention possess at least a limited liberty interest, it has
19 also recognized that aliens' liberty interests are less than full. *See Diouf v. Napolitano*, 634
20 F.3d 1081, 1086-87 (9th Cir. 2011). Because Petitioner's liberty interest is less than that at
21 issue in *Morrissey*, this factor does not indicate that Petitioner must be afforded a pre-
22 detention hearing.
23 The second *Mathews* factor also favors Respondents. Under the existing procedures,
24 aliens including Petitioner face little risk of erroneous deprivation. As explained above,
25 there is no risk of erroneous deprivation because Section 1231(a)(6) unquestionably
26 authorizes Petitioner's detention to execute his final removal order, and ICE is required to
27 give Petitioner additional procedures under the Post Order Custody Review Regulations in
28 8 C.F.R. § 241.13. These regulations require periodic custody reviews in which Petitioner

1 will have the opportunity to submit documents in support of his release, including
2 documentation about flight risk and dangerousness. See generally 8 C.F.R. § 241.4(e)-(f)
3 (listing factors to be considered in custody determinations). These procedures are more
4 than adequate and unquestionably provide Petitioner notice and opportunity to be heard
5 during his detention.

6 The third *Mathews* factor—the value of additional safeguards relative to the fiscal
7 and administrative burdens that they would impose—weighs heavily in favor of
8 Respondents. As previously explained, Petitioner's proposed safeguard—a pre-deprivation
9 hearing—adds little value to the system already in place in which he will receive periodic
10 reviews to ensure his removal remains reasonably foreseeable and in which the entire
11 purpose of her detention is to effectuate his removal. Petitioner's proposed safeguard
12 would disrupt the removal process. Because the hearing Petitioner proposes would, by
13 definition, involve a non-detained individual, there would be hurdles to scheduling a
14 hearing efficiently. There is no administrative process in place for giving an alien with a
15 final order of removal a hearing resembling a bond hearing before an immigration judge.
16 Petitioner's proposed safeguard presents an unworkable solution to a situation already
17 addressed by the current procedures. *See* 8 C.F.R. § 241.13.

18 Respondents recognize that Petitioner is making an individualized challenge here.
19 However, the additional procedure he requests would have a significant impact on the
20 removal system. It would require ICE and the Executive Office of Immigration Review to
21 set up a novel administrative process for Petitioner who—for all intents and purposes—
22 represents a large portion of the final order alien population. Therefore, considering all of
23 the *Mathews* factors together, due process does not require a pre-deprivation hearing.

24 Petitioner has not provided "good reason" to think that his removal to Vietnam is
25 not practicable. Moreover, much of the relief he requests is beyond this Court's authority
26 to grant. If Petitioner prevails, he is entitled only to release from custody.

27 For the foregoing reasons, Respondents respectfully request that this Court deny the
28 Petition for a Writ of Habeas Corpus (Doc. 1).

1 RESPECTFULLY SUBMITTED December 2, 2025.

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s/ Brooks Chupp
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CERTIFICATE OF SERVICE

9 I hereby certify that on this 2nd day of December, 2025, I electronically transmitted
10 the attached document to the Clerk's Office using the CM/ECF System for filing.
11
12 *s/M. Beickert*
13 United States Attorney's Office
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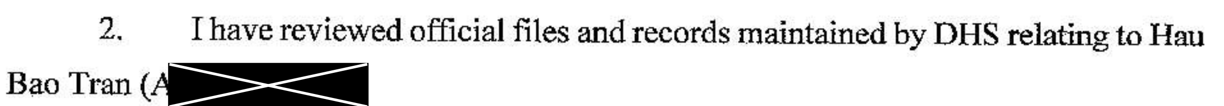
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Hau Bao Tran, Petitioner, v. David R Rivas, et al., Respondents.	No. CV-25-04220-PHX-DJH (DMF) **DECLARATION OF JOSE RUIZ**

I, Jose Ruiz, declare the following under 28 U.S.C. § 1746, and state that under the penalty of perjury, the following is true and correct to the best of my knowledge and belief:

1. I am Deportation Officer (DO) with the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), in the San Diego Field Office. I have been with ICE as a DO since August 10, 2025. My responsibilities include case management of individuals detained by ICE at the San Luis Regional Detention Center. I have access to the official files and records of DHS.

2. I have reviewed official files and records maintained by DHS relating to Hau Bao Tran (A



3. The following information is based on my personal knowledge, as well as my review of government databases and documentation relating to the Petitioner.

4. On December 3, 1997, Tran was admitted to the United States as a refugee and adjusted his status to Lawful Permanent Resident.

1 5. On April 6, 2006, Tran was convicted of violating CPC 245(a)(1) – assault
2 with a deadly weapon/likely to produce great bodily injury and sentenced to 7 years in
3 prison.

4 6. On December 29, 2011, Tran was served with a Notice to Appear charging
5 him with inadmissibility under INA § 212(a)(6)(A)(i) and 237(a)(2)(A)(iii) for having been
6 convicted of an aggravated felony.

7 7. On January 12, 2012, Tran was found removable by an Immigration Judge
8 and ordered removed to Vietnam.

9 8. On March 23, 2012, Tran filed a motion to reopen his case. On April 27,
10 2012, he filed an application to register as a permanent resident, which USCIS denied.

11 9. On July 30, 2012, a new master hearing was held before the Immigration
12 Judge. On August 20, 2012, Tran was ordered removed to Vietnam.

13 10. On April 8, 2013, Tran was released from ICE custody on Order of
14 Supervision.

15 11. On June 5, 2025, ERO arrested Tran to be taken into custody so that ERO
16 could effectuate the outstanding removal order.

17 12. On August 4, 2025, the Board of Immigration Appeals (BIA) received an
18 emergency stay request.

19 13. On September 8, 2025, Tran's passport photos were taken for the Travel
20 Document request. As of November 17, 2025, ERO has prepared documents for the Travel
21 Documents Request and will submit the TD request once a removal date has been
22 determined.

23 14. ICE has removed Vietnamese citizens to Vietnam as recently as November
24 2025.

25 15. ICE routinely has flights to Vietnam.

26 16. Once ICE receives a travel document for Petitioner, his removal can be
27 effectuated promptly.

28 17. Based on my review, Petitioner was previously in DHS custody and was

previously released from custody. The ICE ERO San Diego Field Office does not currently have information or access to the details of that previous detention and release.

18. This declaration is based on my personal knowledge and experience as a law enforcement officer and information provided to me in my official capacity as a Deportation Officer.

I declare under penalty of perjury under the law of the United States that the foregoing is true and correct.

Dated the 2nd day of December 2025.

JOSE J RUIZ Digitally signed by JOSE J RUIZ Date: 2025.12.02 17:52:17 -07'00'

Jose Ruiz
Deportation Officer
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement