

District Judge Kymberly K. Evanson

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

THAN DINH LE,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02454-KKE

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
December 24, 2025

I. INTRODUCTION

This Court should deny Petitioner Than Dinh Le'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 native and citizen of Vietnam who entered the United States in 1991. Petitioner was convicted of various crimes in King County between 2004 and 2006, including possession of a firearm and narcotics (cocaine). Based on these convictions, he was ordered removed to Vietnam in 2006, which has since become administratively final. Petitioner was later released on an Order of Supervision (OSUP) in 2007, due to the inability to obtain travel documents to Vietnam at that time.

1 While released on OSUP, Petitioner had multiple violations of his conditions of release,
2 including subsequent criminal charges and administrative violations. As a result, he has been
3 taken into custody and re-released on subsequent orders of supervision multiple times. Most
4 recently, U.S. Immigration and Customs Enforcement (“ICE”) took Petitioner into custody on
5 July 22, 2025. Prior to his arrest, ERO considered Petitioner was in violation of his OSUP
6 reporting requirements and that there is now a significant likelihood of removal to Vietnam in the
7 reasonably foreseeable future. ICE revoked Petitioner’s order of supervision on that day both
8 because (1) Vietnam has recently been cooperating with the United States to effectuate removal
9 of its citizens creating a strong likelihood of Petitioner’s removal in the reasonably foreseeable
10 future, and (2) Petitioner’s violations of the terms of his order of supervision. And Petitioner
11 presents not evidence to show that his re-detention does not comport with substantive or due
12 process requirements or that ICE violated any of its regulations.

13 Petitioner is responsible for his prolonged detention by failing to cooperate with ICE to
14 effectuate his removal. 8 U.S.C. § 1231(a)(1)(C). On August 27, 2025, Petitioner was interviewed
15 for a passport and given the application for a travel document. Since September 4, 2025, Petitioner
16 has refused to comply with ICE’s requests to complete forms necessary to obtain a travel
17 document on at least five occasions. Petitioner was warned of his failure to comply in September
18 2025 and issued a second warning in October 2025. Despite these warnings, Petitioner continued
19 to refuse to comply. As a result, Petitioner was served with a Failure to Comply Notice on
20 December 12, 2025. As a result of his own refusal to cooperate, he has not met his burden here
21 by providing a good reason to believe that there is no significant likelihood of his removal in the
22 reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner’s own
23 refusals cannot serve as justification for relief in this context.

1 While his Petition discusses removal to a third country, Petitioner presents no evidence of
2 any intention by ICE to do so. The facts here demonstrate that ICE is actively working to complete
3 the necessary travel documents request to Vietnam, upon compliance and cooperation of
4 Petitioner. As a result, ICE believes that Petitioner's removal is reasonably foreseeable as soon
5 as the Petitioner complies with ICE's requests. Any third country claim is not ripe for review.

6 Petitioner's detention is lawful. He is a noncitizen subject to an administratively final
7 order of removal, and he is lawfully detained under Section 241 of the Immigration and
8 Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner's detention also is not indefinite under
9 *Zadvydas*, 533 U.S. 678 at 701. The only necessary determination ICE must make under the
10 *Zadvydas* framework is whether there is a significant likelihood of removal in the reasonably
11 foreseeable future—which there is in this case.

12 Accordingly, Federal Respondents respectfully request the Court deny the Petition. This
13 return is supported by the pleadings and documents on file in this case, the Declaration of
14 Deportation Officer Yralees Melendez Diaz ("Diaz Decl.") and the Declaration of Alixandria K.
15 Morris ("Morris Decl."), with accompanying exhibits. Federal Respondents do not believe any
16 hearing is necessary.

17 II. FACTUAL AND PROCEDURAL BACKGROUND

18 A. Detention Authorities and Removal Procedures

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

1 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
 2 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
 3 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for
 4 removal and to protect the community from noncitizens who may present a danger, Congress has
 5 mandated detention while removal is being effectuated:

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

9 8 U.S.C. § 1231(a)(2).

