United States District Court
Western District of Texas
San Antonio Division

Chuong Hong Nguyen Petitioner, v. Kristi Noem, Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. 5:25-cv-1763-XR

Federal[1] Respondents' Response in Opposition to Petitioner's Writ of Habeas Corpus

Respondents timely submit this response per this Court's Order dated December 16, 2025, directing service and ordering a response within five days of service. *See* ECF No. 3 at 2 (confirming CMRRR delivery on December 22, 2025). In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Nguyen ("Petitioner"), seeks release from civil immigration detention, claiming that his approximately six (6) week post-removal-order detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See* ECF No. 1 at 2 ¶¶ 3-4. Petitioner's claims lack merit, and this petition should be denied.

Despite his allegation that there is "no basis" for his continued detention, Petitioner has a final order of removal from September 20, 2000, which not only mandated his detention under 8 U.S.C. § 1231(a) during the 90-day removal period but allows for continued detention beyond the removal period in the exercise of ICE's discretion, so long as removal is reasonably foreseeable. 8 U.S.C. § 1231(a)(6); *see Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner claims he

[1] The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action. The Federal Respondents are lawfully detaining Petitioner pursuant to 8 U.S.C. § 1231(a)(6).

should not be removed from the United States because he has resided in the United States for more than forty (40) years, he has strong ties to the U.S., and he is married to a United States citizen. ECF No. 1 at ¶ 14. Nonetheless, Petitioner has a lengthy criminal history and served nine (9) years in a United States prison for felony convictions. ECF No. 1¶ 42; *see also*, Exh. A (ERO Declaration). Petitioner claims he was released form state custody in 2000 and placed in the custody of former Immigration and Naturalization Service ("INS"). ECF No. 1 ¶ 43. There he applied for relief to remain in the United States lawfully, but his applications for relief were denied. *Id.*

Petitioner is lawfully detained with a final order of removal, his constitutional challenge to continued detention is not ripe until he has been detained in post-order custody for at least six months, and there is insufficient reason to believe that removal is unlikely in the foreseeable future. The burden of proof has not shifted to Respondents, but even if it had, Respondents can show that removal to Vietnam is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Vietnam. ECF No. 1 at 1 ¶ 1. Petitioner claims he entered the United States in 1985. ECF No 1. At 14 ¶ 42. Thereafter, Petitioner became a lawful permanent resident. *Id.*, *see also*, Exh. A ¶ 4. On June 26, 1995, petitioner was convicted of *inter alia*, robbery and assault and sentenced to nine (9) years and four (4) months in prison. *See* Exh. A ¶¶ 6-7. On September 20, 2000, an immigration judge ordered Petitioner removed from the United States after determining he was ineligible for relief because of his criminal convictions. ECF No. 1 at 14 ¶ 43; *see also*, Ex. A ¶ 8. Petitioner did not appeal the immigration judge's decision. ECF No 1. at 14-15 ¶ 43.

On September 20, 2000, ERO applied for a travel document to remove Petitioner to Vietnam. Exh. A ¶ 9. On January 12, 2001, the 90-day notice of Post Order Custody Review (POCR) was served on the petitioner. Exh. A ¶ 11. On April 4 2001, ERO completed its post-order custody review and determined that the petitioner be released under an Order of Supervision. Exh. A ¶ 12. Moreover, the petitioner was ordered to assist the INS (former DHS) in obtaining any necessary travel documents. *Id.*

On February 16, 2016, petitioner reported as required for his OSUP. Exh. A ¶ 15. He was informed to start obtaining travel documents to any other country that would issue a travel document to him. *Id.* On August 4, 2016, petitioner was again informed to obtain travel documents. Exh. A ¶ 16. Thereafter, on February 1, 2017, February 28, 2018, April 5, 2018, and July 5, 2018, ERO informed petitioner that he needed to obtain a travel document to any other country that would issue it to him. Exh. A ¶¶17-20.

