

District Judge Robert S. Lasnik

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

THACH WANA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02321-RSL

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
December 9, 2025.

I. INTRODUCTION

This Court should deny Petitioner Thach Wana'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.

Against this backdrop, Petitioner, who has a final order of removal, was placed on an Order of Supervision ("OSUP") since January 29, 2008, due to an inability by U.S. Immigration and Customs Enforcement ("ICE"), Office of Enforcement and Removal Operations ("ERO"), to obtain travel documents to Vietnam. However, Petitioner was detained on August 5, 2025, after

1 ERO determined that there was now a significant likelihood of Petitioner's removal to Vietnam
2 in the foreseeable of future. ICE is actively working to effectuate Petitioner's removal to Vietnam,
3 for example, by submitting a Travel Document Request ("TDR") to the ERO headquarters
4 division who communicates with the government of Vietnam. ICE anticipates that a travel
5 document will be issued shortly after the request is approved and forwarded to the Vietnamese
6 consulate.

7 Wana's detention is lawful. He is a noncitizen subject to an administratively final order
8 of removal as a result of criminal activity, and he is lawfully detained under Section 241 of the
9 Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. With increased inter-
10 governmental cooperation, ICE is actively working to effectuate Wana's removal to Vietnam and
11 expects to be able to do so in the reasonably foreseeable future. Thus, Wana's detention is not
12 indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

13 Accordingly, Federal Respondents respectfully request the Court deny the Petition.

14 II. FACTUAL AND PROCEDURAL BACKGROUND

15 A. Detention Authorities and Removal Procedures

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

22 When a final order of removal has been entered, a noncitizen enters a 90-day "removal
23 period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
24 "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for

1 removal and to protect the community from noncitizens who may present a danger, Congress has
2 mandated detention while removal is being effectuated:

3 During the removal period, the [Secretary of Homeland Security]¹ shall detain the
4 [noncitizen]. Under no circumstance during the removal period shall the
5 [Secretary] release [a noncitizen] who has been found inadmissible under section
6 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or
7 1227(a)(4)(B) of this title.

8 8 U.S.C. § 1231(a)(2).

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

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

18 8 U.S.C. § 1231(a)(6) (emphasis added).

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

¹ Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens, 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.

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 *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is
2 applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating that
3 "for detention to remain reasonable, as the period of postremoval confinement grows, what counts
4 as the 'reasonably foreseeable future' conversely would have to shrink"). Thus, the Supreme
5 Court implicitly recognized that six months is the *earliest* point at which a noncitizen's detention
6 could raise constitutional issues. *Id.*

7 Here, Petitioner is the subject of a 2006 administratively final order of removal. *See*
8 Declaration of Jiarong Du ("Du Decl."), at ¶ 7. Following an agreement increasing cooperation
9 from the government of Vietnam, Petitioner was taken into custody on August 5, 2025. *Id.*, ¶ 8.
10 Since then, he has been in custody 121 days as of the day of this filing. The "presumptively
11 reasonable" six-month custody period has not yet expired. *Zadvydas*, 533 U.S. at 701.

12 **B. Petitioner Thach Wana**

13 Petitioner is a native of Vietnam and a citizen of Vietnam. On or about November 26,
14 1990, was admitted into the United States as an immigrant (AM-1) in Honolulu, Hawaii. Du
15 Decl., ¶ 4. On February 12, 1999, Petitioner was convicted in the Superior Court of Washington,
16 King County, for the offense of Residential Burglary, in violation of RCW 9A.52.025. He was
17 sentenced to 12 months and 1 day confinement as a result of this conviction. *Id.*, ¶ 5. On February
18 7, 2005, Petitioner was convicted in the Lucas County Court of Common Pleas in Toledo, Ohio
19 for the offense of Trafficking in Marijuana in violation of ORC 2925.03(A)(2). He was sentenced
20 to 5 years confinement as a result of this conviction. *Id.*, ¶ 6.

21 As a result of such criminal activity, Petitioner was issued a Notice to Appear on April 8,
22 2005, charging him with two counts of the Immigration and Nationality Act, Section 237(a)(2).
23 *Id.*, ¶ 7; *see also* Declaration of Kristen R. Vogel ("Vogel Decl."), Exh. A. He was ordered
24 removed to Vietnam on April 28, 2006, by an Immigration Judge. Du Decl., ¶ 7; *see also* Vogel

1 Decl., Exh B. This order is administratively final. Du Decl., ¶ 7. Petitioner's removal
2 proceedings were conducted while Petitioner was being confined by the Ohio Penitentiary
3 System. *Id.*, ¶ 7. On or about January 29, 2008, Petitioner was booked out of the Ohio Penitentiary
4 System and placed on an OSUP by ERO due to an inability to obtain travel documents to Vietnam.
5 *Id.*, ¶ 8; *see also* Vogel Decl., Exh. C.

