UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PHONG VAN DO,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 4:25-CV-05643
	§	
PAMELA BONDI, *et al.*,	§	
	§	
Respondents.	§	

THE FEDERAL RESPONDENTS' RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT

Respectfully submitted,

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Respondents Pamela Bondi, Kristi Noem, Todd Lyons, Marcos Charles, Bret Bradford, U.S. Immigration and Customs Enforcement, Department of Homeland Security, and Randy Tate (hereinafter the "Federal Respondents") hereby request that the Court deny Petitioner's habeas petition and grant summary judgment in the Government's favor, in accordance with Federal Rule of Civil Procedure 56.

Simply put, the Court should reject Petitioner's habeas petition because the factual record in this case does not support the legal theories that he relies on. First, he claims his detention is unlawful in light of *Zadvydas* because there is no significant likelihood of removal. But he relies on the conclusory assertion that his home country will not accept his removal—a premise that is not only unfounded (and thus Petitioner fails to meet his burden), but provably false. Second, there have been no procedural due process violations as Petitioner's claims of specific violations of applicable federal regulations are contradicted by sworn and documentary evidence to the contrary. Thus, the Court should deny the petition and enter judgment in favor of the Government.

II. BACKGROUND AND PROCEDURAL HISTORY

As Petitioner Phong Van Do does not dispute, he is a citizen and native of Vietnam. *See* Exhibit 1 ¶ 7 (Sworn Declaration of Deportation Officer Ellen Henry); ECF No. 1 ¶ 1. While Petitioner was initially admitted to the United States, and later attained permanent residency, he was convicted of burglary in 1994 and bank fraud in 1996. Exh. 1 ¶¶ 9–10. In light of those offenses, he was placed in removal proceedings and ordered removed from the country on June 5, 2006. *Id.* ¶¶ 11–14. At some point thereafter, he was placed on an Order

of Supervision and has since been reporting to ICE in accordance with that order. ECF No. 1 ¶ 7.

On October 9, 2025, ICE Enforcement and Removal Operations ("ERO") arrested Petitioner when he reported for his scheduled Order of Supervision appointment. Exh. 1 ¶ 15. ERO is in the process of effectuating Petitioner's repatriation to his home country of Vietnam, and has been submitting the requisite documentation. *Id.* ¶ 16. As of this moment, the travel document request is pending. *Id.* The agency believes that "there is a significant likelihood in the reasonably foreseeable future, that [Petitioner] will be removed to Vietnam." *Id.* ¶ 17.

On November 23, 2025, Petitioner filed a Writ of Habeas Corpus (Dkt. No. 1), challenging his detention as unlawful. He argues that his detention violates (1) applicable federal regulations; (2) the Due Process Clause of the Fifth Amendment in light of *Zadvydas*; and (3) the Administrative Procedure Act. On November 26, 2025, the Court issued an order directing the Respondents to answer or otherwise respond to the habeas petition by no later than December 9, 2025. ECF No. 6 at 4. The Federal Respondents accordingly responds to the habeas petition with this motion for summary judgment.

III. LEGAL STANDARD ON SUMMARY JUDGMENT

Generally, summary judgment is proper when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). If the moving party meets is burden of demonstrating the absence of a genuine factual dispute, the non-movant must then come forward with specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475

U.S. 574, 586–87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). The non-movant must "go beyond the pleadings and by [the nonmovant's] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Nola Spice Designs, LLC v. Haydel Enters., Inc.*, 783 F.3d 527, 536 (5th Cir. 2015). The non-movant's burden "will not be satisfied by 'some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence.'" *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005) (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (per curiam)).

IV. APPLICABLE LAW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286, 61 S.Ct. 574, 85 L.Ed. 830 (1941). As set forth in the INA, an alien must be held in custody after entry of a final removal order and during the 90-day removal period. 8 U.S.C. § 1231(a)(2). After this period, the INA nevertheless contemplates continued detention. *Id.* § 1231(a)(6). However, in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001), the Supreme Court addressed "whether aliens that the Government finds itself unable to remove are to be condemned to an indefinite term of imprisonment within the United States." *Id.* at 695. It held that post-removal detention is presumptively lawful up to six months, after which the detention may still be reasonable and lawful until "the alien provides good reason" to "determine that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

With this backdrop in mind, the Federal Respondents proceed to the legality of Petitioner's post-removal detention in this case.