On October 29, 2024, petitioner reported to the San Antonio Field Office and completed the consulate paperwork in an effort to obtain a travel document. Exh. A ¶ 26. On April 10, 2025, ERO requested copies of petitioner's parents A files in hopes of locating any identification for the petitioner. Exh. A ¶ 27. On November 13, 2025, petitioner was served with forms I-205, Warrant of Removal/Deportation and I-294, Warning to Alien Ordered Removed or Deported. Exh. A ¶ 28. On December 18, 2025, Petitioner was served with Form I-229, Failure to Depart. Exh. A ¶ 30. Petitioner refused to sign. *Id.* As of December 29, 2025, ERO is awaiting a response from the Vietnamese consulate. Exh. A ¶ 31.

On December 16, 2025, Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, arguing his detention is unreasonably prolonged in violation of the Immigration and Nationality Act (INA) and the Constitution. ECF No. 1 at 2 ¶ 4. Petitioner seeks release from

ICE Detention since his removal to Vietnam is not reasonably foreseeable. ECF No. 1 at 2 ¶7. Alternately, he seeks an order from this court mandating the DHS to provide notice about the third county it intends to remove petitioner and provide petitioner an opportunity to contest the removal. *Id.*

II. Detention Is Lawful Under 8 U.S.C. §1231(a)(6).

The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231(a). That statute affords ICE a 90-day mandatory detention period within which to remove the alien from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of three dates: the date (1) the order becomes "administratively final," (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B).

Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas*, 533 U.S. at 701. Under § 1231, the removal period can be extended in a least three circumstances. *See Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien presents a flight risk or other risk to the community. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). An alien may be held in confinement until there is "no significant likelihood of removal in a reasonably foreseeable future." *Zadvydas*, at 533 U.S. at 680.

III. Petitioner's Substantive Due Process Claim under *Zadvydas* is Premature.

Petitioner's reliance on *Zadvydas* is premature because he has been detained less than six months. To state a claim for relief under *Zadvydas*, Petitioner must show that: (1) he is in DHS custody; (2) he has a final order of removal; (3) he has been detained in *post*-removal-order detention for six months or longer; and (4) there is no significant likelihood of removal in the

reasonably foreseeable future. *Zadvydas*, 533 U.S. at 700. Petitioner does not and cannot make this showing, as he has been detained less than six months in post-order custody. *Chance v. Napolitano*, 453 F. App'x 535, 2011 WL 6260210 at *1 (5th Cir. Dec. 15, 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 2011 WL 891071 at *1 (5th Cir. Mar. 15, 2011); *Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 929 n.33 (W.D. Tex. 2018); *Kasangaki v. Barr*, 2019 WL 13221026 at *3 (W.D. Tex. July 31, 2019); *Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 7–16 (W.D. Tex. Aug. 12, 2025).

IV. There Is No Good Reason to Believe That Removal Is Unlikely in the Reasonably Foreseeable Future.

Petitioner cannot show "good reason" to believe that removal to Vietnam is unlikely in the reasonably foreseeable future. In *Zadvydas*, the U.S. Supreme Court held that § 1231(a)(6) "read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States" but "does not permit indefinite detention." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute." *Id.* at 699. The Court designated six months as a presumptively reasonable period of post-order detention but made clear that the presumption "does not mean that every alien not removed must be released after six months." *Id.* at 701; *see also Linares*, ECF No. 14 at 8, 10–11.

Once the alien establishes that he has been in post-order custody for more than six months at the time the habeas petition is filed, the alien must provide a "good reason" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Id.* at 14–16; *see Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006); *Gonzalez v. Gills,* No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien establishes the requisite "good reason," the burden will not shift to the government to prove otherwise. *Id.*

The "reasonably foreseeable future" is not a static concept; it is fluid and country-specific, depending in large part on country conditions and diplomatic relations. *Ali v. Johnson*, No. 3:21–CV–00050-M, 2021 WL 4897659 at *3 (N.D. Tex. Sept. 24, 2021). Additionally, a lack of visible progress in the removal process does not satisfy the petitioner's burden of showing that there is no significant likelihood of removal. *Id.* at *2 (collecting cases); *see also Idowu v. Ridge*, No. 3:03-CV-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003). Conclusory allegations are also insufficient to meet the alien's burden of proof. *Nagib v. Gonzales*, No. 3:06-CV-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-CV-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004)). One court explained:

> To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that "the circumstances of his status" or the existence of "particular individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4 (citation omitted).

