IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TRUNG HUY HUU NGUYEN, Petitioner, v. PAMELA BONDI, et al., Respondents.	)	CIV-25-1415-JD

RESPONSE IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents,[1] pursuant to the Court's Order (Doc. 8), respond to the Petition for Writ of Habeas Corpus (Doc. 1), and respectfully submit that the Court should deny the Petition and enter an order of dismissal.

This is a post-order immigration detention habeas proceeding governed by 8 U.S.C. § 1231 and *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner seeks immediate release based on conclusory speculation that his removal to Vietnam is not reasonably foreseeable. But at the time of filing, Petitioner's detention was presumptively reasonable given that it did not exceed six months. Further, Petitioner fails to meet his initial burden to establish that removal is unlikely; nor does he rebut Immigration and Custom Enforcement's (ICE's) determination that materially changed circumstances now make removal reasonably foreseeable. Indeed, Respondents have had recent success removing noncitizens to

[1] Respondent Scarlet Grant, Warden of the Cimarron Correctional Center, is not a federal official and this response is therefore not filed on her behalf. It is respectfully submitted that Warden Grant's interests in this litigation are contractually derivative of the federal respondents' interests and that a separate response from Warden Grant is not necessary to resolve the Petition or effectuate relief.

Vietnam. To that end, since February 2025, Vietnam has issued travel documents in response to *every* request issued by ICE Enforcement and Removal Operations (ERO). Accordingly, there is significant likelihood that Petitioner will be removed in the reasonably foreseeable future.

The Petitioner also improperly seeks declaratory, injunctive, and APA relief that is well beyond the scope of § 2241 habeas review, including requests to regulate future revocations, restrain transfers, and require immigration-court-type hearings. These claims are jurisdictionally barred, unripe, and non-justiciable. Accordingly, the petition should be dismissed.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Vietnam and a lawful permanent resident admitted in 2007. Petitioner ¶ 2. In 2018, he was convicted of two felony counts of possession of a controlled substance (methamphetamine) and sentenced to two concurrent ten-year terms. He was paroled in 2020 and then ordered removed by an immigration judge who made adverse credibility findings. Ex. 1 ¶3. The BIA dismissed his appeal on May 19, 2021, rendering the removal order final. *Id.* at ¶ 4; Petition ¶ 3. Thereafter, ICE released Petitioner on an Order of Supervision that was conditional and subject to revocation. Petition ¶ 4.

Given changed circumstances with removals to Vietnam, Petitioner was detained on June 8, 2025 to effectuate his removal. He is currently held at the Cimarron Correctional Facility. His petition was filed on November 11th, *less than six months since his detention.*

LEGAL FRAMEWORK

I. Statutory Framework

The authority to detain noncitizens[2] after the entry of a final order of removal is set forth in Section 241(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(a). Pursuant to that provision, ICE is afforded a ninety-day period within which to remove the noncitizen from the United States following the entry of a final order of removal. 8 U.S.C. § 1231(a)(1). During the removal period, ICE must detain the noncitizen. 8 U.S.C. § 1231(a)(2). If the removal period expires, ICE can either release an individual pursuant to an order of supervision as directed by Section 1231(a)(3), or continue detention under Section 1231(a)(6). Section 1231(a)(6) allows continued detention for those noncitizens who are inadmissible, removable under various INA provisions, to include Section 1227(a)(2), or who are determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal.

This detention prior to removal, however, is not indefinite. In *Zadvydas v. Davis*, the United States Supreme Court held that section 1231(a)(6) does not "permit indefinite detention." *Zadvydas,* 533 U.S. at 689. Instead, to avoid a constitutional issue, the Court found that six months was a presumptively reasonable period of post-order detention. *Id.* at 701; *see also Morales-Fernandez v. INS*, 418 F.3d 1116, 1123 (10th Cir. 2005) ("the reasonable period of post-removal detention is presumptively six months . . ."). As such, in

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[2] Unless directly quoted, this Response uses the term "noncitizen" as equivalent to the statutory term "alien." *Nasrallah v. Barr*, 590 U.S. 573, 578 n. 2 (2020) (citing 8 U.S.C. § 1101(a)(3)).

order to establish a prima facie claim under the *Zadvydas*, a noncitizen must first show that he was in post-order custody for more than six months at the time the habeas petition is filed. *Al-Shewaily v. Mukasey*, No. CIV-07-0946-HE, 2007 WL 4480773, at *4 (W.D. Okla. Dec. 18, 2007) (order adopting R&R).