V. ARGUMENT

Petitioner asserts four causes of action. For Count One, he "requests a declaratory judgment pursuant to 28 U.S.C. § 2201." ECF No. 1 ¶¶ 95–98. Count Two is his claim that his detention is unlawful because the Government failed to comply with 8 C.F.R. § 241.13(i)(2)–(3) upon revocation of his Order of Supervision. ECF No. 1 ¶ 99–103. Count Three is his claim that his detention violates the Due Process Clause because there is no significant likelihood of removal in the reasonably foreseeable future. *Id.* ¶¶ 104–07. And finally, Count Four contends that Petitioner's detention violates the APA. *Id.* ¶¶ 108–13. The Federal Respondents address each in turn.

A. COURT I: DECLARATORY JUDGMENT

First, Petitioner asserts a claim for declaratory judgment pursuant to 28 U.S.C. § 2201. Petitioner's invocation of this statute as a standalone claim is misguided, as declaratory judgment is not an independent cause of action but rather a form of relief based on underlying claims. *See, e.g., Collin Cnty., Tex. v. Homeowners Ass'n for Values Essential to Neighborhoods, (HAVEN)*, 915 F.2d 167, 170–71 (5th Cir. 1990) ("The Declaratory Judgment Act is remedial only . . . it is the underlying cause of action . . . that is actually litigated in a declaratory judgment action[.]"); *Braidwood Mgmt., Inc. v. Equal Emp. Opportunity Comm'n*, 70 F.4th 914, 933 (5th Cir. 2023) (explaining that in a declaratory judgment action, "it is the underlying cause of action of the defendant against the plaintiff that is actually litigated").

Declaratory judgment is a "form[] of relief based on underlying claims." *Johnson v. Wells Fargo Bank, NA*, 999 F.Supp.2d 919, 935 (N.D. Tex. 2014) (citing *Collin Cnty.*, 915 F.2d at 170–71). In cases like this, Petitioner need only seek declaratory judgment in her Prayer for Relief, and the Federal Respondents do not contest that if she were entitled to prevail on the merits, such relief is available to her (in light of the Declaratory Judgment Act). But the statute is not itself a cause of action; it provides "merely a form of relief that the court may grant." *Val-Com Acquisitions Tr. v. CitiMortgage, Inc.*, 421 F. App'x 398, 401 (5th Cir. 2011). Accordingly, this "cause of action" is not actually a cause of action, and cannot supply the alleged illegality of Petitioner's habeas petition.

B. COUNT II: REGULATORY CHALLENGES

Next, in Count Two of his petition, Petitioner invokes "8 C.F.R. § 241.13(g), (i)(2)-(3)" and alleges that "Respondents have failed to comply with these provisions prior to redetaining [him] after [his] release on an OOS." ECF No. 1 ¶ 100–101.[1] However, these contentions are factually and legally unavailing.

1. 8 C.F.R. § 241.13(g)

With respect to subsection (g), Petitioner's citation to this text is peculiar as it discusses "a written decision" in reference to subsection (c)'s instruction that the detention unit "shall conduct a review under this section, in response to a request from a detained alien, in order to determine whether there is no significant likelihood that the alien will be removed in the reasonably foreseeable future." *See* 8 C.F.R. § 241.13(c); *see id.* § 241.13(g). In other words,

[1] The heading of Count Two only cites to 8 C.F.R. § 241.13(i)(2)-(3), but paragraph 100 within that count also cites to 8 C.F.R. § 241.13(g), so the Federal Respondents will also address the latter.

subsection (c) permits a detained alien to request a review after that alien has already been detained, and subsection (g) provides for that decision to be written and provided to the detained alien. This subsection, then, does not provide for actions the agency must take before or upon re-detaining him; rather, these are post-detention procedures which only come into effect when the alien requests a review of his custody. Thus, 8 C.F.R. § 241.13(g) cannot supply the agency's alleged failure to comply with applicable regulations "prior to redetaining" him. Not only so, but here Petitioner does not allege that he made a post-custody request for a determination as to the likelihood of his removal. Both factually and legally, this claim fails.

2. 8 C.F.R. § 241.13(i)(2)-(3)

Similarly, Petitioner cannot succeed on a purported violation of subsection (i). As for subsection (i)(2), he does not articulate how the agency ran afoul of the regulatory text, which provides that revocation may occur if ICE determines there is a significant likelihood of removal. Nor could he, as ICE in fact did so. *See* Exh. 1 ¶¶ 16–17 (explaining that ICE revoked his OOS to execute his final order of removal, and finding there was a significant likelihood of removal).