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

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

16 8 U.S.C. § 1231(a)(6) (emphasis added).

17 During the removal period, ICE² is charged with attempting to effect removal of a
 18 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit
 19 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may
 20

21
 22 ¹ Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens,
 23 the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this
 24 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 be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal
2 from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six
3 months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.* at 701. The
4 *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is
5 applied to assess the continuing lawfulness of a noncitizen’s post-order detention. *Id.* (stating that
6 “for detention to remain reasonable, as the period of post-removal confinement grows, what
7 counts as the ‘reasonably foreseeable future’ conversely would have to shrink”). Thus, the
8 Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen’s
9 detention could raise constitutional issues. *Id.*

10 **B. OSUP and Revocation**

11 Once it is determined that there is no significant likelihood of removal in the reasonably
12 foreseeable future, DHS may release noncitizens on an Order of Supervision (“OSUP”). 8 C.F.R.
13 § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is
14 governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen “violates
15 any of the conditions of release,” *id.* §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined “that
16 there is a significant likelihood that the alien may be removed in the reasonably foreseeable
17 future.” *Id.* § 241.13(i)(2). Whether there is a significant likelihood that the alien may be removed
18 in the reasonably foreseeable future is determined by assessing a series of factors, including “the
19 history of the alien’s efforts to comply with the order of removal, the history of the Service’s
20 efforts to remove aliens to the country in question or to third countries ... and the views of the
21 Department of State regarding the prospects for removal of aliens to the country or countries in
22 question.” *Id.* § 241.13(f). Alternatively, certain designated officials may also revoke an OSUP
23 as an act of discretion when revocation is in the public interest. *Id.* § 241.4(l)(2).

1 Section 241.13(i)(3) provides that upon revocation, the alien “will be notified of the
2 reasons for revocation of his or her release” and will receive an “initial informal interview
3 promptly” after being detained, to “afford the alien an opportunity to respond to the reasons for
4 revocation stated in the notification.” *Id.* § 241.13(i)(3). During such an interview, the noncitizen
5 “may submit any evidence or information that he or she believes shows there is no significant
6 likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not
7 violated the order of supervision.” *Id.* “The revocation custody review will include an evaluation
8 of any contested facts relevant to the revocation and a determination whether the facts as
9 determined warrant revocation and further denial of release.” *Id.* Then, if the alien’s request for
10 release is denied, he or she “may submit a request for review of his or her detention . . . six months
11 after [DHS’s] last denial of release[.]” *Id.* § 241.13(j).

12 **C. Petitioner Than Dinh Le**

13 Petitioner is a native and citizen of Vietnam. *See* Pet., pg. 5; Diaz Decl. ¶ 3. He entered
14 the United States in 1991 as a refugee. Diaz Decl. ¶ 4. Petitioner was convicted in the Superior
15 Court of Washington for King County for the offense of Possession of a Firearm, in violation of
16 RCW 9 .41.040(1)(B), after arresting officers located Petitioner with a stolen vehicle which was
17 revealed to contain drugs, drug paraphernalia, and a revolver on August 30, 2004. *Id.* ¶ 5. On
18 January 20, 2006, Petitioner was convicted in the Superior Court of Washington for King County
19 for the two counts of the offense of Possession of Narcotics, to wit: Cocaine, in violation of RCW
20 69.50.4013, where he was alleged to have facilitated a purchase of narcotics. *Id.* ¶ 6. On April 20,
21 2006, Petitioner was convicted in the Superior Court of Washington for King County for the
22 offense of Possession of Narcotics, to wit: Cocaine, in violation of RCW 69.50.4013. *Id.* ¶ 7.