If a noncitizen can demonstrate he has been held longer than six months, they must then provide a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. As explained by the Tenth Circuit, "the onus is on the alien to 'provide[] good reason to believe that there is no [such] likelihood' before 'the Government must respond with evidence sufficient to rebut that showing.'" *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (citing *Zadvydas*, 533 U.S. at 701). And critically, someone detained cannot establish a claim for relief simply because he has been detained for more than six months. *Zadvydas,* 533 U.S. at 701. "To the contrary," noncitizens "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

In other words, while six months of detention is presumptively reasonable, additional detention may also be reasonable so long as removal is in the reasonably foreseeable future. Further, the noncitizen bears the initial burden of proof in showing that no such likelihood of removal exists." *Id.*

II. Regulatory Framework

The Code of Federal Regulations sets forth specific provisions regarding the release and revocation of release of a noncitizen with a final order of removal. Specifically, 8 C.F.R. § 241.4 is entitled "Continued detention of inadmissible, criminal, and other

[noncitizens] beyond the removal period" and relates to the release (and the revocation of release) of such noncitizens. Generally, regulations grant authority to designated officials with ICE (formerly the Immigration and Naturalization Service) to grant release or parole to a noncitizen, and the agency may continue a noncitizen's custody under those provisions.

Revocation of release is governed by 8 C.F.R. § 241.4(l). This can occur for two reasons: the noncitizen violates the conditions of release, or ICE determines in its discretion to revoke release. If release is revoked due to a violation of conditions under § 241.4(l)(1), the noncitizen must be notified of the reasons for revocation and afforded an initial informal interview promptly after his return to custody, to afford the noncitizen an opportunity to respond to the reasons for revocation. *Id.* § 241.4(l)(1). In contrast, the regulation providing for revocation of release in the discretion of ICE has no such language requiring notice of the reason for revocation or for an informal interview upon being taken into custody. *Id.* § 241.4(l)(2). Factors allowing for the revocation of release in the discretion of ICE include: (1) the purpose of the release has been served; (2) the noncitizen violated a condition of release; (3) revocation is appropriate to enforce a removal order or to commence removal proceedings; and (4) the conduct of the noncitizen, or any other circumstance, indicates release would no longer be appropriate. *Id.* §§ 241.4(l)(2)(i)–(iv).

DHS has also enacted regulations for noncitizens who have "provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). Under this regulation, DHS may release the noncitizen subject to conditions of supervision. *Id.* § 241.13(g)(1). Similar to the regulations described above, § 241.13 provides for the

revocation of release if ICE determines "that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." *Id.* § 241.13(i)(2).

ARGUMENT

Petitioner's *Zadvydas* claim is premature, unsupported beyond conclusory assertions, and without merit. Instead, Petitioner primarily contests the regulatory basis for ICE's decision to re-detain him. But that is not a valid *Zadvydas* claim, helping to explain Petitioner's attempt to ground his claims on non-habeas grounds, like the APA. But this is a habeas case and those other grounds fail. Accordingly, the Petition should be denied.

I. Petitioner's Statutory and Constitutional Claims Are Premature, Unsupported, and Without Merit

All four of Petitioner's Counts are rooted in *Zadvydas* and the assertion that there is no significant likelihood of removal in the reasonable foreseeable future (SLRRFF). *See, e.g.*, Petition ¶ 97. Put simply, Petitioner contends that due to the alleged lack of SLRRFF, Respondents violated the INA (Count Two), the Fifth Amendment (Count Three), and the APA (Count Four), and that he is entitled, therefore, to declaratory judgment (Count One). But *Zadvydas* is notably absent from the text of those counts. That is no accident.

