

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BON VAN NGUYEN,
Petitioner,

v.

PAMELA BONDI, *et al.*,
Respondents.

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Civil Action No. 4:25-CV-5827

**FEDERAL RESPONDENTS' MOTION FOR SUMMARY JUDGMENT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 56**

The Government¹ hereby requests that the Court deny Petitioner's habeas petition and grant summary judgment in the Government's favor under Federal Rule of Civil Procedure 56.

SUMMARY

The Court should reject Petitioner Bon Van Nguyen's habeas petition because the factual record in this case does not support the legal theories that he relies on. First, Nguyen has been in U.S. Immigration and Custom Enforcement detention for approximately one month, less than the six-month detention period presumed to be reasonable under *Zadvydas*. Nguyen has the burden of proof to show that there is no significant likelihood of removal in the foreseeable future. And he has not met his burden. Second, he fails to show that there

¹ Petitioner alleges that he is being detained at the Montgomery Detention Center in Conroe, Texas. Dkt. No. 1 at ¶ 17. This facility operates under the direction of the Federal Government; as such, it is the Federal Respondents, not the named warden in this case, who makes the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code. Therefore, the Federal Government is the real party in interest and respond herein.

have been arbitrary or capricious actions by ICE related to the applicable federal regulations regarding revocation of supervised relief. As such, summary judgment in favor of the Government is appropriate.

BACKGROUND

Nguyen is a Vietnam citizen, with a removal order, awaiting deportation. On November 15, 1978, United States Customs and Border Protection officers admitted Nguyen, at a New York, New York port of entry, as a Lawful Permanent Resident. Ex. 1, Declaration of Deportation Officer Salinas, at ¶ 9. On November 17, 1992, the California Police Department in Pacific Grove, CA arrested him for the crime of Stolen Property. Ex. 1 at ¶ 10. On December 2, 1992, Monterey County Court in Monterey, CA convicted him for the offense of stolen property and sentenced him to three days imprisonment and two years of probation. Ex. 1 at ¶ 11.

On August 24, 2001, the Phoenix Police Department arrested Nguyen for the crime of Possession of a Dangerous Drug for Sale. Ex. 1 at ¶ 14. The following month, the Maricopa County Superior Court, in Phoenix, AZ convicted him for the offense of Possession of Dangerous Drugs and sentenced him to six months imprisonment followed by five years of probation. Ex. 1 at ¶ 15. On December 3, 2007, the Phoenix Police Department arrested him again for the crime of Possession of Dangerous Drugs. Ex. 1 at ¶ 18. On that same day, ICE lodged a detainer with the Maricopa County Sheriff's Office. Ex. 1 at ¶ 18.

On December 19, 2007, ICE took custody of Nguyen upon his release from the Maricopa County Sherriff's Office. Ex. 1 at ¶ 20. That same day, Nguyen was issued a Notice to Appear, Form I-862, pursuant to Section 237(a)(1)(B) of the Immigration and Nationality

ACT (INA). Ex. 1 at ¶ 21. On February 27, 2008, an Immigration Judge ordered him removed to Vietnam. Ex. 1 at ¶ 22. On June 5, 2008, ICE served Nguyen with form I-220B Order of Supervision and was subsequently released from ICE custody. Ex. 1 at ¶ 24.

On June 23, 2008, the Maricopa County Sheriff's Office in Phoenix, AZ arrested Nguyen for the crime of Aggravated DUI and he was eventually sentenced to two years in probation and six months imprisonment. Ex. 1 at ¶ ¶ 25-26. On May 18, 2009, ICE took custody of Nguyen upon his release from the Maricopa County Sheriff's Office, and on this same day, served him with form I-220B Order of Supervision and then released him from custody. Ex. 1 at ¶ 27.

On November 13, 2025, ICE Fugitive Operations apprehended Nguyen and transported him to the Montgomery Processing Center (MPC) in Conroe, Texas. Ex. 1 at ¶ 28. On December 2, 2025, ICE submitted a travel document request to the Consulate of Vietnam. Ex. 1 at ¶ 29. Vietnam is currently accepting the return of their citizens. Ex. 1 at ¶ 30. Given Vietnam's acceptance of repatriation, there is a significant likelihood in the reasonably foreseeable future, that Nguyen will be removed to Vietnam. Ex. 1 at ¶ 30. As of December 15, 2025, he remains detained at MPC pending travel documents for removal. Ex. 1 at ¶ 31.

ARGUMENT

Nguyen presents two arguments as to why his detention is unlawful. First, he argues that there is no significant likelihood that he will actually be removed in the reasonably foreseeable future. Dkt. No. 1 at ¶ ¶ 95-99. Second, he challenges the revocation of his order of supervision. Dkt. No. 1 at ¶ ¶ 100-104. The Government addresses each argument in turn.