In the same vein, he cannot succeed on subsection (i)(3) either, which requires that "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release," and the detention unit "will conduct an initial informal interview promptly after" return to custody where the alien is afforded "an opportunity to respond to the reasons for revocation stated in the notification." Here, such notice was provided, as Officer Henry interviewed him on October 20, 2025 (eleven days after his re-detention), explaining to him his immigration status and that his OOS was revoked on the basis that ICE intended to execute

his removal order. Exh. 1 ¶ 16. It is true that Petitioner pled to the contrary in his petition. *See* ECF No. 1 ¶¶ 14, 54 (stating that he never received any such notice). However, pleadings are not summary judgment evidence. *See, e.g., In re Grand Jury Subpoena*, 419 F.3d 329, 336 (5th Cir. 2005) ("Allegations in pleadings are not evidence."); *Wallace v. Texas Tech Univ.*, 80 F.3d 1042, 1047 (5th Cir. 1996) (same); *Anderson v. Siemens Corp.*, 335 F.3d 466, 475 n.15 (5th Cir. 2003) (same). Absent actual evidence expressly contradicting Officer Henry's account, this claim must fail.[2]

C. COUNT III: *ZADVYDAS* CHALLENGE

By his pleadings, Petitioner's due process challenge under *Zadvydas* appears to be his central claim. As stated earlier, *supra* Part III, the INA contemplates continued detention after the initial 90-day removal period. 8 U.S.C. § 1231(a)(6). However, in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001), the Supreme Court rejected the notion of indefinite post-removal detention, holding that post-removal detention is presumptively lawful up to six months, after which the detention may still be reasonable and lawful until "the alien provides good reason" sufficient to show that there is "no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Notably, under the plain instruction of *Zadvydas* when addressing the propriety of post-removal detention, this burden belongs to the alien. See id. That burden remains the same on re-detention, as re-detention is just one form of post-removal detention, which *Zadvydas* addressed generally. This very Court has recognized this burden. *See Ali v. Dep't of Homeland Sec.*, 451 F.Supp.3d 703, 707 (S.D. Tex. 2020) (Ellison,

[2] Perhaps of note, Petitioner seems hesitant to state with certainty that he never received the notice. Despite stating that he had not received such notice in Paragraph 54 of his complaint, the very next paragraph he is "[a]ssuming arguendo" that he did receive the notice. *See* ECF No. 1 ¶ 55.

J.) (explaining, in a re-detention case, that the alien bears the burden); *see also Diaz-Ortega v. Lund*, No. 1:19-CV-00670, 2019 WL 6003485 (W.D. La. Oct. 15, 2019) (same), *report and recommendation adopted*, No. 1:19-CV-00670, 2019 WL 6037220 (W.D. La. Nov. 13, 2019).

Here, the *Zadvydas* inquiry should be comfortably resolved in the Government's favor as Petitioner fails to meet even his initial burden. He relies on little more than his own pessimism that the United States will not be able to obtain a travel document and effectuate his removal. As courts have recognized, this issue as to the likelihood of removal is a fact-intensive inquiry. *See, e.g.*, *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 2451030 (S.D. Tex. Aug. 25, 2025) (explaining that likelihood of removal is a fact-intensive inquiry); *Hernandez-Esquivel v. Castro*, No. 5-17-CV-00564, 2018 WL 3097029 (W.D. Tex. June 22, 2018) (same). In *Andrade v. Gonzalez*, 459 F.3d 538 (5th Cir. 2006), the Fifth Circuit dismissed a *Zadvydas* challenge as "meritless" where the alien "offered nothing beyond his conclusory statements suggesting" that he could not be removed. *Id.* at 543–44. At most, Petitioner alludes—without citation to authority—to past periods of difficulty in effectuating removals of Vietnam nationals. Not only does this argument fail to meet his burden, but even assuming past obstacles, geopolitical dynamics are just that: dynamic, i.e., subject to change. Such invocation of outdated circumstances poorly reflects—if not altogether paints a misleading picture of—the current state of affairs, which permits repatriations to Vietnam.

Indeed, the one source Petitioner does identify—the 2020 Memorandum of Understanding ("MOU") between Vietnam and the United States regarding the repatriation of pre-1995 Vietnamese nationals—reveals that the opposite is true. *See* ECF No. 1 ¶ 2. In the MOU, which was negotiated toward the end of President Trump's first administration,