Petitioner urges this Court to order that his continued detention pending removal is contrary to statute and in violation of his procedural and substantive due process rights, because he was previously detained by the INS (former DHS) and has a liberty interest I remaining free from physical confinement where removal is not reasonably foreseeable and he has not violated the condition of his release. ECF No. 1 at 17 ¶ 55. However, Petitioner has continuously failed to comply with the requirements of his OSUP. *See* Exh. A. Petitioner was informed on several different occasions over a span of several years to start obtaining travel documents and failed to do so. *Id.* at ¶¶ 15-20.

Petitioner's claims are insufficient under *Zadvydas* because he has not shown that he has been in post-order custody for six months, and he has not shown any good reason to believe that removal is unlikely. *See Linares*, ECF No. 14 at 8, 10–11, 14–16; *Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); *see also Andrade*, 459 F.3d at 543–44; *Boroky v. Holder*, No. 3:14-CV-2040-L-BK, 2014 WL 6809180, at *3 (N.D. Tex. Dec. 3, 2014); *Thanh v. Johnson*, No. EP-15-CV-403-PRM, 2016 WL 5171779, at *4 (W.D. Tex. Mar. 11, 2016) (denying habeas relief where government was taking affirmative steps to obtain Vietnamese travel documents). Petitioner has not shown that his continued detention is unreasonable, nor has he shown he is owed any additional due process than what he is currently receiving. *See Hernandezs-Esquivel v. Castro*, No. 5-17-cv-0564-RBF, 2018 WL 3097029, at *8 (W.D. Tex. June 22, 2018). Therefore, the burden of proof does not shift to Respondents to prove significant likelihood of removal in the reasonably foreseeable future.

Even if the burden did shift to ICE, ICE could show that removal is likely in the foreseeable future. First, publicly available statistics show that 12 Vietnam nationals were successfully removed to Vietnam FY2025 in Q1. *See* ICE Enforcement and Removal Operations Statistics | ICE (filtered by nationality and last accessed December 29, 2025). Prior to FY2025, 58 Vietnamese nationals were successfully removed in FY2024, which indicates ICE is successfully removing Vietnam nationals to Vietnam on a quarterly and annual basis. On or about October 29, 2024, ICE delivered to the Vietnamese Consulate Petitioner's request for a travel document. Exh. A at ¶ 26. There is no indication that Petitioner's removal will be impeded once the travel document is issued. *Id.* Petitioner's substantive due process claim fails here as a matter of law.

V. ICE Has Afforded Petitioner Procedural Due Process During His Post-Order Custody Pending Removal.

To establish a procedural due process violation, Petitioner must show that he was deprived of liberty without adequate safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The Fifth Circuit has not provided guidance to lower courts, post-*Arteaga-Martinez*, on the appropriate standard for reviewing a procedural due process claim alleged by an alien detained under § 1231, but the Fourth Circuit, post-*Arteaga-Martinez*, used the *Zadvydas* framework to analyze a post-order-custody alien's due process claims. *See Linares*, at 10–14 (discussing *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). This Court should also follow *Zadvydas* to review the procedural claim at issue here. *Id.* Under the *Zadvydas* framework, six months post-order detention is reasonable, and unless that time frame has passed, any procedural due process claim is also premature.

In any event, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Even if the Court were to find a procedural due process violation here, the remedy is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

Petitioner argues he has not violated his conditions of supervised release and his complied with his OSUP. ECF No. 1 at ¶ 15. However, he fails to explain the outcome of prior applications for a Vietnamese travel document as instructed by ICE and a condition of his OSUP. He further

contends his OSUP was revoked without any change in circumstances that would make his removal reasonably foreseeable. *Id.*

VI. Conclusion

Petitioner's detention is lawful under 8 U.S.C. § 1231(a)(6) and any due process claim is premature under *Zadvydas*. Moreover, Petitioner fails to show good reason to believe that there is no significant likelihood of removal to Vietnam in the reasonably foreseeable future. As such, the