23 Petitioner was taken into ICE custody and then served a Notice to Appear charging him
24 as removable under INA §§ 237(a)(2)(B)(i) and 237(a)(2)(C) based on the criminal convictions

1 for possession of controlled substances and firearms. Morris Decl., Exs. 1, 2 (Notice to Appear;
2 I-213). On September 21, 2006, Petitioner was denied relief and ordered removed to Vietnam by
3 an immigration judge at the Seattle Immigration Court; both parties waived appeal making the
4 order administratively final. Diaz Decl. ¶ 9; Morris Decl., Ex. 4 (Order of Removal). Petitioner
5 was released on an Order of Supervision (“OSUP”) with reporting requirements and other
6 conditions of release on January 16, 2007. Diaz Decl. ¶ 10; Morris Decl., Ex. 3 (Orders of
7 Supervision – 2007, 2012, and 2017).

8 While released on supervision, Petitioner was convicted of additional crimes after his
9 immigration proceedings, including additional controlled substance violations and thefts, which
10 violate the terms of OSUP. Diaz Decl. ¶ 11. Petitioner had additional administrative violations of
11 his supervision when he missed reporting dates in 2008, 2010, 2011, 2012, 2013, and 2014, and
12 at least some of which Petitioner failed to report due to his being incarcerated at King County and
13 Snohomish County jails for probation violations related to drug use and other criminal encounters.
14 *Id.* ¶ 12. Petitioner also reported late to several check-ins throughout 2017, 2018, and 2019, during
15 which Petitioner also reported losing his OSUP paperwork during some of the check-ins he did
16 report for. *Id.* ¶ 13.

17 Prior to arrest, local ERO determined Petitioner was in violation of his OSUP reporting
18 requirements and according to ERO HQ, there is now a significant likelihood of removal to
19 Vietnam in the reasonably foreseeable future for Petitioner. *Id.* ¶ 14. ERO Seattle conducted a
20 custody redetermination to bring Petitioner back into custody for travel document acquisition and
21 removal to Vietnam. *Id.* Following this review, Petitioner was taken into custody when he
22 reported for a check-in on July 22, 2025, and was later transported to Tacoma, Washington. *Id.* ¶
23 15. On the same day, July 22, 2025, Petitioner was notified that his OSUP was revoked based on
24

1 ICE's determination that there are changed circumstances in his case and he can now be removed
 2 pursuant to his outstanding removal order. *Id.* ¶ 16.

3 On August 27, 2025, Petitioner was interviewed for a passport and given the application
 4 for a travel document. *Id.* ¶ 17. Petitioner was served an initial Warning for Failure to Depart. *Id.*
 5 On September 4, 2025, Petitioner refused to speak with ERO Tacoma. *Id.* ¶ 18. On September
 6 12, 2025, Petitioner spoke with ERO Tacoma but refused to turn in the forms for the travel
 7 document application. *Id.* ¶ 19. Petitioner was warned of his failure to comply. *Id.* On September
 8 16, 2025, Petitioner refused to speak with ERO Tacoma. *Id.* ¶ 20. On October 30, 2025, Petitioner
 9 refused to speak with ERO Tacoma for his Post Order Custody Review. *Id.* ¶ 21. Petition was
 10 then served a second Warning for Failure to Depart. *Id.* On December 1, 2025, Petitioner spoke
 11 with ERO Tacoma and refused to fill out the travel document application forms. *Id.* ¶ 22. That
 12 same day, a Failure to Comply notice was prepared by ERO Tacoma for supervisory review. *Id.*
 13 ¶ 23. On December 12, 2025, the approved Failure to Comply was served on Petitioner with a
 14 and Decision to Continue Detention letter. *Id.* ¶ 24.

15 III. ARGUMENT

16 A. Petitioner's Administrative Procedure Act claims must be dismissed for lack of 17 Subject Matter Jurisdiction

18 Petitioner seeks to challenge his detention on grounds that violated Sections 706(2)(A),
 19 (B) and (C) of the Administrative Procedure Act ("APA"). The Court has no subject matter
 20 jurisdiction to hear these claims.

