THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

KIET NGUYEN,	)	
	)	
Petitioner	)	
	)	
v.	)	**Case No. CIV-25-1356-SLP**
	)	
PAMELA BONDI, et al.,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

Petitioner Kiet Nguyen, proceeding *pro se*, seeks habeas corpus relief under 28 U.S.C. § 2241. (ECF No. 2). United States District Judge Scott L. Palk has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). Respondent has filed a Response and Plaintiff has replied. (ECF Nos. 15 & 20). For the reasons set forth below, the undersigned recommends that the Court **GRANT** habeas relief to Petitioner and release him from custody immediately.

I. BACKGROUND

Mr. Nguyen is a citizen of Vietnam, who was admitted to the United States on or about September 3, 1993 and was ordered removed from the United States on August 3, 1999. (ECF Nos. 2:1; 15-1:2). According to a declaration from Immigration and Customs Enforcement (ICE) officer, Micheal Thompson, who has been assigned to Mr. Ngyuen's case, on September 9, 1999, Mr. Nguyen was taken into ICE custody, underwent a 90-day post order custody review on or about February 9, 2000, and his release was denied on March 6, 2000. (ECF No. 15-1:2). Ultimately, however, Mr. Nguyen was released from

ICE custody on September 14, 2000, under an order of supervision (OOS). (ECF Nos. 2:1-2; 15-1:2).

On July 17, 2025, Petitioner was re-detained by ICE officials and has remained in detention since that time. (ECF Nos. 2:2; 15-1:2). To date, no future hearings have been scheduled for Mr. Nguyen[1] and he is currently detained at the Cimmaron Correctional Facility in Cushing, Oklahoma.[2]

II. PETITIONER'S CLAIMS

In the Petition, Mr. Nguyen asserts four claims. First, he seeks a declaratory judgment that ICE officials failed to rebut Petitioner's showing, which he had established by means of being released under an OOS, that there was no significant likelihood of his removal in the reasonably foreseeable future. (ECF No. 2:20). Second, Petitioner argues that ICE officials failed to comply with the Immigration and Nationality Act (INA) prior to re-detaining him. (ECF No. 2:21). Third, Petitioner argues that he has been subjected to prolonged detention in excess of six months in violation of *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). (ECF No. 2:21-22). Fourth, Petitioner alleges a violation of the Administrative Procedures Act. (ECF No. 2:22-23). As relief, Petitioner requests immediate release, along with declaratory and injunctive relief. (ECF No. 2:23-24).

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[1] *See* https://acis.eoir.justice.gov (last visited Feb. 9, 2026).

[2] *See* https://locator.ice.gov (last visited Feb. 9, 2026).

III. STANDARD OF REVIEW

To obtain habeas corpus relief, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). "[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear ... challenges to the lawfulness of immigration-related detention." *Zadvydas v. Davis*, 533 U.S. at 687; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) ("Challenges to immigration detention are properly brought directly through habeas."); *Head v. Keisler*, No. 07-CIV-402-F, 2007 WL 4208709, at *2 (W.D. Okla. Nov. 26, 2007) (determining that "[t]his Court has subject matter jurisdiction over" unconstitutional detention in an immigration-related § 2241 habeas petition).

Petitioner asserts that his continued detention violates 8 U.S.C. § 1231(a). (ECF No. 2). Under this statute, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). The 90-day period is known as the "removal period." *Id.* After the removal period, ICE has discretion to detain inadmissible or criminal aliens. *Id.* § 1231(a)(6). However, detention of an alien subject to a final order of removal may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *See Zadvydas*, 533 U.S. at 701; *see also Morales-Fernandez v. INS*, 418 F.3d 1116, 1123 (10th Cir. 2005) (reiterating that "the reasonable period of post-removal detention is presumptively six months"). After that, a detainee may bring a habeas action to challenge

his detention. *Zadvydas*, 533 U.S. at 688. "This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

Therefore, to obtain habeas relief, a petitioner has the initial burden to show the post-removal-order detention has surpassed six months and to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*; *see also Soberanes*, 388 F.3d at 1311 ("If removal is not reasonably foreseeable, the court should hold continued detention unreasonable." (citation modified)). "After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. Further, "for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.*

IV. PETITIONER'S CONTINUED DETENTION VIOLATES HIS FIFTH AMENDMENT DUE PROCESS RIGHTS

Mr. Nguyen is entitled to immediate release based on a violation of his Due Process rights as discussed below.