Vietnam agreed to accept repatriations regardless of whether they were pre-1995 or not.[3] *See Memorandum of Understanding*, available at https://www.nguoi-viet.com/wp-content/uploads/2021/07/Vietnam-2020-MOU-redacted-1.pdf. And while the previous administration largely declined to pursue repatriations despite the 2020 MOU, the current administration is doing so. Currently, from even a basic Google search, copious timely articles from 2024–25 reflect that Vietnam is presently accepting removals of its nationals from the United States. *See, e.g.*, Francesco Guarascio, *Vietnam to Support Deportations from U.S. After Tariff Threats, Lawyer Says*, REUTERS (February 27, 2025) (reporting that despite historically denying travel document requests, Vietnam "has pledge to support" the U.S.'s repatriation efforts "after U.S. threats of trade tariffs and visa sanctions"), https://www.reuters.com/world/vietnam-support-deportations-us-after-tariff-threats-lawyer-says-2025-02-28/; *Resources on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995*, ASIAN LAW CAUCUS (July 15, 2025) (indicating that as of January 2025, ICE began "deport[ing] pre-1995 immigrants at higher numbers than it has in the past"). https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports; JT Moodee Lockman and Kaicey Baylor, *Maryland Mother Deported to Vietnam After Being Detained and Released by ICE*, CBS NEWS (November 20, 2025) (reporting on a successful Vietnam repatriation after Vietnam had previously failed to accept the alien under prior administrations), https://www.cbsnews.com/baltimore/news/maryland-melissa-tran-deported-vietnam-ice-immigration/. Moreover, Deportation Officer Ellen Henry informed

[3] This MOU superseded a previous MOU from 2008 wherein the two countries previously agreed that Vietnam would not take pre-1995 Vietnamese nationals. *See* 2008 Agreement, available at https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf.

in her sworn declaration that Vietnam is currently accepting the return of their citizens, and concluded that there is a significant likelihood of removal. Exh. 1 ¶ 17.

In light of the foregoing, Petitioner has not met his burden of showing no substantial likelihood of removal. Until or unless Petitioner can identify a current geopolitical obstacle which would prevent Vietnam from accepting his repatriation, and until or unless Vietnam denies the currently-pending travel document request, it cannot be said that there is no substantial likelihood of removal under *Zadvydas*. *See, e.g.*, *Tawfik v. Garland*, 2024 WL 4534747, at *3 (S.D. Tex. 2024) (denying a petition that argued a "lack of visible progress" toward removal); *Apau v. Ashcroft*, No. 3:02-CV-02652, 2003 WL 21801154, *3 (N.D. Tex. June 17, 2003) (the "bare fact" that Ghana had not yet issued travel documents was not sufficient to carry the petitioner's burden under *Zadvydas*). Petitioner's *Zadvydas* claim should therefore be rejected.

D. COUNT IV: APA CHALLENGE

Finally, Petitioner alleges that his detention "violates the APA" because the Government's "decision to re[-]detain [him] is arbitrary, capricious, and not in accordance with law[.]" ECF No. 1 ¶ 113. This claim misses the forest in the trees, as it attempts to introduce an improper vehicle through which to vindicate his substantive legal claims when he is already in the proper vehicle: a petition for a writ of habeas corpus.

The APA itself instructs that claims under the APA are available only when "there is no other adequate remedy in a court." 5 U.S.C. § 704. And this Court itself has recognized the unspectacular point that "28 U.S.C. § 2241 provides a district court with jurisdiction over petitions for habeas corpus where a petitioner is 'in custody in violation of the Constitution

or law or treaties of the United States.'" *Vazquez Barrera v. Wolf*, 455 F.Supp.3d 330, 336 (S.D. Tex. 2020) (Ellison, J.) (citing 28 U.S.C. § 2241(c)(3); *INS v. St. Cyr*, 533 U.S. 289, 305, 121 S.Ct. 2271, 150 L.Ed.2d 347 (2001)).

To the extent Petitioner's detention is unlawful, whether it be by way of statute, regulation, the Constitution, or otherwise, he can already challenge the legality of his detention via his habeas petition. Thus, his APA claim is functionally duplicative and cannot maintain as there is already an "adequate remedy." 5 U.S.C. § 704. Very recently, the Supreme Court directly addressed this point. In a habeas claim, the Supreme Court was confronted with both a habeas corpus proceeding which also purported to bring the claims via the APA. The Court concluded that because the claims challenge the validity of confinement, the claims "must be brought in habeas." *Trump v. J. G. G.*, 604 U.S. 670, 672, 145 S.Ct. 1003, 221 L.Ed.2d 529 (2025). Justice Kavanaugh further explained why this is so in his concurrence: because "habeas corpus, not the APA, is the proper vehicle" given that the APA is only available where no other adequate remedy is available. *Id.* at 674.

In sum, each of Petitioner's arguments here as to why his detention is unlawful—that is, his challenges under the Due Process Clause and applicable federal regulations—can already be considered in habeas, which makes the APA an improper vehicle. The APA claim must be dismissed.

VI. CONCLUSION

For the foregoing reasons, the Federal Respondents respectfully request that the Court grant their motion and deny Petitioner's petition for a writ of habeas corpus as he has not shown that his detention is unlawful.

Dated: December 9, 2025

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CERTIFICATE OF SERVCE

I certify that on December 9, 2025, the foregoing was filed and served on counsel for Petitioner via the Court's CM/ECF service.

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