21 Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C.
 22 § 704 ("Agency action made reviewable by statute and final agency action *for which there is no*
 23 *other adequate remedy in a court* are subject to judicial review.") (emphasis added). Simply put,
 24

1 “federal courts lack jurisdiction over APA challenges whenever Congress has provided another
2 ‘adequate remedy.’” *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

3 Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial
4 detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See*
5 *Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs’
6 claims necessarily implied the invalidity of the Plaintiffs’ confinement and removal under the
7 “Alien Enemies Act” and so had to be brought as habeas corpus claims in the jurisdiction of their
8 confinement). As Justice Kavanaugh stated in his concurring opinion, “[e]specially given the
9 history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704,
10 which states that claims under the APA are not available when there is another ‘adequate remedy
11 in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.”
12 *Id.* at 674; *cf. O’Banion v. Matevousian*, 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that
13 “habeas actions” provide an “adequate remedy” displacing APA review under Section 704); *and*
14 *see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018)
15 (“Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in
16 a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.”).

17 Moreover, to be reviewable under the APA an action must be a “final agency action,”
18 which is to say that it is the “consummation of the agency's decision making process.” *See Bennett*
19 *v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of executing a
20 removal order is not within that category because it is only an intermediary step in the process.
21 *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly,
22 Petitioner’s claims based on alleged APA should be denied.

B. Petitioner has failed to demonstrate that his OSUP revocation did not comport with due process or was inconsistent with ICE's procedural regulations

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

1. Petitioner's liberty interest in remaining released on conditions is reduced.

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

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.

Petitioner's release on OSUP was always subject to many conditions, including that he not commit any crimes. Petitioner was notified on three separate occasions, over the course of 12 years, that he could be re-detained if he violated these terms. Morris Decl., Ex. 3. Accordingly, Petitioner cannot now claim that the Respondents promised him ongoing, limitless freedom from detention.

2. The existing procedures for OSUP revocation are constitutionally sufficient and Petitioner has failed to demonstrate that his detention violates ICE's regulations.

Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of Petitioner's liberty here is minimal, and Petitioner fails to show that ICE did not comply with procedural safeguards in this case. Petitioner presents no evidence for his claims that the agency failed to give him both notice and an opportunity to be heard regarding his OSUP revocation.

As outlined above, Congress established a clear statutory framework in 8 C.F.R. § 241.13(i) that sets forth the requirements and process for affecting an OSUP revocation. When an alien has violated any condition of their release, as Petitioner did many times over in committing numerous criminal offenses, or ICE determines that there is a "significant likelihood" an alien can be removed from the United States within the "reasonably foreseeable future," ICE is clearly permitted to revoke the OSUP and take the alien into custody; nothing else is required for revocation under these circumstances. *Id.* § 241.13(i)(1) and (2); *see also Nizar Esmail v. Noem*, et al., 2025 WL 3030590, at *2 (C.D. Cal. Sept. 12, 2025).⁴ Additionally, when ICE's revocation is based on an alien's violation of a condition of release, the statute does not require that only certain officials may revoke the OSUP. *See generally* 8 C.F.R. § 241.13(i); *see also Nizar Esmail*, 2025 WL 3030590, at *2, n.3 (distinguishing between Sections 241.4 and 241.13,

⁴While ICE may also revoke an OSUP as an act of discretion if revocation is in the public interest, pursuant to 8 C.F.R. § 241.4(l)(2), this is not what ICE has chosen to do in this case.

1 explaining that “Section 241.13 applies to cases where a petitioner is in revocation proceedings,
2 whereas Section 241.4 applies to routine custody reviews for aliens detained after the 90-day
3 removal period.”).

4 8 C.F.R. § 241.13(i)(3) further outlines the OSUP revocation procedures and provides that
5 “upon revocation,” i.e., not before revocation, “the alien will be notified of the reasons for the
6 revocation” and to conduct an “initial interview promptly after his or return to Service custody to
7 afford the alien an opportunity to respond to the reasons for revocation stated in the notification.”
8 *Id.* § 241.13(3).

