UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

QUOC ANH PHO, Petitioner, v. BRIAN ENGLISH, Warden, Miami Correctional Facility, et al. Respondents.	)	Case No. 3:25-cv-977-CCB-SJF

RESPONSE TO PETITION FOR *WRIT OF HABEAS CORPUS*

Quoc Anh Pho ("Pho") has petitioned for a *writ of habeas corpus* under 28 U.S.C. § 2241 asking this Court to order his immediate release from ICE custody. The Court should deny his motion because it lacks subject matter jurisdiction under 8 U.S.C. § 1252(g). But even if the Court had jurisdiction, the Court should deny the petition because Pho's detention is lawful under 8 U.S.C. § 1231(a) and *Zadvydas v. Davis*, 533 U.S. 678 (2001).

INTRODUCTION

Pho is a Vietnamese national who is subject to a final order of removal. In October 2025, Pho was taken into ICE custody. He is currently detained at Miami Correctional Facility pending his final removal to Vietnam. Pho filed a petition for a *writ of habeas corpus*, arguing that his ongoing "prolonged detention" violates the Due Process Clause of the Fifth Amendment and 8

U.S.C. § 1231(a). He asks the Court to order his immediate release.

The Court should deny this Petition. This Court lacks jurisdiction to interfere with the execution of a removal order under 8 U.S.C. § 1252(g). Setting jurisdiction aside, Pho's petition fails on the merits. First, his current post-final order of removal detention is authorized under 8 U.S.C. § 1231(a)(6). Second, Pho cannot show his detention is unreasonable or violates the Due Process Clause. Under the framework in *Zadvydas*, post-final order detention is "presumptively reasonable" for up to six months. *Id.* at 701. Pho's current detention is well within that timeframe and thus constitutional. Accordingly, this Court should dismiss the case with prejudice.

FACTUAL AND PROCEDURAL BACKGROUND

Pho is a native and citizen of Vietnam who entered the United States in 1997. DE # 1 at ¶¶2-3. In 2003, Pho was convicted of Indecency with a Child Sexual Contact. *See* Ex. 1 (A-file) at 2. He was thereafter served with a Notice to Appear ("NTA") charging him with removability under Immigration and Nationality Act ("INA") § 237(a)(2)(E)(i) (an alien who has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment) and § 237(a)(2)(A)(ii) (an alien who has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct). *Id.* On October 28, 2004, an Immigration Judge entered a final order of removal. *See* Ex. 2; DE # 1 at ¶¶2-3. Pho did not

appeal. *See* Ex. 1 at 5 (stating no appeal received by the BIA).

On October 17, 2025, immigration officers at the Dallas Field Office discovered that Pho was subject to a final order of removal with no pending applications. *Id.* at 2. Pho was arrested pursuant to an administrative warrant and then transferred to Miami Correctional Facility in Bunker Hill, Indiana. *Id.* at 7. On or around November 26, 2025, Pho filed this *habeas* petition.

LEGAL STANDARD

A petition for a *writ of habeas corpus* challenges the legality or constitutionality of the government's restraint or imprisonment of the petitioner. 28 U.S.C. § 2241. A petitioner bears the burden to demonstrate that his detention is unlawful. *Walker v. Johnston*, 312 U.S. 275, 268 (1941).

ARGUMENT

I. PETITIONER'S *HABEAS* CLAIMS SHOULD BE DISMISSED FOR LACK OF JURISDICTION.

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including *habeas corpus* jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] *execute removal orders* against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law

(statutory or nonstatutory)." *Id.* Though this section "does not sweep broadly," *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Except as provided by § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *Id.*

The statute was "'directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion,'" to protect "'no deferred action' decisions and similar discretionary decisions." *Tazu*, 975 F.3d at 297 (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 (1999) ("*AADC*")). This particular limitation exists for "good reason": "[a]t each stage the Executive has discretion to abandon the endeavor." *AADC*, 525 U.S. at 483–84. In addition, through § 1252(g) and other provisions of the INA, Congress "aimed to prevent removal proceedings from becoming 'fragment[ed], and hence prolong[ed].'" *Tazu*, 975 F.3d at 296 (alterations in original) (quoting *AADC*, 525 U.S. at 487); *see Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022) ("Limiting federal jurisdiction in this way is understandable because Congress wanted to streamline immigration proceedings by limiting judicial review to final orders, litigated in the context of petitions for review.").

