

The Honorable S. Kate Vaughan

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANH VAN NGUYEN,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02674-SKV

**FEDERAL RESPONDENTS'
RETURN MEMORANDUM**

Noted for Consideration:
January 20, 2026.

I. INTRODUCTION

This Court should deny Petitioner Danh Van Nguyen's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). Petitioner challenges his post-order detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional and unlawful while he awaits removal from the United States. Petitioner is a native and citizen of Vietnam who entered the United States in 1995. Petitioner was convicted of various crimes between 2000 and 2008, including domestic violence, violating a domestic violence no contact order, theft, and forgery. Based on these convictions, he was ordered removed to Vietnam in 2008, which has since become administratively final. Petitioner was later released on an Order of Supervision (OSUP) in 2009, due to the inability to obtain travel documents to Vietnam at that time.

1 While released on OSUP, Petitioner had multiple violations of his conditions of release,
2 including at least two criminal arrests. As a result, U.S. Immigration and Customs Enforcement
3 (“ICE”) took Petitioner into custody on June 30, 2025. ICE revoked Petitioner’s order of
4 supervision on that day both because (1) Vietnam has recently been cooperating with the United
5 States to effectuate removal of its citizens creating a strong likelihood of Petitioner’s removal in
6 the reasonably foreseeable future, and (2) Petitioner’s violations of the terms of his order of
7 supervision. Petitioner presents no evidence to show that his re-detention does not comport with
8 substantive or due process requirements or that ICE violated any of its regulations.

9 While his Petition discusses removal to a third country, Petitioner presents no evidence of
10 any intention by ICE to do so. The facts here demonstrate that ICE is actively working to complete
11 the necessary travel documents request to Vietnam, upon compliance and cooperation of
12 Petitioner. As a result, ICE believes that Petitioner’s removal is reasonably foreseeable as soon
13 as the Petitioner complies with ICE’s requests. Any third country claim is not ripe for review.

14 Petitioner’s detention is lawful. He is a noncitizen subject to an administratively final
15 order of removal, and he is lawfully detained under Section 241 of the Immigration and
16 Nationality Act (“INA”). *See* 8 U.S.C. § 1231. Petitioner’s detention also is not indefinite under
17 *Zadvydas*, 533 U.S. 678 at 701. The only necessary determination ICE must make under the
18 *Zadvydas* framework is whether there is a significant likelihood of removal in the reasonably
19 foreseeable future—which there is in this case.

20 Accordingly, Federal Respondents respectfully request the Court deny the Petition. This
21 return is supported by the pleadings and documents on file in this case, and the Declaration of
22 Deportation Officer Yrales K. Melendez Diaz (“Diaz Decl.”). Federal Respondents do not
23 believe an evidentiary hearing is necessary.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Detention Authorities and Removal Procedures

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general detention periods are generally referred to as “pre-order” (meaning before the entry of a final order of removal) and, relevant here, “post-order” (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

When a final order of removal has been entered, a noncitizen enters a 90-day “removal period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for removal and to protect the community from noncitizens who may present a danger, Congress has mandated detention while removal is being effectuated:

During the removal period, the [Secretary of Homeland Security]¹ shall detain the [noncitizen]. Under no circumstance during the removal period shall the [Secretary] release [a noncitizen] who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

8 U.S.C. § 1231(a)(2).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

[A noncitizen] ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or

¹ Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority to the Secretary of the Department of Homeland Security (“DHS”), of which ICE is a component. *See also* 6 U.S.C. § 251.

1 who has been determined by the [the Secretary of Homeland Security] to be a risk
2 to the community or unlikely to comply with the order of removal, *may* be detained
3 *beyond the removal period* and, if released, shall be subject to the terms of
4 supervision in paragraph (3).

5 8 U.S.C. § 1231(a)(6) (emphasis added).

6 During the removal period, ICE² is charged with attempting to effect removal of a
7 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit
8 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may
9 be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal
10 from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six
11 months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.* at 701. The
12 *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is
13 applied to assess the continuing lawfulness of a noncitizen’s post-order detention. *Id.* (stating that
14 “for detention to remain reasonable, as the period of post-removal confinement grows, what
15 counts as the ‘reasonably foreseeable future’ conversely would have to shrink”). Thus, the
16 Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen’s
17 detention could raise constitutional issues. *Id.*

18 **B. OSUP and Revocation**

19 Once it is determined that there is no significant likelihood of removal in the reasonably
20 foreseeable future, DHS may release noncitizens on an Order of Supervision (“OSUP”). 8 C.F.R.
21 § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is
22 governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen “violates
23 any of the conditions of release,” *id.* §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined “that

24 ² Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

1 there is a significant likelihood that the alien may be removed in the reasonably foreseeable
2 future.” *Id.* § 241.13(i)(2). Whether there is a significant likelihood that the alien may be removed
3 in the reasonably foreseeable future is determined by assessing a series of factors, including “the
4 history of the alien's efforts to comply with the order of removal, the history of the Service's
5 efforts to remove aliens to the country in question or to third countries ... and the views of the
6 Department of State regarding the prospects for removal of aliens to the country or countries in
7 question.” *Id.* § 241.13(f). Alternatively, certain designated officials may also revoke an OSUP
8 as an act of discretion when revocation is in the public interest. *Id.* § 241.4(l)(2).

