UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DA VAN LE, Petitioner, v. PAMLEA BONDI, *et al.*, Respondents.	§ § § § § § § § § §	CASE NO. 4:25-cv-6179

GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT

The Government[1] hereby requests that the Court deny Da Van Le's habeas petition and grant summary judgment in the Government's favor under Federal Rule of Civil Procedure 56.

INTRODUCTION

The Court should deny Petitioner Da Van Le's habeas petition because he has been in U.S. Immigration and Customs Enforcement (ICE) detention for approximately two months, which is well within the six-month detention period presumed to be reasonable under *Zadvydas*. Even assuming for the sake of argument that the detention period exceeded six months, Petitioner has the burden of proof to show that there is no significant likelihood of removal

[1] Petitioner alleges that he is being detained at the Houston Processing Center in Houston, Texas. Dkt. No. 1 at ¶ 43. 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.

in the foreseeable future. And he cannot meet this burden. As such, summary judgment in favor of the Government is appropriate.

BACKGROUND

Petitioner Da Van Le is a Vietnam citizen, with a removal order, awaiting deportation. Dkt. 1 at ¶¶ 2, 3, 35. Petitioner entered the United States in 1981. *Id.* at ¶ 35. In 1996 Petitioner was convicted of aggravated robbery in Jefferson County, Texas. *See* Exhibit 1. Petitioner was sentenced to confinement for a period of 50 years. *Id.* Petitioner was ordered deported in 1997. *See* Exhibit 2, Order of Removal. After his removal order was entered, Petitioner was placed on an Order of Supervision and released. Dkt. 1 at ¶ 4. ICE detained Petitioner on or about November 4, 2025, so that he could be removed to Vietnam. *Id.* at ¶ 5. On December 2, 2025, ICE submitted a request for a travel document to the government of Vietnam. *See* Exhibit 3.

ARGUMENT

Petitioner presents two arguments as to why his detention is unlawful. First, he argues that his detention is unconstitutional under the framework establish by the Supreme Court in *Zadvydas*. Second, he challenges the revocation of his order of supervision. The Government addresses each argument in turn.

I. Petitioner's approximate two-month detention is lawful.

The length of Petitioner's detention, since November of 2025, is lawful and any challenge based on *Zadvydas* is premature. A petitioner may challenge continued detention under the framework established in *Zadvydas*, which held that detention may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *Zadvydas v.*

Davis, 533 U.S. 678, 701 (2001). If an alien's post removal order detention is less than six months, any habeas challenge based on *Zadvydas* should be rejected as premature. *See Agyei-Kodie v. Holder*, 418 Fed. Appx. 317, 318 (5th Cir. 2011)(holding that any challenge under *Zadvydas* within the six-month period is premature). Here, the Petitioner is still within the presumptively reasonable six-month period set forth in *Zadvydas* and his habeas challenge should therefore be denied as premature.

Assuming for the sake of argument that Petitioner's challenge is not premature, he cannot meet his initial burden under the *Zadvydas* framework. In a challenge to detention under *Zadvydas*, the petitioner must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701; *see also 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"; rather, a petitioner must demonstrate that there are particular individual barriers preventing his removal. *See 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).

Petitioner has not demonstrated that ICE is unlikely to effectuate his removal in the near future. Petitioner has offered no evidence indicating that any real, non-speculative barriers to his removal exist. Instead, Petitioner asserts that "he does not understand the reason ICE now believes that there is a significant likelihood he will be removed in the reasonably

foreseeable future." Dkt. 1 at ¶ 60. At bottom, Petitioner's position appears to be that the Government is incapable of removing him in the near future because it failed to do so in the past. But the state of foreign affairs is inherently dynamic, and thus any unsuccessful removal efforts in past administrations are minimally probative of renewed efforts now. One of the few specifics that Petitioner alleges is that "[u]pon information and belief, Petitioner pleads that Respondents have yet to submit a travel document request to the embassy of Vietnam on Petitioner's behalf." Dkt. at ¶ 11. This is inaccurate. ICE has submitted a travel document request to Vietnam. *See* Exhibit 3. Thus, assuming that the instant habeas petition is not premature, Petitioner has failed to meet his initial burden under *Zadvydas* to provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.

Petitioner's current detention has been ongoing for less than six months and is thus presumptively constitutional. Petitioner does not allege that he was detained for a significant length of time prior to his current detention. Dkt. 1 at ¶ 6. However, even if he had been previously detained, that does not render his current detention unlawful. While *Zadvydas* did not speak with precision on the six-month presumption, some 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.

Because Petitioner's current detention began on November 4, 2025, his habeas petition is premature and should be denied.

II. ICE lawfully exercised its discretion to revoke Petitioner's Order of Supervision.

Here, ICE exercised its discretion to revoke Petitioner's Order of Supervision in order to effectuate his removal order. The Government's decision to revoke an order of supervision is discretionary. *See* 8 C.F.R. §§ 241.5, 241.4(l)(2) ("Release may be revoked in the exercise of discretion when, in the opinion of the revoking official ... (iii) [i]t is appropriate to enforce a removal order")). Indeed, courts have recognized that the applicable regulations permit the Government "extraordinarily broad discretion to revoke" an order of supervision; and, "that discretion is expressly not limited to circumstances where a non-citizen violates the conditions of his" supervised release. *Zhen v. Doe*, No. 3:25-CV-01507-PAB, 2025 WL 2258586, at *10 (N.D. Ohio Aug. 7, 2025) (citing 8 C.F.R. § 241.4(l)(2)(i)-(iv)) (citations and quotations omitted). Here, the Petitioner has been re-detained to effectuate his removal because DHS determined it was appropriate to enforce the removal order, which is authorized in 8 C.F.R. § 241.4(l)(2)(iii). Courts have recognized that, due to the discretionary nature of the power, the Government is not required to "demonstrate what facts or factors, if any, it considered in deciding to revoke." *Mong Tran v. Nikita Baker*, 2025 WL 2085020, at *4 (D. Md. July 24, 2025). The discretionary nature of the decision divests the Court of jurisdiction to review a challenge to the revocation.

Under 8 U.S.C. § 1252(a)(2)(B), "Congress has sharply circumscribed judicial review of the ... process" whereby noncitizens may obtain review of a discretionary decision. *Patel v. Garland*, 596 U.S. 328, 332 (2022). The statute strips courts of jurisdiction to review decisions

within the discretion of the Attorney General or Secretary of Homeland Security. *Id.* at § 1252(a)(2)(B)(ii). Thus, the Court lacks jurisdiction over a challenge to the revocation of an order of supervision. *See, e.g., Hafed v. US Immig. and Cust. Enf't*, No. 3:20-CV-1248-N-BN, 2020 WL 4587582, at *2 (N.D. Tex. June 30, 2020), report and recommendation adopted, No. 3:20-CV-1248-N, 2020 WL 4583635 (N.D. Tex. Aug. 10, 2020) (citing § 1252(a)(2)(B)(ii) and finding a lack of jurisdiction to consider a challenge to revocation of supervision order).

CONCLUSION

For the reasons stated above, the Court should grant judgment as a matter of law in the Government's favor and deny the petition for writ of habeas corpus.

Dated: January 6, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 6, 2026, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

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