A. Likelihood of Removal

To prevail on his habeas petition, Nguyen carries the burden to show that “there is no significant likelihood of removal . . . in the reasonably foreseeable future.” 8 C.F.R. § 241.13; see *Tawfik v. Garland*, No. 4:24-CV-02823, 2024 WL 4534747, at *3 (S.D. Tex. Oct. 21, 2024) (citing *Zadvydas*, 533 U.S. at 701) (explaining that it is the detainee’s burden to show that his removal is not significantly likely in the reasonably foreseeable future). To carry that burden requires “something beyond speculation and conjecture,” and a lack of visible progress, such as “a lack of post-order-of-removal proceedings,” is insufficient; rather, a petitioner must demonstrate that there are particular individual barriers preventing his removal. *Idowu v. Ridge*, No. 3:03-CV-01293, 2003 WL 21805198, at *3 (N.D. Tex. Aug. 4, 2003); see also *Apau v. Ashcroft*, No. 3:02-CV-02652, 2003 WL 21801154 (N.D. Tex. June 17, 2003) (holding the fact that the respondent country had yet to issue travel documents was insufficient to meet this burden).

Nguyen has not demonstrated that ICE is incapable of effecting his removal in the near future. Rather he simply concludes that the Government is incapable of removing him in the near future because it has not yet done so in the month that he has been in detention. See Dkt. No. 1 at ¶ 55. Moreover, the state of foreign affairs is inherently dynamic, and thus any unsuccessful removal efforts in 2009 are minimally probative of renewed efforts now. The Government took him back into custody while “there is a significant likelihood of removal.” Ex. 1 at ¶ 30. And ICE has stated that it is actively pursuing removal by requesting a TD to Vietnam. Ex. 1 at ¶ 29. Nguyen has offered no evidence indicating that any real, non-

speculative barriers to his removal exist. There are therefore no constitutional infirmities with his detention at this juncture.

B. The Six-Month Clock

Next, Nguyen's current detention has been ongoing for less than six months and is thus presumptively constitutional. While *Zadydas* did not speak with precision on the six-month presumption, courts have treated the clock on detention as re-starting each time an alien subject to a final order of removal is again detained by ICE. *See, e.g., Guerra-Castro v. Parra*, No. 1:25-CV-22487, 2025 WL 1984300 (S.D. Fla. July 17, 2025); *Thai v. Hyde*, -- F.Supp.3d --, 2025 WL 1655489 (D. Mass. June 11, 2025); *Dogra v. Immigr. Customs Enf't*, No. 1:09-CV-00065, 2009 WL 2878459, at *2 n.2 (W.D.N.Y. Sept. 2, 2009). Such an approach makes sense, as the overarching anathema that *Zadydas* sought to avoid was indefinite detention—not some total cumulative period of detention.

Nguyen pleads that his detention began on November 13, 2025. Ex. 1 at ¶ 28. This habeas petition is therefore premature as it has not been brought within the presumptively lawful six-month period.

C. Revocation of Supervised Release

Nguyen cites to 8 C.F.R. § 241.4, arguing that this regulation entitled him to notice prior to revocation. But read in context, that sub-provision is inapplicable to him as it only addresses aliens re-detained based on a violation of the conditions of their release. Start with its title: "Violation of conditions of release." *Id.* And it immediately proceeds to address "[a]ny alien . . . who has been released under an order of supervision or other conditions of release *who violates the conditions of release[.]*" *Id.* (emphasis added). And the remainder of that sub-

provision in turn addresses “[a]ny such alien,” and then “the alien,” the scope of which is naturally read as directed at the earlier-specified subset of aliens. *Id.* That scenario is not present here. *See, e.g., Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *6 (S.D. Fla. Aug. 8, 2025) (holding that the petitioner was not entitled to notice and an interview because such requirements “are only referenced in § 241.4(l)(1)—the OSUP revocation provision based on an alien’s violation of his conditions of release—and not § 241.4(l)(2)—the OSUP revocation provision based on the discretion of a qualified official to enforce a removal order or to commence removal proceedings”).

As to criterion, revocation of release is in the discretion of the revoking official. As set forth in the regulation, the revoking official has discretion to find that:

- (i) The purposes of release have been served;
- (ii) The alien violates any condition of release;
- (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
- (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

8 C.F.R. § 241.4(l)(2). It is clear that the third justification is present here. ICE is actively working to remove him, i.e., to enforce a removal order. These decisions are expressly entrusted to the revoking official’s discretion. Thus, ICE lawfully exercised that discretion and re-detained Nguyen to enforce a removal order—in compliance with 8 C.F.R. § 241.4(l)(2). As a result, he has failed to show a violation of the regulations.

CONCLUSION

For the reasons stated above, the Court should grant judgment as a matter of law in the Government’s favor and dismiss the petition for writ of habeas corpus (Dkt. No. 1).

Dated: December 18, 2025

Respectfully submitted,

NICHOLAS J. GANJEI
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CERTIFICATE OF SERVICE

I certify that on December 18, 2025, the foregoing was filed and served on counsel for Petitioner via the Court's CM/ECF service.

/s/ Lisa Luz Parker
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