UNITED STATES DISTRICT COURT
Western District of Texas
El Paso Division

Hien Duy Vu, Petitioner, vs. Pamela Bondi, in her Official Capacity as U.S. Attorney General, *et al.*, Respondents.	)	No. 3:25-CV-00678-LS Judge Leon Schydlower

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents' arguments for continued detention must be rejected. Petitioner's re-detention is not mandatory under the INA, was effected in violation of governing regulations, and cannot be justified where removal is not reasonably foreseeable and is presently legally barred.

I. PETITIONER'S DETENTION IS NOT MANDATORY AND IS UNAUTHORIZED UNDER THE INA

Respondents' assertion that Petitioner's re-detention in May 2025 was "mandatory" is contrary to law. Although Petitioner is subject to a final order of removal that became final in March 2002, the INA does not authorize renewed mandatory detention decades later where Petitioner was already detained during the statutory removal period, removal proved unattainable, and supervised release remains available.

Post-removal detention is governed by INA § 241, 8 U.S.C. § 1231. Detention is mandatory only during the 90-day removal period beginning when the order becomes administratively final. 8 U.S.C. § 1231(a)(1)–(2). If removal is not effectuated, the noncitizen "shall be subject to

supervision." 8 U.S.C. § 1231(a)(3). Although § 1231(a)(6) permits detention beyond the removal period for certain categories, the Supreme Court has imposed constitutional limits.

In *Zadvydas v. Davis*, the Court held that post-removal detention is presumptively reasonable for six months. 533 U.S. 678, 692 (2001). After that period, detention is unauthorized absent clear and convincing evidence of a significant likelihood of removal in the reasonably foreseeable future. *Id.* at 689, 701; *Clark v. Martinez*, 543 U.S. 371, 378 (2005). The Fifth Circuit applies *Zadvydas* to all categories of noncitizens under § 1231(a)(6). *Tran v. Mukasey*, 515 F.3d 478, 482 (5th Cir. 2008).

Petitioner's removal order became final on March 19, 2002. Respondents concede Petitioner was detained during the removal period and released on June 24, 2002, after Vietnam declined to issue travel documents. *See* ECF # 4, page 2. Thus, Petitioner already served the mandatory detention period and was released once removal was no longer reasonably foreseeable. *Zadvydas*, 533 U.S. at 699.

Nothing in § 1231 authorizes a new period of mandatory detention each time the government renews previously futile removal efforts. Any such interpretation would permit serial, potentially indefinite detention - the precise result rejected in *Zadvydas*. 533 U.S. at 689–92, 699; *Clark*, 543 U.S. at 384; *Demore v. Kim*, 538 U.S. 510, 532–33 (2003) (Kennedy, J., concurring); *Tran*, 515 F.3d at 484–85; *Shokeh v. Thompson*, 369 F.3d 865, 867, 872–73 (5th Cir. 2004).

Absent changed circumstances showing that re-detention was necessary to secure removal or to assure Petitioner's presence, the statute requires supervision—not renewed detention. *Zadvydas*, 533 U.S. at 699–700; *Clark*, 543 U.S. at 384. Respondents' claim of "mandatory" re-detention should therefore be rejected.

II. RE-DETENTION WAS UNLAWFUL UNDER 8 C.F.R. § 241.13(i)

Even if re-detention were otherwise permissible, it was unlawful from the outset. When ICE seeks to rescind supervised release, 8 C.F.R. § 241.13(i) requires a determination based on changed circumstances, that removal is significantly likely in the reasonably foreseeable future. The regulation mandates notice, a prompt informal interview, and an opportunity to rebut the basis for re-detention. 8 C.F.R. § 241.13(i)(3).

Petitioner received no interview and no meaningful custody review until after the presumptively reasonable six-month period elapsed. Respondents do not contend otherwise and offer no evidence of compliance. Agencies are required to follow their own regulations, particularly where they provide procedural safeguards. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Chevron Oil Co. v. Andrus*, 588 F.2d 1383, 1386 (5th Cir. 1979); *Bonitto v. ICE*, 547 F. Supp. 2d 747 (S.D. Tex. 2008); *Government of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970); *United States v. Caceres*, 440 U.S. 741, 760 (1979).

Failure to comply with § 241.13 independently renders Petitioner's re-detention unlawful. *Bonitto*, 547 F. Supp. 2d at 755; *Wing Nuen Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025); *Sering Ceesay v. Kurzdorfer*, No. 25-cv-00267-LJV, 2025 WL 1284720, at *21 (W.D.N.Y. May 2, 2025); *Saravia for AH v. Sessions*, 905 F.3d 1137, 1142 n.8, 1145 n.10 (9th Cir. 2018); *Ahmad v. Whitaker*, No. 18-cv-00287-JLR-BAT, 2018 WL 6928540, at *5 (W.D. Wash. Dec. 4, 2018).