Several courts in this Circuit have held § 1252(g) applies to the discretionary decision to execute a removal order. *E.F.L.*, 986 F.3d at 964–65 (holding that § 1252(g) barred review of the decision to execute a removal order

while an individual sought administrative relief); *see also Ferreyra v. Nielsen*, No. 18-CV-1005, 2018 WL 4496330, at *2–3 (E.D. Wis. Sept. 18, 2018) (no jurisdiction over *habeas corpus* petition challenging detention due to removal order); *Nino v. Johnson*, No. 16-cv-2876, 2016 WL 6995563 (N.D. Ill. Nov. 30, 2016) ("An alien cannot evade § 1252(g) by attempting to re-characterize a claim that, at its core, attacks the decision to execute a removal order."); *Albarran v. Wong*, 157 F.Supp.3d 779, 784–85 (N.D. Ill. 2016), *appeal dismissed* (7th Cir. Apr. 13, 2016) (the court lacked jurisdiction to hear challenges to discretionary denials of requests for stay of removal, rescission of reinstatement order, and release on order of supervision).

Here, Pho challenges ICE's decisions and actions to execute his removal from the United States. His petition seeks release from custody, arguing that it is contrary to the statute and violates his due process rights because he was previously under an order of supervision. But as the Seventh Circuit has held, and the statute demands, challenges to decisions or actions to execute removal orders "are insulated from judicial review." *E.F.L.*, 986 F.3d at 964. Therefore, this Court lacks jurisdiction over such claims.

II. THE COURT SHOULD DISMISS THE PETITION BECAUSE PETITIONER'S DETENTION IS LAWFUL.

Jurisdiction aside, Pho fails because his current detention is lawful under 8 U.S.C. § 1231(a) and *Zadvydas*.

A. Petitioner's Current Detention is Lawful Under 8 U.S.C. § 1231.

ICE's detention authority in this case stems from 8 U.S.C. § 1231 which provides for the detention and removal of individuals with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days, which is known as the "removal period." During the removal period, ICE must detain the alien. 8 U.S.C. § 1231(a)(2) ("shall detain"). If the removal period expires, ICE can either release an individual pursuant to an order of supervision as directed by § 1231(a)(3) or may continue detention under § 1231(a)(6). ICE may continue detention beyond the removal period for three categories of individuals: (i) those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182; (ii) those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or (iii) those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6)(A).

Here, Pho is subject to a final order of removal. *See* DE # 1 at ¶ 23. Following his arrest on October 17, 2025, Pho has been at the Miami Correctional Facility pending execution his final order of removal. DE # 1 at 25; Ex. 1 at 2. DHS has discretionary, statutory authority to detain Pho while it effectuates the removal order. *See* 8 U.S.C. § 1231(a)(6) (an alien "may be detained" while efforts to complete removal continue). Accordingly, Pho's

detention is lawful, and thus the Court should deny his petition.

B. Petitioner's Detention is Constitutional under *Zadvydas*.

Pho cannot show his detention is unreasonable or violates the Due Process Clause. The Supreme Court has recognized that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). When evaluating "reasonableness" of detention, the touchstone is whether the detention continues to serve "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. To set forth a Constitutional violation for § 1231 detention, an individual must satisfy the *Zadvydas* test. *See Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining that "*Zadvydas*, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established.").

In *Zadvydas*, the Supreme Court considered the government's ability to detain an alien subject to a final order of removal before the removal is effectuated. 533 U.S. at 699. The Supreme Court held that the government cannot detain an alien "indefinitely" beyond the 90-day removal period, limiting "post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 682, 689. The Court further held that a detention period of six months is "presumptively reasonable." *Id.* at 701. Then after this first six months, the burden is on the

petitioner to show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" before the burden shifts back to the government to rebut that showing. *Id.* Courts routinely deny *habeas* petitions that are filed with less than six months of detention. *See, e.g., Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 (D. Mass. 2017) ("As petitioner has been detained for approximately two months as of this date, the length of his detention does not offend due process."); *Julce v. Smith,* No. CV 18-10163-FDS, 2018 WL 1083734, at *5 (D. Mass. Feb. 27, 2018) (deeming habeas petition "premature at best" as it was filed after three months of post-final order detention); *Farah v. U.S. Att'y Gen.,* 12 F.4th 1312, 1332-33 (11th Cir. 2021) ("If after six months he is still in custody and has not been removed from the United States, then he can challenge his detention under section 1231(a). But until then, his detention is presumptively reasonable under *Zadvydas.*"), *overruled on other grounds by Santos-Zacaria v. Garland,* 598 U.S. 411, 419-23 & n.2 (2023).

Pho has been in ICE custody since October 17, 2025 – approximately 49 days. He cannot show that his current detention exceeds six months. Pho admits that he is subject to a final order of removal and no appeal is pending. Because his post-final removal order detention has lasted less than six months, it is presumptively reasonable under *Zadvydas*. Therefore, the Court should find his current detention is constitutional. *Castaneda,* 95 F.4th at 760

("*Zadvydas* standard is due process: a § 1231 detainee who fails the Zadvydas test fails to prove a due process violation.").