A. Mr. Nguyen has met his Initial Burden

Petitioner has met his initial burden under *Zadvydas* to: (1) establish his post-removal-order detention has surpassed six months and (2) show "there is no significant

likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Notably, Petitioner is not required under *Zadvydas* to "show the absence of any prospect of removal—no matter how unlikely or unforeseeable," *id.* at 702, only that that he has "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

As to his current detention, to date, Mr. Nguyen has been detained over six months—since July 17, 2025. *See supra.*[3] Further, Petitioner has "provide[d] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. As noted by Petitioner, he was previously granted a withholding of removal and ICE officials ordered him released under an OOS. *See supra.* These facts provide pertinent evidence in determining that Petitioner has provided good reason to believe that there is no significant likelihood of removal in the reasonably

[3] The Court notes that Petitioner filed his habeas petition before the expiration of the presumptively reasonable six-month period. *See* ECF No. 2. While Petitioner's *Zadvydas* claim was not ripe when filed, it is now ripe. The alternative would be to dismiss the Petition, only for Mr. Nguyen to re-file and pay another court-filing fee. While pleading claims for relief prematurely is disfavored, the Court will not force Petitioner to re-file at this juncture. *See Momennia v. Bondi, et al.*, No. CIV-25-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025) (recommending granting habeas relief, in part, based on the petitioner's *Zadvydas* claim, which ripened during the pendency of the case), *adopted*, 2025 WL 3011896, at *1 (stating: "It is undisputed that Petitioner has been detained over six months."); *Smith v. Barr*, 444 F.Supp.3d 1289, 1298 (N.D. Okla. Mar. 16, 2020) (denying motion to dismiss habeas petition which had argued that the petitioner's *Zadvydas* claim was filed before the expiration of the presumptively reasonable 6-month post-removal-period, stating "On these facts, petitioner arguably had a ripe constitutional claim under *Zadvydas after* he filed the instant petition[.]") (emphasis added); *Quang Minh Lien v. Sessions*, No. 18-cv-2146-WJM-SKC, 2018 WL 4853339, at *4 (D. Colo. Oct. 5, 2018) (allowing a *Zadvydas* claim that was premature at the time of filing the habeas petition but became ripe during the pendency of the case).

foreseeable future. *See* ECF No. 20:12, *Sukhyani v. Bondi, et al.*, Case No. CIV-25-1243-J (W.D. Okla. Nov. 18, 2025) (noting the prior inability to remove the petitioner, coupled with his prior release "are directly relevant to the likelihood now that Petitioner will be removed to a third country in the reasonably foreseeable future."), *adopted*, ECF No. 24, *Sukhyani v. Bondi*, et al., Case No. CIV-25-1243-J (W.D. Okla. Nov. 25, 2025).

Based on the forgoing, the Court should find that Petitioner has met his initial burden to demonstrate that there is no significant likelihood of his removal in the reasonably foreseeable future.

B. Respondents Have Not Met Their Burden

Once Petitioner has established six months of post-removal-order detention and "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. The Court should find that Respondents have not met their burden in this regard.

In their Response, dated December 4, 2025, the Respondents attached a declaration from ICE deportation officer, Mr. Thompson, which stated that on October 25, 20205, officials with Enforcement and Removal Operations (ERO) "submitted a travel document request to the government of Vietnam, which was subsequently approved" and Petitioner was "tentatively scheduled for removal . . . on December 14, 2025." (ECF No. 15-1:3). However, Petitioner was "removed from that flight" and "expected to be included on the next flight manifest, scheduled to depart in January 2026." (ECF No. 15-1:3). In a

Notice dated December 23, 2025, Respondents simply notified the Court that Petitioner "w[ould] be rescheduled for a future flight." (ECF No. 22:1).

January passed, yet Mr. Nguyen still remained in custody, with no update from Respondents. As a result, on February 2, 2026, the Court ordered Respondents to provide an update regarding Petitioner's status. (ECF No. 23). On February 4, 2026, Respondents informed the Court that on December 23, 2025, ICE officials "requested Travel Document ("TD") from the Attache Office in Hanoi, Vietnam, and on December 31, 2025, the Attache Office confirmed receipt of this request." (ECF No. 24). Respondents also state that ICE Deportation officer Jessie Gonzalez "advises that a TD has been issued and expects to receive an update regarding Petitioner's travel accordingly." (ECF No. 24).

Interestingly, although Respondents note that this request was made December 23, 2025, Respondents' notice to the Court dated December 23, 2025 was noticeably silent on this issue and Respondents never state that the travel document was requested for this specific Petitioner—Kiet Nguyen. The undersigned realizes this may be nothing more than an oversight, but the February 4th statement, which references the December 23, 2025 request for a travel document (for an unnamed individual) potentially conflicts with Respondents' prior statement that ERO officials "submitted a travel document request to the government of Vietnam" on October 25, 2025, which was subsequently approved. *See* ECF No. 15-1:3. Granted, the first travel document issued post-October 25, 2025, may have expired, requiring a second request, but Respondents have not said as much.