Petitioner effectively concedes he does not have a prima facie *Zadvydas* claim. By his own pleading, he admits his claim is premature. Petition ¶ 6 (admitting inability to plead detention more than six months at the time of filing). As such, he fails to state a cognizable *Zadvydas* claim. *See Al-Shewaily v. Mukasey*, No. CIV-07-0946-HE, 2007 WL 4480773, at *4 (W.D. Okla. Dec. 18, 2007) (order adopting R&R); *Okpoju v. Ridge*, No. 03-11145, 2004 WL 2943629, at *1 (5th Cir. Dec. 20, 2004) (unpublished decision) (six-month period must

have expired at the time habeas petition is filed); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) ("This six-month period thus must have expired at the time [petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*."); *Smith v. Barr*, 444 F. Supp. 3d 1289, 1297 (N.D. Okla. 2020) ("The Court agrees that any potential *Zadvydas* claim petitioner advances in his § 2241 petition was not ripe when he filed the petition and that it would be appropriate to dismiss his unripe *Zadvydas* claim without prejudice to refiling.").

Even if that were not the case, Petitioner cannot meet his initial burden to demonstrate the absence of SLRRFF. *Zadvydas*, 533 U.S. at 701 ("once the alien provides good reason to believe that there is no [SLRRFF], the Government must respond ..."); *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("the onus is on the alien"). Indeed, one of his only substantive allegations is a conclusory conditional assertion devoid of substance. Petition ¶ 55 ("Each time ICE or Nguyen have tried to obtain a travel document for Nguyen (**if ever**), they have failed." (emphasis added)). No allegations regarding removals to Vietnam or limitations thereon are alleged and one of the only specific facts asserted supports Respondents. Petition ¶ 12 ("Nguyen believes that Respondents have a copy of his Vietnamese birth certificate"). And Petitioner's conclusory assumption that Respondents have not submitted travel documents to Vietnam is false. Exhibit 1 ¶ (travel document request sent in August). Moreover, "**the Government of Vietnam has issued travel documents for every travel document request ERO has submitted since February 2025**". *Id.* ¶ 5 (emphasis added). Yet Petitioner asserts no reason why he would be the lone applicant to be denied. And any delay in receiving travel documents is insufficient in any event. *Head v. Keisler*, No. 07-402-F, 2007 WL 4208709, at *4 (W.D. Okla. Nov. 26, 2007)

("a mere delay [in receiving travel documents] does not trigger the inference that an alien will not be removed in the reasonably foreseeable future because the reasonableness of detentions pending deportation cannot be divorced from the reality of the bureaucratic delays that almost always attend such removals." (quote omitted)). Petitioner must allege more.

Further, Respondents have had recent success removing noncitizens to Vietnam. Indeed, ERO has removed 569 Vietnamese nationals this fiscal year, a significant increase from 58 removals in 2024. Exhibit 1 ¶ 8. Against that backdrop, Petitioner's conclusory assertions that lack any specific impairments or restrictions regarding *his* removal, specifically, carry no weight. *Al-Shewaily v. Mukasey*, No. 07-0946-HE, 2007 WL 4480773, at *5 (W.D. Okla. Dec. 18, 2007) ("To carry this burden, an alien subject to an order of removal must present something beyond speculation and conjecture." (cleaned up)). And Respondents' assessment regarding the likelihood of removal are entitled to some deference. *Zadvydas*, 533 U.S. at 700 (recognizing that courts "must take appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive [DHS] efforts to enforce this complex statute").

Because Petitioner has failed to state a claim pursuant to *Zadvydas*, he also "cannot prevail on a substantive due process claim based upon his continued detention." *Mafukidze v. Gonzales*, No. 25-871-W, 2008 WL 395411, *4 (W.D. Okla. Feb. 11, 2008). Nor does he assert a valid statutory claim. Even though Petitioner is outside the 90-day statutory removal period, he is still eligible for ICE detention as he is a noncitizen who was convicted of controlled substances crimes after his admission, resulting in a final order of removal

pursuant to 8 U.S.C. § 1227(a)(2)(B)(i); 8 U.S.C. § 1231(a)(6) ("An alien ordered removed who is . . . removable under section . . . 1227(a)(2) . . . may be detained beyond the removal period"). That helps explain why in Count Two (titled "Violation of the Immigration and Nationality Act – 8 C.F.R. § 541.13(i)(2)-(3)"), Petitioner labels the count a statutory violation but cites to the *regulation* in the caption.