9 Here, ICE took custody of Petitioner based on its determination that Petitioner could be
10 removed expeditiously and based on Petitioner’s criminal and administrative violations of the
11 conditions of his release. Diaz Decl., ¶¶ 11-14; Morris Decl., Exs. 2, 3, 5, 6, 7. Upon revocation,
12 ICE provided Petitioner with written notice of the specific reasons for its determination, including
13 Petitioner’s criminal offenses and a likelihood of removal. Morris Decl., Exs. 2, 5. That same day,
14 ICE records reflect that an ICE Officer conducted an informal interview with Petitioner. *Id.*, Ex.
15 2, pgs. 1-2. Accordingly, Petitioner’s fails to meet his burden to demonstrate his unevicenced
16 contentions that he was detained without cause, notice, and an opportunity to respond.

17 **3. The Government has a strong interest in returning aliens to custody who**
18 **violate conditions of release.**

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

1 enforcing compliance with its orders of release and returning individuals to custody who violate
2 their terms. This is especially the case when such violations involve putting public safety at risk
3 –such as the case with Petitioner’s long history of repeated criminal activity.

4 In sum, the three *Mathews* factors demonstrate that Petitioner’s detention comports with
5 procedural due process and that ICE adhered to its own regulations in revoking Petitioner’s
6 OSUP.

7 **4. Petitioner’s detention comports with substantive due process.**

8 Petitioner argues that his detention is unlawful in violation of *Zadvydas*. The burden is on
9 Petitioner to show that there is “good reason to believe that there is no significant likelihood of
10 removal in the reasonably foreseeable future.” *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir.
11 2003) (citing *Zadvydas*). If a petitioner meets his evidentiary burden, the government must then
12 introduce evidence to refute the petitioner’s assertion. *Id.*

13 It is undisputed that Petitioner is subject to an administratively final removal order. Morris
14 Decl., Ex. 4, Immigration Judge Order. Following his removal order, Petitioner remained in
15 custody for approximately six months, until he was released on OSUP. *Id.*, Ex. 3 (2007, 2012,
16 and 2017 OSUPs). While released from ICE custody, Petitioner committed criminal offenses, in
17 violation of the terms of his release. *Id.*, Ex. 2 (I-213). Based on these violations and a
18 determination that Petitioner could be expeditiously removed to Vietnam, ICE revoked his OSUP
19 and detained Petitioner. Diaz Decl., ¶¶ 11-14; Morris Decl., Ex. 5 (Notice of Revocation).

20 In *Zadvydas*, the Supreme Court noted the six-month “presumptively reasonable” post-
21 order detention period “does not mean that every [noncitizen] not removed must be released after
22 six months. 533 U.S. at 701. To the contrary, [a noncitizen] may be held in confinement until it
23 has been determined that there is no significant likelihood of removal in the reasonably
24 foreseeable future.” *Id.* The *Zadvydas* Court recognized that as the length of detention grows, a

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

12 While the Government does not concede that Petitioner's presumptively reasonable period
13 has ended⁵, even assuming arguendo that it has, Petitioner fails to demonstrate that there is good
14 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
15 future.

16 Furthermore, Petitioner's own refusal to cooperate in obtaining a travel document extend
17 the reasonable timeframe by which ICE can detain him. Implicit in the removal process, ICE must
18 take steps, along with the noncitizen's efforts, to effectuate removal, including working with the
19 appropriate foreign countries. To the extent that Petitioner's removal has been delayed, this Court
20 should recognize Petitioner's continued refusal to cooperate with ICE's efforts, even being issued

21
22 ⁵ Federal Respondents acknowledge that Courts in this district disagree as to whether the presumptively reasonable
23 period expires six months after a final order, regardless of detention. *See Tran v. Bondi*, No. CV-25-01897-JLR,
24 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025); *but see Thach Wana v. Bondi, et al.*, No. 2:25-CV-02321-RSL,
2025 WL 3628634, at *3, n.2 (W.D. Wash. Dec. 15, 2025). For the reasons set forth in their briefing in the *Tran*
case, Federal Respondents do not agree with this decision. In any event, Petitioner's detention is still lawful even
past the presumptively reasonable period for the reasons stated herein.