As it stands now, Respondents have informed the Court that a travel document "has been issued" (presumably for Mr. Nguyen) and Officer Gonzalez "expects to receive an update regarding Petitioner's travel accordingly." (ECF No. 24). But as noted by this Court, "There is no reference to any data underlying this statement and it so conclusory, that it is difficult to discern whether the declarant even has personal knowledge"[4] of this fact. Respondents have not submitted an affidavit from Mr. Gonzalez attesting to this fact, and at this point, what the Court is left with is an unverified statement that a travel document has been issued, and a prior declaration from Deportation Officer Thompson who states:

- In Fiscal Year 2025, as of September 11, 2025, ERO has removed 569 Vietnam citizens to Vietnam. In Fiscal Year 2024, ERO removed only 58 Vietnam citizens to Vietnam. ICE is currently not recognizing MOUs, and the Government of Vietnam has issued travel documents for every travel request ERO has submitted since February 2025. The majority of these cases were citizens of Vietnam who entered the United States prior to 1995; and

- Based on the Government of Vietnam's willingness to accept its citizens, and the number of successful removal ERO has made to Vietnam this fiscal year, I believe removal of Ngyuen to Vietnam is significantly likely in the reasonably foreseeable future.

(ECF No. 15-1:3). But this language has been rejected by this Court as "a generalized, statistical increase in removal effort to Vietnam in 2025," which, when coupled with no evidence that travel documents have been requested or issued for Petitioner, is

[4] *See* ECF No. 29:17, *Khaliq v. Noem*, et al., Case No. CIV-25-1154-SLP) (W.D. Okla. Jan. 26, 2026).

insufficient to rebut Petitioner's initial showing under *Zadvydas*. *See* ECF No. 13:3, *Tang v. Grant*, Case No. 25-1468-J (W.D. Okla. Feb. 6, 2025).

Based on the forgoing, the Court should conclude that Respondent has failed to rebut Petitioner's showing that there is no significant likelihood of his removal in the reasonably foreseeable future and that he is being detained indefinitely in violation of the Fifth Amendment. Respondents have failed to present *evidence* that Mr. Nguyen's removal is significantly likely in the reasonably foreseeable future. Instead, what exists at this point is:

- A December 1, 2025 statement from Respondents that Petitioner was scheduled to be removed on December 14, 2025;[5]
- A December 3, 2025 declaration from Officer Thompson that Petitioner was removed from the December 14, 2025 flight and was "expected" to be on the next flight, scheduled to depart in January 2026;[6]
- A December 23, 2025 notice from Respondent stating that "Petitioner will be rescheduled for a future flight;"[7] and
- An unverified statement that a travel document "has been issued" and Respondents "expect to received an update regarding Petitioner's travel accordingly."

At this point, the Court should find that the Respondents' ongoing, speculative belief regarding Petitioner's removal is simply insufficient to rebut Petitioner's burden

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[5] (ECF No. 11).

[6] (ECF No. 15-1).

[7] (ECF No. 22).

under *Zadvydas*. Accordingly, the undersigned concludes that Petitioner is entitled to habeas relief and immediate release from custody. *See* 28 U.S.C. § 2241(c)(3).

V. PETITIONER'S REMAINING CLAIMS

As stated, Petitioner also alleges that his re-detention was in violation of ICE's own regulations, and in violation of the APA. *See supra*. But Because the undersigned recommends that the Court grant the Petition after finding Petitioner's indefinite detention violates his Fifth Amendment Due Process rights, the Court should decline to address Petitioner's other claims. *See Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3006045, at *1 n.1 (W.D. Okla. Oct. 27, 2025) (declining to decide whether ICE violated its own regulations by continuing to detain the petitioner because the Court adopted the conclusion that his indefinite detention violates his Fifth Amendment Due Process rights). Further, considering the recommended relief, the undersigned declines to address Petitioner's other requests for relief.

VI. RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT

For the reasons set forth above, the undersigned recommends the Court grant Petitioner's request for habeas relief, and order his immediate release from custody. The undersigned further recommends that the Court order Respondent to submit a declaration pursuant to 28 U.S.C. § 1746 affirming that Petitioner has been released from custody.

The parties are advised of their right to file an objection to this Report and Recommendation with the Clerk of this Court by **February 17, 2026**, in accordance with

28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2).[8] The parties are further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

VII. STATUS OF REFERRAL

This Report and Recommendation terminates the referral by the District Judge in this matter.

ENTERED on February 9, 2026.

Shon T. Erwin

SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE

[8] Given the expedited nature of these proceedings, the undersigned has reduced the typical objection time to this Report and Recommendation to seven days. *See* Fed. R. Civ. P. 72(b)(2) advisory committee's note to 1983 addition (noting that rule establishing 14-day response time "does not extend to habeas corpus petitions, which are covered by the specific rules relating to proceedings under Sections 2254 and 2255 of Title 28."); *see also Whitmore v. Parker*, 484 F. App'x 227, 231, 231 n.2 (10th Cir. 2012) (noting that "[t]he Rules Governing § 2254 Cases may be applied discretionarily to habeas petitions under § 2241" and that "while the Federal Rules of Civil Procedure may be applied in habeas proceedings, they need not be in every instance – particularly where strict application would undermine the habeas review process").