**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**FT. MYERS DIVISION**

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| PHONG TAN LAM,<br>Petitioner,<br><br>v.<br><br>DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL.,<br>Respondents. | Case No. 2:25-CV-1202-KCD-DNF |

**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Phong Tan Lam ("Petitioner") seeks the grant of a petition for writ of habeas corpus ("Petition") pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking his immediate release from custody. Petitioner also brings challenges pursuant to the Fifth Amendment to the United States Constitution and statute. His petition must be denied.

## BACKGROUND

Petitioner is a citizen of Vietnam. *See* Petition, ¶¶ 1, 17. He was paroled into the United States as a lawful permanent resident on November 3, 1980. Petition, ¶¶ 1, 18. In 1999, Petitioner was convicted possession of cocaine and paraphernalia. Petition, ¶ 19; ECF No. 1-2 at 28-32. Petitioner's criminal convictions led the legacy Immigration

and Naturalization Service to initiate removal proceedings against him and he was ordered removed from the United States on December 5, 2002. Petition, ¶ 21; ECF No. 1-2 at 14. While initially detained, Petitioner was ultimately released from immigration detention on June 4, 2003. Petition, ¶ 22; ECF No. 1-2 at 18-19. Petitioner was placed on an order of supervision thereafter. Petition, ¶ 5. On October 29, 2025, ICE revoked Petitioner's order of supervision and detained him. Petition, ¶ 8, 24; Notice of Revocation of Release (Exhibit A). On December 22, 2025, Petitioner filed an emergency petition for writ of habeas corpus and an emergency motion seeking a temporary restraining order and preliminary injunction ("TRO Motion"). ECF Nos. 1, 2. On December 31, 2025, this Court denied Petitioner's TRO Motion and preliminary injunctive relief. ECF No. 5. In response to this Court's order, ECF No. 4, and for the reasons set forth below, Respondents respectfully request that this Court deny all relief.

## LEGAL STANDARD

The Court has the power to grant a writ of habeas corpus where a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941). "The burden rests on the person in custody to prove his detention is unlawful." *Benito Vasquez v. Moniz*, No. 25-11737-NMG, 2025 WL 1737216, at *1 (D. Mass. June 23, 2025).

## STATUTORY AND REGULATORY FRAMEWORK

An alien with a final order of removal is subject to the detention and removal standards set forth at 8 U.S.C. § 1231. The statute directs that an alien ordered removed

be removed within 90 days of his order becoming final and that he remain detained during that timeframe. 8 U.S.C. § 1231 (a)(1)(A); (a)(2)(A). Where the removal period elapses without the alien's departure, the INA and regulations give DHS the authority to grant an order of supervision pending his removal. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5(a).

An order of supervision is not indefinite, rather the regulations permit the government to revoke the order for a variety of reasons. 8 C.F.R. § 241.4(*l*). Among the reasons for which supervision may be revoked are violation of the conditions of release—in which the alien must be notified of those reasons and given the opportunity to respond—and at DHS's discretion when: "(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*)(1)-(2).

After the February 2001 *Zadvydas* decision, discussed at greater length *supra*, regulations were promulgated to govern administrative review of alien detention determinations made beyond the removal period. *See* 8 C.F.R. § 241.13 (enacted in November 2001); *see also Zadvydas v. Davis*, 533 U.S. 678 (2001). Under this regulatory scheme, an alien who believes his detention falls within its parameters may submit a request for release to the Headquarters Post-Order Detention Unit ("HQPDU") stating the basis for which he believes there is no significant likelihood of his removal in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(c) ("The HQPDU shall conduct a

review under this section, *in response to a request from a detained alien*, in order to determine whether there is no significant likelihood that the alien will be removed in the reasonably foreseeable future) (emphasis added); *see also* 8 C.F.R. § 241.13(d)(1). A written request must include sufficient information to establish his compliance with his obligation to cooperate in the process of obtaining necessary travel documents necessary to effect removal. 8 C.F.R. § 241.13(d)(2). The HQPDU must respond to the alien's request in writing to acknowledge receipt of the request for a review of his continued detention and immigration officials may continue to detain the alien until the HQPDU has made a determination as to whether there is a significant likelihood that the alien can be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(e)(1). Importantly, the regulations at 8 C.F.R. § 241.4 continue to apply notwithstanding an alien's applicability under 8 C.F.R. § 241.14. *See* 8 C.F.R. § 241.13(b)(1).

## ARGUMENT

### I. No Respondent is Proper.

The only appropriate respondent to a habeas case is the official with physical custody of petitioner. 28 U.S.C. § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained."); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) ("[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official."). Accordingly, all Respondents—none of which are the Warden of the facility in which Petitioner is detained—are improper parties to this action and should be dismissed. Furthermore, Respondent Joseph B.