6 On August 5, 2025, ERO determined that there was now a significant likelihood of
7 removal in the foreseeable future due to cooperation between the United States and Vietnam.
8 Accordingly, OSUP was revoked and Petitioner was arrested by ERO. *Id.*, ¶ 9. On September 15,
9 ERO served Notice to Alien of File Custody Review and provided petitioners with the travel
10 document application. *Id.*, ¶ 10. On September 17, Petitioner assisted ERO by filling out
11 documents related to obtaining a travel document to Vietnam, and ERO produced other
12 documents in order to obtain a travel document. *Id.*, ¶ 11. On October 24, ERO sent documents
13 to aid in obtaining a travel document to a translation service. *Id.*, ¶ 12. On November 2, 2025,
14 ERO sent a TDR to supervisory channels with translated documents. *Id.*, ¶ 13. On November 4,
15 the TDR was approved by local management to be sent to the ERO headquarters division who
16 communicates with government of Vietnam. The TDR remains pending at this time. *Id.*, ¶ 14.

17 III. ARGUMENT

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

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

1 reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

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

14 Here, Petitioner’s total post-order detention is approximately 121 days because he was in
15 state court custody – not immigration custody – when his removal order became administratively
16 final. Du Decl., ¶ 7. By the time he was booked out of the Ohio Penitentiary System on January
17 29, 2008, ERO was aware that it could not obtain travel documents to Vietnam and therefore
18 placed Petitioner on an OSUP in lieu of detention. *Id.*, ¶ 8; *see also* Vogel Decl., Exh. C. While
19 Petitioner argues that the six-month presumptively reasonable period runs from the final order of
20 removal regardless of whether he was in immigration custody or not, Respondents respectfully
21 disagree with this interpretation of *Zadvydas*. At least one court in this District has similarly
22 looked to the aggregate time in detention. *See, e.g., Nguyen v. Scott*, No. 2:25-cv-01398, 2025
23 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025) (Cartwright, J.).

1 Since Petitioner has been detained, the TDR was approved by local management to be
2 sent to ERO headquarters division who communicates with the government of Vietnam. Du Decl.,
3 ¶ 14. ICE anticipates receiving travel documents expeditiously because the government of
4 Vietnam has agreed to issue travel documents within 30 days. *Id.*, ¶ 16. Indeed, it has issued travel
5 documents in hundreds of cases just this fiscal year, including 154 Vietnamese citizens who
6 entered the United States before July 12, 1995. *Nguyen*, 2025 WL 2419288, at *17. Because of
7 this increased cooperation with the government of Vietnam, Petitioner's removal will likely occur
8 in the reasonably foreseeable future. Du Decl., ¶¶ 16, 20.

9 Vietnam has clearly engaged in issuing travel documents, which demonstrates a good faith
10 intention to issue travel documents in this case. *Id.* The Court can take notice of the many cases
11 in this district alone where Vietnamese citizens have been removed on a relatively short timeframe
12 once the travel document request has been submitted. *See e.g., Nguyen v. Bondi et al.*, 2:25-cv-
13 01833-JNW, Dkt. 19 (removal approximately 36 days following ICE's submission of the Travel
14 Documents to Vietnam); and *Van Le v. Bondi et al.*, 2:25-cv-02084-JNW-SKV, Dkt. 7. Further,
15 Vietnam is accepting individuals for removal from the United States and ICE believes there is a
16 significant likelihood of Petitioner's removal to Vietnam in the reasonably foreseeable future. *See*
17 *Du Decl.*, ¶¶ 9, 20.

18 The fact that Petitioner does not yet have a specific date of anticipated removal does not
19 make his detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008). Detention
20 becomes indefinite in situations where the country of removal refuses to accept the noncitizen or
21 if removal is legally barred. *Id.* There is no reason to believe that is the situation here.
22 Consequently, Petitioner has failed to demonstrate a good reason to believe that there is no
23 significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at
24 701.

1 **B. Petitioner's August 2025 detention comported with due process.**

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

10 Respondents recognize the “weighty liberty interests implicated by the Government's
11 detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y.
12 Aug. 20, 2021). However, Petitioner's interest in his liberty *generally* does not mean that he
13 possesses a separate or heightened liberty interest in the continuation of his conditional release
14 on OSUP.³ The recognized liberty interests of U.S. citizens and aliens are not coextensive: the
15 Supreme Court has “firmly and repeatedly endorsed the proposition that Congress may make rules
16 as to aliens that would be unacceptable if applied to citizens.” *Rodriguez Diaz*, 53 F.4th at 1206
17 (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, “[i]n
18 the exercise of its broad power over naturalization and immigration, Congress regularly makes
19 rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80
20 (1976).