II. Petitioner's Regulatory Challenges Are Barred and Without Basis

Because Petitioner does not have a cognizable *Zadvydas* claim, he asserts collateral challenges to ICE's decision and actions to revoke his supervision by claiming noncompliance with *regulatory* provisions. That claim suffers several problems.

First, this Court is jurisdictionally barred from reviewing ICE's *decision* and *actions* to revoke supervision. 8 U.S.C. § 1252(g) strips district courts of jurisdiction over claims "arising from the decision or action … to execute removal orders." Courts have recognized that re-detention is "simply the enforcement mechanism" chosen to execute a removal order and is therefore insulated from district-court review. *Tazu v. Att'y Gen. of United States*, 975 F.3d 292, 299–300 (3d Cir. 2020). While Petitioner will no doubt claim § 1252(g) does not bar challenges to detention, Petitioner is asserting a process challenge to the manner and means of revoking supervision—not the length of his detention when he cites the regulations. That does not mean Petitioner's detention is immune from review. Rather, that challenge is the failed *Zadyvdas* claim addressed above.

Second, Petitioner's Order of Supervision was issued under 8 C.F.R. § 241.4, and revocation was governed by § 241.4(l)(2). As noted above, that provision grants ICE broad

discretionary authority to revoke release when revocation is appropriate to enforce a removal order or when circumstances indicate release is no longer appropriate. Unlike § 241.4(l)(1) or § 241.13(i)(3), § 241.4(l)(2) contains no requirement that ICE provide an interview or advance notice upon re-detention. And Petitioner can show no prejudice in any event. *Bahadorani v. Bondi*, CIV-25-1091-PRW, 2025 WL 3048932, at *2 (W.D. Okla. Oct. 31, 2025) ("The harmless error standard applies in deportation and administrative cases. Accordingly, it is Petitioner's burden to show that the government's failure to abide by its own regulations prejudiced him."); Karki v. Noem, No. 25-cv-131862025 WL 3516782, at *7 (E.D. Mich. Dec. 8, 2025) ("[Petitioner] also had ample opportunity to challenge the Government's decision to revoke his release. He has had the chance to obtain counsel, argue before a federal court for why his detention is unlawful, and put on evidence.").

Third, Habeas corpus relief is limited to violations of the Constitution, law, or treaties of the United States. 28 U.S.C. § 2241(c)(3); *Estelle v. McGuire*, 502 U.S. 62, 68 (1991). And in the immigration context, habeas is limited to "statutory and constitutional challenges" to detention. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Here, however, Appellant relies on regulatory violations for his habeas action. But even if established, those violations do not constitute statutory or constitutional challenges. Indeed, when courts note that regulations can have the force and effect of law, *see, e.g.*, *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 65 (2004) ("agency regulations that have the force of law"), they engage in that legal fiction precisely because they are *not* literally the "laws" of the United States. Instead, they have the *effect* of law. And regulations are certainly not statutes.

Accordingly, they do not provide a basis for habeas. *See Wright v. Lansing*, 75 F. App'x 710, 712 (10th Cir. 2003) ("To the extent that he is complaining that as a result of the alleged violation of the prison regulations he 'is in custody in violation of the ... laws ... of the United States,' 28 U.S.C. § 2241(c)(3), he has not established a violation cognizable under the habeas corpus statutes, even assuming that the regulations of a federal prison could be deemed federal law.").

III. Petitioner's APA and Declaratory Judgment Claims Fail

Petitioner seeks non-habeas relief in his habeas petition. Specifically, lacking a cognizable statutory or *Zadvydas* claim, Petitioner asserts relief under the Declaratory Judgment Act (Count One) and the APA (Count Four). But neither are available in habeas.

By the APA's terms, it is available only for "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704; *see also Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 882 (1990) (explaining that an action under 5 U.S.C. § 702 must also satisfy the requirements of § 704). "As a general matter, two conditions must be satisfied for agency action to be 'final': First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (cleaned up). But Petitioner does not identify a final agency action and removal efforts are continuing and subject to ongoing review. Therefore, APA relief is unavailable.