Edlow is the Director of United States Citizenship and Immigration Services, an entity which has no role in the apprehension and removal of aliens subject to a final order of removal as those responsibilities lie with U.S. Immigration and Customs Enforcement.[1]

**II. 8 U.S.C. § 1252(g) Precludes Review of Petitioner's Claims**

There is no jurisdiction to review "any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from "discrete acts of commencing proceedings, adjudicating cases, and executing removal orders." *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) ("*AADC*") (cleaned up). These activities "represent the initiation or prosecution of various stages in the deportation process" that Congress had "good reason" to withhold from judicial review. *Id.*

This bar is subject to limitations and must be applied "to just those three specific actions" listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, "courts must focus on the action being challenged." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). Here, Petitioner is subject to a final order of removal—Petition, ¶ 21—and he challenges ICE's detention incidental to the execution of that order. *Id.* This matter thus falls squarely within the specific actions

[1] *See* https://www.uscis.gov/about-us/organization/leadership/joseph-b-edlow-director-us-citizenship-and-immigration-services (last accessed Jan. 9, 2026).

*Jennings* contemplated, namely the discrete action of executing a removal order, and this Court lacks jurisdiction to hear Petitioner's claims. *See e.g.*, *Rivera-Amador v. Rhoden*, No. 3:25-CV-1460-WWB-SJH, 2025 WL 3687452, at *2 (M.D. Fla. Dec. 19, 2025); *see also Camarena v. Dir., Immigration and Customs Enforcement*, 988 F.3d 1268 (11th. Cir. 2021).

**III. Petitioner's Detention is Lawful**

Should the Court determine that it retains jurisdiction over Petitioner's habeas claims—and it should not—he still cannot establish eligibility for habeas relief because his detention is lawful. Petitioner argues that his present detention is improper because Respondents have not demonstrated that his removal to Vietnam is reasonably foreseeable. Petition, ¶ 37. This claim fails because Petitioner—detained for 72 days as of the date of this filing—is well under the 180-day period at which the burden-shifting framework of *Zadvydas* comes into play. Even if the Court construes *Zadvydas* in a manner most favorable to Petitioner, his detention is still proper because his removal from the United States is indeed reasonably foreseeable.

The INA requires that an alien ordered removed be detained for the 90-day removal period after his order of removal becomes final. 8 U.S.C. § 1231 (a)(1)(A); (a)(2)(A). But even where removal is not effected on that schedule, the government is permitted to continue to detain an alien—or to detain him again in the future for the purpose of executing the order—and there is no statutory limit on how long that post-removal detention period may last. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). However, due to constitutional concerns, the U.S. Supreme Court has

nevertheless interpreted the post-removal period to allow extended detention for "a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. In all, a reasonable length of detention "is presumptively six months." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021); *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable period expires without removal, then a burden-shifting framework comes into play that considers the "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 689. But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale*, 287 F.3d at 1051-52; *Guo Xing Song v. U.S. Attorney General*, 516 F. App'x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009).

Here, Respondents urge the Court to find that the presumptively reasonable detention period has not elapsed, and Petitioner's habeas petition is premature. Petitioner has only been detained for 72 days. *See* Petition, ¶¶ 8, 24. And though *Akinwale* counsels that the initial removal period should be included in 180-day the presumptively reasonable period, there are important factual distinctions there from the case at hand that warrant consideration of a different application here. In *Akinwale*, the habeas petitioner had been detained pursuant to his removal order immediately following his incarceration for a criminal office and his immigration detention spanned a *continuous* four-month period of time at the time the habeas petition was filed.

*Akinwale*, 287 F.3d at 1051. It was during that four-month period of time that the government continued to make removal efforts and during that period of time that the Court determined that the 90-day removal period making up the front end of that four months should properly be included into the presumptively reasonable calculation. *Id.* at 1052. The facts here are distinguishable. Though Petitioner was indeed detained following the issuance of his final order of removal, we do not face a situation of indefinite detention. Rather, Petitioner remained free in the community for roughly 23 years before ICE's recent resumption of custody.

The very spirit of our caselaw is to avoid prolonged, indefinite detention. *See e.g.*, *Zadvydas*, 533 U.S. at 679. And the purpose of the removal period is to allow the government a reasonable amount of time to make travel and documentation arrangements necessary to remove an individual. *Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008). With these considerations in mind, it would thus make little sense to read *Akinwale* so strictly as foreclose any presumptively reasonable period here in 2026 based on a period of detention that occurred nearly a quarter of a century ago. *See e.g.*, *Meskini v. Att'y Gen. of United States*, No. 4:14-CV-42 (CDL), 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018) (rejecting strict adherence to 180-day time period and urging analysis based upon removal efforts at present). Here, Petitioner was detained once prior for the purpose of attempting removal—over 20 years ago—and a practical and reasonable approach dictates that Respondents should be afforded a reasonable period of time to arrange for his removal once more given the passage of time and changes in circumstances. The concerns giving rise to *Zadvysdas* and *Akinwale* are

simply not triggered under the facts here. This is not a situation in which Respondents have held Petitioner for an extended period of time, released him, and redetained him immediately once more with no plans for removal. Rather, this is case in which Respondents have commenced the process of attempting removal once. Furthermore, Respondents retain the ability to seek removal to an alternate third country. *See* 8 U.S.C. § 1231(b)(1(C).

**CONCLUSION**

The court should deny this petition. This Court is barred from considering Petitioner's claims challenging ICE's execution of his final removal order. Furthermore, Petitioner—detained for the purpose of executing his final order of removal—has been properly detained pursuant to 8 U.S.C. § 1231 consistent with the applicable regulations. Respondents have acted lawfully and this Petition should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 9, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: January 9, 2026

Signed:

*/s/ Amanda Saylor*
Amanda Saylor
Assistant United States Attorney