21 First, when released on OSUP, Petitioner was notified that he was being placed under
22 supervision only because ICE had not affected his deportation or removal during the period
23

24 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 prescribed by law. As part of his OSUP, Petitioner was also required to assist ICE in obtaining
2 any necessary travel documents, and report to ICE in person all actions he took to obtain a travel
3 document. *See* Vogel Decl., Exh. C. Thus, Petitioner cannot now claim that the Respondents
4 promised him ongoing, limitless, indefinite freedom from detention while he remained in the
5 United States. The sole basis for OSUP was that Petitioner could not be removed to Vietnam in a
6 timely manner. Those circumstances have now changed.

7 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
8 of Petitioner's liberty here is minimal. Congress established a clear statutory framework in 8
9 C.F.R. § 241.13(i)(2) that allows ICE to revoke OSUP if it determines that there is a "significant
10 likelihood" an alien can be removed from the United States within the "reasonably foreseeable
11 future." The regulations also require that "[u]pon revocation, the alien will be notified of the
12 reasons for revocation of his or her release." *Id.* §§ 241.13(2), (3); *see also Nizar Esmail v. Noem,*
13 *et al.*, 2025 WL 3030590, at *2 (C.D. Cal. Sept. 12, 2025). Here, ICE properly detained Petitioner
14 based on its individualized determination that Petitioner could be removed expeditiously. Du
15 Decl., ¶¶ 9, 20. As discussed above, Petitioner was on notice that this was a possibility, and he
16 also received notification of the reason for the OSUP revocation and an initial informal interview.
17 Vogel Decl., Exh. C, at pgs. 5-6.

18 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
19 test "must account for the heightened government interest in the immigration detention context."
20 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth
21 Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in
22 preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*,
23 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). The government likewise has an interest in
24 enforcing compliance with final orders of removal.

1 In sum, the three *Mathews* factors demonstrate that Petitioner's detention comports with
2 due process.

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

4 Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing
5 cases or controversies. *Deakins v. Monaghan*, 484 U.S. 193, 199, 108 S.Ct. 523, 528, 98 L.Ed.2d
6 529 (1988). "Ripeness is an Article III doctrine designed to ensure that courts adjudicate live
7 cases or controversies and do not 'issue advisory opinions [or] declare rights in hypothetical
8 cases.'" *Bishop Paiute Tribe v. Inyo Cty.*, 863 F.3d 1144, 1153 (9th Cir. 2017) (alteration in
9 original) (quoting *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir.
10 2000) (en banc)). The Supreme Court has stated that to meet the ripeness standard, plaintiffs must
11 show either a specific present objective harm or the threat of specific future harm. *Laird v. Tatum*,
12 408 U.S. 1, 14 (1972). "A claim is not ripe for adjudication if it rests upon contingent future
13 events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*,
14 523 U.S. 296, 300 (1998) (internal citations omitted). "For a case to be ripe, it must present issues
15 that are definite and concrete, not hypothetical or abstract." *Bishop*, 863 F.3d at 1153.

16 Here, Petitioner's argument that he could be removed to a third country is without merit,
17 speculative, and not ripe for review. There is no case or controversy because there is no concrete
18 indication that such removal to a third country will occur. The record contains no evidence
19 supporting the claim. ICE is currently seeking a travel document to Vietnam. Accordingly, the
20 claim should be dismissed as premature. *Cf. Spencer v. Kemna*, 523 U.S. 1, 16 (1998) (rejecting
21 habeas petitioner's alleged consequences as "a possibility rather than a certainty or even a
22 probability" and as "purely a matter of speculation").

23 **IV. CONCLUSION**

24 For the foregoing reasons, Federal Respondents respectfully request that this Court deny

1 the Petition and dismiss this matter.

2 Dated this 4th day of December, 2025.

3 Respectfully submitted,

4 CHARLES NEIL FLOYD
5 United States Attorney

6 s/ Kristen R. Vogel

7 KRISTEN R. VOGEL, NY No. 5195664
8 Assistant United States Attorney
9 United States Attorney's Office
10 Western District of Washington
11 700 Stewart Street, Suite 5220
12 Seattle, Washington 98101
13 Phone: 206-553-7970
14 Fax: 206-553-4067
15 Email: kristen.vogel@usdoj.gov

16 *Attorneys for Federal Respondents*

17 I certify that this memorandum contains 3,113
18 words, in compliance with the Local Civil Rules.