1 a Notice of Failure to Comply as recently as five days prior to the date of this filing on December
2 12, 2025. Because he continues to refuse to comply in good faith with ICE's removal efforts, he
3 "cannot meet his burden to show that there is no significant likelihood of removal in the
4 foreseeable future." *Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003). Consequently, Petitioner has
5 failed to demonstrate a good reason to believe that there is no significant likelihood of his removal
6 in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Accordingly, Petitioner's
7 detention does not violate principals of substantive due process.

8 **C. Petitioner is not Entitled to a Pre-Detention Hearing in the Post-Order Context**

9 The cases Petitioner invokes in arguing that due process requires a hearing prior to
10 Petitioner's being re-detained are inapposite. Pet., pgs. 9-12 (Section VIII). Petitioner cites *E.A.*
11 *T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, *Ledesma Gonzalez v. Bostock*, No.
12 CV25-1404-JNW-GJL, 2025 WL 2841574, and other recent out-of-district cases, which are all
13 not applicable under post-removal §1231 detention. *See* Pet., pgs. 9-12. Petitioner does not dispute
14 that he is subject to an administratively final order of removal. Each of the cases cited by
15 Petitioner to support that a pre-detention hearing is warranted are decided in the context of pre-
16 order detention or under regulatory schemes wholly distinct from the post-order detention
17 framework at issue here. As such, the authorities cited in this section to argue a requirement for a
18 hearing prior to being detained provide little meaningful guidance.

19 **D. Petitioner's Third Country Claims are Without Merit and Not Ripe for Review**

20 Petitioner presents *no evidence* of any intention by ICE to remove Petitioner to a third
21 country. *See* Pet., pgs. 15-21. Petitioner purports to bring claims challenging the constitutionality
22 of his possible removal to a third country as a likely violation of the Fifth Amendment, 8 U.S.C.
23 § 1231, the Eighth Amendment, the Convention Against Torture, the INA, the APA, and relevant
24 implementing regulations. *Id.* Such claims are based on the hypothetical scenario of his removal

1 to a third country other than Vietnam, which are entirely speculative and not ripe for review.
2 Petitioner has a removal order to Vietnam. Morris Decl., Ex. 4. ICE has made multiple requests
3 for Petitioner to complete documents for acquisition of travel documents solely for Vietnam. Diaz
4 Decl. ¶ 14. ICE indicates that upon Petitioner's compliance to assist in completing a travel
5 document request, it will submit that request to the Vietnamese consulate. *Id.* ¶ 26. ERO HQ has
6 indicated to ICE that Vietnam is currently issuing travel documents for returning aliens in 30 to
7 90 days after TOR is submitted to the consulate. *Id.* ¶ 27. ERO continues to anticipate that a travel
8 document will be issued by Vietnam once Petitioner complies with the travel document request
9 process. *Id.* ICE believes Petitioner will be removed to Vietnam shortly after the travel document
10 request for Vietnam is completed. *Id.* There is no case or controversy because there is no concrete
11 indication that removal to any third country will occur.

12 In any event, at least one court in this district has found that such claims are not the proper
13 subject of an immigration habeas petition, considering that Petitioner presents no evidence that
14 Federal Respondents seek to remove him to a third country. *See Tran*, 2025 WL 3140462, at *4
15 (citing *Zadvydas*, 533 U.S. at 688).

16 Accordingly, Petitioner's claims are speculative and not part of a live controversy because
17 there is no concrete indication that removal to a third country will occur. Thus, these claims should
18 be dismissed as premature.

19 IV. CONCLUSION

20 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
21 the Petition.

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1 DATED this 19th day of December, 2025.

2 Respectfully submitted,

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15 I certify that this memorandum contains 5,050
16 words, in compliance with the Local Civil Rules.