III. REMOVAL IS NOT REASONABLY FORESEEABLE AND IS PRESENTLY LEGALLY IMPOSSIBLE

A. BIA Stay of Removal

Removal is legally prohibited because the BIA has granted a stay pending resolution of Petitioner's motion to reopen. While the stay remains in effect, removal cannot be effectuated. A

stay requires a "strong showing" of likelihood of success—the "most critical" factor. *Nken v. Holder*, 556 U.S. 418, 427, 434 (2009); *Barber v. Bryant*, 833 F.3d 510, 511 (5th Cir. 2016); *United States v. Texas*, 97 F.4th 268, 274 (5th Cir. 2024); *Planned Parenthood Surgical Health Servs. v. Abbott*, 734 F.3d 406, 418 (5th Cir. 2013).

Because Petitioner has been detained for more than six months and removal is barred by the stay, detention is presumptively unreasonable under *Zadvydas*. 533 U.S. at 701. The government cannot rebut this presumption while removal is legally impossible. *Id.* at 699–701; *Clark*, 543 U.S. at 383–87.

B. No Evidence of Imminent Removal

Even absent the stay, Respondents have failed to show removal is significantly likely. They offer only conclusory assertions that a travel document and charter flight exist. No documentation, flight date, or confirmation has been produced.

Vietnam has declined to accept Petitioner for nearly twenty-five years, and pre-1995 entrants are repatriated only on a discretionary, case-by-case basis. *Hoi Thanh Duong v. Tate*, No. 24-cv-04119-H, 2025 WL 933947, at *4 (S.D. Tex. Mar. 27, 2025); *Trinh v. Homan*, 446 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). Courts consistently find such circumstances insufficient to establish foreseeability. *Phan v. Becerra*, No. 25-cv-1757, 2025 WL 1993735, at *3–5 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 149 (D. Mass. 2025); *Tran v. Scott*, No. 25-cv-1886, 2025 WL 2898638, at *3–5 (W.D. Wash. Oct. 12, 2025); *Tran v. Baker*, No. 25-cv-1598, 2025 WL 2085020, at *5–7 (D. Md. July 24, 2025); *Nguyen v. Noem*, No. 25-cv-57, 2025 WL 2737803, at *7–10 (N.D. Tex. Aug. 10, 2025); *Wing Nuen Liu*, 2025 WL 1696526, at *2. Bare assertions are insufficient. *Shokeh*, 369 F.3d at 867, 873. Where removal has been unsuccessful for decades and no concrete evidence is presented, detention no longer bears a reasonable relation to

its purpose. *Id.* at 869, 873; *Zadvydas*, 533 U.S. at 682; *Rajigah v. Conway*, 268 F. Supp. 2d 159, 166–67 (E.D.N.Y. 2003); *Serets-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 49 (D.D.C. 2002); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 424–26 (M.D. Pa. 2004).

IV. CONDITIONS OF CONFINEMENT UNDERSCORE THE NEED FOR IMMEDIATE RELEASE

Petitioner's continued civil detention has caused significant deterioration of his physical and mental health, including malnutrition and lack of medical and mental health care. Civil detention is non-punitive. *Zadvydas*, 533 U.S. at 690. Deliberate indifference to serious medical needs violates due process and the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97 (1976); *Farmer v. Brennan*, 511 U.S. 825, 829 (1994); *Hui v. Castaneda*, 130 S. Ct. 1845, 1849 (2010). Where removal is not foreseeable and supervision is available, continued detention under such conditions is excessive and unconstitutional. *Gisbert v. INS*, 988 F.2d 1437, 1442 (5th Cir. 1993).

CONCLUSION

Petitioner's detention is neither mandatory nor authorized. ICE failed to comply with governing regulations, removal is not reasonably foreseeable and is presently barred, and continued detention violates the INA and due process. The writ of habeas corpus should be granted and Petitioner immediately released under supervision.

Dated: January 18, 2026

Respectfully submitted,

/s/ Theodore N. Cox (with permission)
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CERTIFICATE OF CONFERENCE

Counsel for Petitioner conferred with counsel for Federal Respondents about the relief requested in this motion. Respondents seek dismissal of the habeas petition.

s/ Theodore N. Cox

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CERTIFICATE OF SERVICE

I certify that on January 18, 2026 the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

s/ Theodore N. Cox

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