In an attempt to avoid this presumption, Pho asks this Court to analyze the reasonableness of post-removal order detention based on the initial date of the final order of removal, rather than the date his current detention began. DE # 1 at ¶¶ 42-44. In other words, Pho argues that the reasonableness of the length of his detention should be based largely on the years he spent not detained. Pho is incorrect. First, *Zadvydas* makes clear that the six-month reasonable presumption counts the time in detention and not the duration of the removal period. *See* 533 U.S. at 682 ("we must decide whether this post-removal-period statute *authorizes* the Attorney General to detain a removable alien indefinitely") (emphasis added). More important, Pho's argument undermines the very rationale of *Zadvydas*, specifically the Court's concern over an alien facing indefinite detention when removal is not foreseeable. That is not the case here. DHS arrested Pho in order to execute his final order of removal. *See* Ex. 1 at 7. DHS is currently awaiting travel documents so that he can return to Vietnam. *See* DE # 6. His current detention is well within the six-month period set forth in *Zadvydas*. Pho has not shown that his removal is not foreseeable or that he faces indefinite detention. Thus, this Court should reject any contention that Pho's current 49-day detention, pending the execution of his final order of removal, is "prolonged" or violates the Due Process Clause.

Accordingly, the Court should deny the petition.

C. DHS Complied with the Regulations and the Constitution

Pho argues that his detention violates Due Process because he did not receive notice that his order of supervision had been revoked. But this argument does not provide a basis to bar his removal or detention necessary to effectuate his removal.

As discussed above, Pho was detained pursuant to § 1231(a) for purposes of effectuating his removal pursuant to a final order of removal. Section 1231(a)(3) is silent regarding the revocation procedures applicable to an individual who was previously released pursuant to an order of supervision, but ICE has issued Post-Order Custody Regulations contained at 8 C.F.R. § 241.4 to set forth mechanisms concerning custody reviews, release from ICE custody, and revocation of release for individuals with final orders of removal. *See* 8 C.F.R. § 241.4. The regulatory provisions applicable to the Pho are contained at 8 C.F.R. § 241.4(l) and provide significant discretion to ICE to revoke release. *See Tanha v. Warden, Balt. Detention Facility*, No. 1:25-cv-02121-JRR, 2025 WL 2062181, at *5 (D. Md. July 22, 2025). 8 C.F.R. § 241.4(l) permits the Government extraordinarily broad discretion to revoke an order of supervised release and that discretion is not limited to circumstances where a non-citizen violates the conditions of his order.

8 C.F.R. § 241.4(l)(2) makes clear that an order of supervision may be

revoked and a non-citizen may be re-detained when "it is appropriate to enforce a removal order . . . " Markedly different than the regulations surrounding it, § 241.4(l)(2) does not require notice, explanation, or an interview for the alien to respond. *Compare id.*, with § 241.4(l)(1). Further, the regulation does not compel the Government to demonstrate what facts or factors, if any, it based its decision to revoke, nor does the regulation (or any other authority) require the Government to demonstrate what, if any, steps, it took to effect or secure removal prior to [order of supervised release] revocation. *Leybinsky v. U.S. Immigr. & Customs Enf't,* 553 F. App'x 108, 110 (2d Cir. 2014) (remarking on the "broad discretionary authority the regulation grants ICE" to revoke release); *see also Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *6 (S.D. Fla. July 8, 2025) (noting differences between both subsections); *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (explaining that while the revocation regulation "provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion . . . ."). Again, the regulations provide for revocation when ICE determines that "[i]t is appropriate to enforce a removal order . . . against an alien, . . ." 8 C.F.R. § 241.4(*l*)(2)(i)–(iv) (emphasis added); *see also Tanha*, 2025 WL 2062181, at *5.

Pho was detained for purposes of effectuating his removal pursuant to a warrant. When ICE "determined that revocation was necessary to initiate []

removal ... [n]o further justification was required." *Doe v. Smith*, No. 18-cv-11363-FDS, 2018 WL 4696748, at *11 (D. Mass. Oct. 1, 2018). To the extent Pho believes ICE should have provided him with advance notice of its intent to revoke his release, this belief is not grounded in regulation or the Constitution. ICE is not required to provide advance notice of its intent to revoke release for the obvious reason that it could encourage flight or increase law enforcement safety concerns. *See id.* at *7.

Finally, Section 241.13 does not apply to Pho's circumstances. *See* DE # 1 at ¶¶ 36-37. This regulation "establishes special review procedures for those aliens who are subject to a final order of removal and are detained . . . where the alien has provided good reason to believe there is no significant likelihood of removal . . . in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). As explained above, Pho cannot show there is no significant likelihood of removal and thus § 241.13 does not apply here. *See Tran v. Baker*, No. 1:25-cv-01598-JRR, 2025 WL 2085020, at *3-5 (D. Md. July 24, 2025) (rejecting § 241.13 challenge because petitioner failed to make showing).

CONCLUSION

For the foregoing reasons, the Court should deny this petition and dismiss this case for lack of jurisdiction.

Respectfully submitted,

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