UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THO PHUOC NGUYEN,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 4:25-CV-5876
	§	
PAMELA BONDI, *et al.*,	§	
	§	
Respondents.	§	

GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT

The Government[1] 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 Tho Phuoc 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 two months, 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 have been arbitrary or capricious actions by ICE related to the applicable federal regulations

[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.

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 December 19, 1989, Nguyen was admitted into the United States as a Lawful Permanent Resident. Ex. 1, Declaration of Deportation Officer Henry, at ¶ 9. On June 27, 2003, the 182nd District Court of Harris County, Texas convicted Nguyen of possession of a controlled substance and sentenced him to 180 days confinement. Ex. 1 at ¶ 10. On March 22, 2004, ERO Houston served Nguyen a Notice to Appear, Form I-862, pursuant to section 237(a)(2)(A)(iii) and 237(a)(2)(B)(i) of the Immigration and Nationality Act. Ex. 1 at ¶ 11. Nguyen was ordered removed from the country on April 5, 2004. Ex. 1, ¶ 12. He was then released from custody on an Order of Supervision on July 13, 2004. Ex. 1, ¶ 13.

On November 9, 2025, Nguyen reported to the ERO Houston office where he was arrested and transported to the Montgomery Processing Center (MPC). Ex. 1, ¶ 14. On November 20, 2025, Nguyen's immigration file was received from the National Record Center. Ex. 1, ¶ 15. On November 21, 2025, Nguyen was interviewed by ICE and his current immigration status was explained to him. Ex. 1, ¶ 15. It was further explained to him that his supervision had been revoked, because ICE intends to execute his final removal order. Ex. 1, ¶ 15. On December 2, 2025, a travel document application was emailed to the Removal and International Operations desk officer in DC Headquarters (HQ). Ex. 1, ¶ 15

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 ¶ 16.

ARGUMENT

Nguyen's claims can be summed up as presenting three 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 pp. 23-24. Second, he challenges the revocation of his order of supervision. Dkt. No. 1 at pp. 20-22, 25-26. He further challenges the Government's ability to remove him to a third country. Dkt. No. 1 at pp. 26-28. 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 ¶ ¶ 86-87. Moreover, the state of foreign affairs is inherently dynamic, and thus any unsuccessful removal efforts in 2004 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 ¶ ¶ 15-16. And ICE has stated that it is actively pursuing removal by requesting a TD to Vietnam. Ex. 1 at ¶ 15. 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.

Next, Nguyen's current detention has been ongoing for less than six months and is thus presumptively constitutional. While *Zadvydas* 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 *Zadvydas* sought to avoid was indefinite detention—not some total cumulative period of detention.

Nguyen's current detention began on November 9, 2025. Ex. 1 at ¶ 14. This habeas petition is therefore premature as it has not been brought within the presumptively lawful six-month period.

B. 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 remainer 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.

C. Removal to a Third Country

Finally, in a request that is outside the scope of a habeas petition, Nguyen asks this Court to enjoin Respondents from removing or transferring Petitioner to a third country without notice and an opportunity to seek relief from removal to that country before an Immigration Judge. Dkt. No. 1, ¶ 1058. This claim fails for two reasons.

First, the Court lacks jurisdiction to consider such request as it would relate to a decision or action by the Attorney General to execute a removal order against an alien. *See Alvidres-Reyes v. Reno*, 180 F.3d 199, 206 (5th Cir. 1999) (Section 1252(g) removed jurisdiction to consider a "challenge to the Attorney General's decision to decline to commence proceedings or to adjudicate deportations, *or to hear the plaintiffs' claim for suspension of their deportations which concomitantly arises therefrom.*"); *Fabuluje v. Immigr. & Naturalization Agency*, 244 F.3d 133 (5th Cir. 2000). Relatedly, to the extent Nguyen raises due process claims to challenge execution of his removal order, such claims are also barred by Section 1252(g). *Foster v. Townsley*, 243 F.3d 210 (5th Cir. 2001); *see also*, *Chen v. Escareno*, No. 4:09-CV-00270, 2009 WL 3073928, at *2, 6 (S.D. Tex. Sept. 18, 2009) (rejecting petitioner's claim that she faced removal "without due process," as "all of the plaintiffs' claims are connected directly and immediately

with a decision or action by the Attorney General to execute the [removal order]," and thus were unreviewable under Section 1252(g)).

Second, this claim is not yet live because there is no plausible allegation or evidence that Nguyen will be deported to a third country without notice and an opportunity for him to challenge the removal to an immigration judge. Thus, not only is Nguyen's request outside the scope of his habeas petition but it is not yet a live controversy until ICE identifies his third country, and he opposes such country.

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 31, 2025

Respectfully submitted,

NICHOLAS J. GANJEI
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I certify that on December 31, 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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