Additionally, in *Trump v. J.G.G.*, the Supreme Court held that where immigration detainees' claims "necessarily imply the invalidity of [] confinement," those claims "must

be brought in habeas." 604 U.S. 670, 672 (2025) (internal quotation marks and citation omitted).[3] As noted by Justice Kavanaugh in a concurrence, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 674 (Kavanaugh, J. concurring). The same holds true for the current Petition. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) ("Upon that question, we hold today that when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.").

Furthermore, this Court is without jurisdiction to order APA remedies. "Service of process, under longstanding tradition in our system of justice, is fundamental to any procedural imposition on a named defendant." *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). But the Petition has not been served pursuant to the Federal Rules. "In the absence of service of process (or waiver of service by the defendant), a court ordinarily may not exercise power over a party the complaint names as defendant." *Id.*; *see also Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987) ("Before a ... court may exercise personal jurisdiction over a defendant, the procedural requirement of

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[3] *See also Fuentes v. Choate*, No. 24-CV-01377-NYW, 2024 WL 2978285, at *11 (D. Colo. June 13, 2024) ("In the Tenth Circuit, a detainee "who challenges the fact or duration of h[er] confinement and seeks immediate release or a shortened period of confinement, must do so through an application for habeas corpus." (quoting *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012)).

service of summons must be satisfied."). But proper service has not occurred. In fact, no summons have even been issued.

The Respondents endeavor to comply with the Court's orders for response in habeas proceedings implicating liberty interests associated with shortened statutory response times authorized by statute and rule. *See, e.g.*, 28 U.S.C. § 2243; Rules Governing 2254 Cases. But Respondents have *not* waived service. That is especially true for non-habeas claims that permit broader judicial review[4] and do not enjoy statutory preference for compelling accelerated responses. Indeed, even under Rule 4 of the Rules Governing 2254 Cases, there is improper service in this case. Accordingly, the Court is without jurisdiction to award APA relief.

And finally, given that the APA's waiver of sovereign immunity does not apply, Petitioner cannot resort to the Declaratory Judgment Act ("DJA") either. As the Tenth Circuit recently reaffirmed, "the DJA does not confer jurisdiction upon federal courts, so the power to issue declaratory judgments must lie in some independent basis of jurisdiction. Nor does the DJA provide a waiver of sovereign immunity." *Purgatory Recreation I, LLC v. United States*, No. 24-1241, 2025 WL 2958091, at *10 (10th Cir. Oct. 21, 2025) (cleaned up). In *Purgatory Recreation*, the Tenth Circuit applied the DJA only because of the application of the APA and its waiver of sovereign immunity, which is the inverse of the present case, underscoring that the DJA cannot be applied to the Petition. *Id.* at *10-11.

[4] *See I.N.S. v. St. Cyr*, 533 U.S. 289, 312 (2001) (explaining that habeas review is "far narrower than the judicial review authorized by the APA" and that it is that difference in scope that "differentiates habeas review from judicial review" (cleaned up)).

In summary, this is a habeas-only case. No other authority is conferred or available for Petitioner to seek relief.

IV. Petitioner's Request for an Injunction of *Future* Actions Is Not Ripe

Petitioner makes extraordinary requests for relief in this habeas case. One such request is for Court action on future potential re-detentions. Specifically, he requests that the Court "Permanently enjoin Respondents from redetaining Nguyen under 8 C.F.R. § 241.13(i)(2)-(3) unless and until Respondents have obtained a travel document allowing for Respondent's removal from the United States," and "Permanently enjoin Respondents from redetaining Nguyen under 8 C.F.R. § 241.13(i)(2)-(3) for more than three days after receiving a travel document." Petition at 25, ¶¶ 10-11.

Those claims are not ripe for review. As explained by the United States Supreme Court, "[r]ipeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807–08 (2003). Petitioner's requests for blanket prohibitions on future actions fall into that category, requiring premature adjunction of abstract disagreements prior to finalized action.

CONCLUSION

The Respondents respectfully request that the Court deny the Petition and dismiss the case.

Dated: December 15, 2025

Respectfully submitted,
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