9 Section 241.13(i)(3) provides that upon revocation, the alien “will be notified of the
10 reasons for revocation of his or her release” and will receive an “initial informal interview
11 promptly” after being detained, to “afford the alien an opportunity to respond to the reasons for
12 revocation stated in the notification.” *Id.* § 241.13(i)(3). During such an interview, the noncitizen
13 “may submit any evidence or information that he or she believes shows there is no significant
14 likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not
15 violated the order of supervision.” *Id.* “The revocation custody review will include an evaluation
16 of any contested facts relevant to the revocation and a determination whether the facts as
17 determined warrant revocation and further denial of release.” *Id.* Then, if the alien’s request for
18 release is denied, he or she “may submit a request for review of his or her detention . . . six months
19 after [DHS’s] last denial of release[.]” *Id.* § 241.13(j).

20 **C. Petitioner Danh Van Nguyen**

21 Petitioner is a native and citizen of Vietnam. *See* Pet., pg. 5. On March 03, 1995, Petitioner
22 entered the United States admitted as lawful permanent resident. Diaz Decl. ¶ 3.

23 Petitioner subsequently was arrested or convicted for multiple crimes. *Id.* ¶ 4. Petitioner
24 was arrested for driving without a license by Mercer Island Police Department on August 11,

1 2000. *Id.* ¶ 4(a). Petitioner was arrested for criminal trespassing by Seattle Police Department on
2 August 25, 2004, but no charges were filed. *Id.* ¶ 4(b). Petitioner was arrested for forgery by
3 Shoreline Police Department on November 03, 2004, which resulted in felony conviction on July
4 18, 2005. *Id.* ¶ 4(c). Petitioner was arrested for domestic violence on February 17, 2005, by the
5 Seattle Police Department but the charges were dismissed. *Id.* ¶ 4(d).

6 Petitioner was arrested for violation of no contact/protection order, domestic violence,
7 theft and criminal trespassing on February 22, 2005, by the Seattle Police Department with
8 conviction for theft (misdemeanor) and no contact/protection order violation (felony) on July 18,
9 2005, by Seattle Municipal Court. *Id.* ¶ 4(e). The Petitioner was ordered 364 days of work release
10 and 12 months of supervision. *Id.*

11 Petitioner was arrested for assault on February 04, 2006, by the Seattle Police Department
12 and the Petitioner was found guilty of domestic violence on January 27, 2008, by the Seattle
13 Municipal Court. *Id.* ¶ 4(f). Petitioner was arrested for forgery on March 10, 2006, by Corrections
14 Bureau of Everett and conviction for forgery on July 05, 2006, in the Snohomish County Superior
15 Court and sentenced for 49 days in jail. *Id.* ¶ 4(g). Petitioner was arrested and charged for larceny,
16 theft & burglary on March 17, 2006, by the Seattle Police Department. Seattle Municipal Court
17 handed conviction for larceny on December 13, 2006, and ordered 2 months' jail and work-
18 release. *Id.* ¶ 4(h).

19 Petitioner was arrested for theft on February 18, 2007, by Seattle Police Department and
20 conviction of theft by Seattle Municipal Court with jail term of 365 days and suspension of 360
21 days. *Id.* ¶ 4(i). Petitioner was arrested for theft on April 22, 2007, by Tukwila Police Department
22 and conviction by Tukwila Municipal Court of Tukwila on April 23, 2008, with jail term of 365
23 days (suspended 330 days). *Id.* ¶ 4(j). Petitioner was arrested for Theft by Issaquah Police
24 Department on June 04, 2019, and conviction by Issaquah Municipal Court for Gross

1 Misdemeanor Theft and sentencing of 364 days (184 days suspended). *Id.* ¶ 4(k). Petitioner was
2 arrested for Malicious Mischief by Bellevue Police Department on February 26, 2021. No
3 disposition found. *Id.* ¶ 4(l).

4 On February 14, 2008, the Petitioner was issued a Notice to Appear (“NTA”) as a result
5 of such criminal activity, charging him with having been convicted of two crimes of moral
6 turpitude not arising out of a single scheme under INA § 237(a)(2)(ii), and charging him to be an
7 alien engaged in conduct of credible threats of violence, repeated harassment, or bodily injury to
8 the person in violation of protection order given to protect such person under INA §
9 237(a)(2)(E)(ii). *Id.* ¶ 5. Thereafter, on March 17, 2008, an immigration judge ordered Petitioner
10 removed from the United States. *Id.*

11 On April 29, 2009, Petitioner was released on an Order of Supervision (“OSUP”) due to
12 the inability to obtain travel documents to Vietnam. *Id.* ¶ 6. However, Petitioner violated terms
13 of OSUP due to his criminal activities after getting OSUP. *Id.* On June 30, 2025, ERO determined
14 to revoke Petitioner’s OSUP due to threat to public safety because of the Petitioner and that there
15 was now a significant likelihood of removal in the foreseeable future due to cooperation between
16 the United States and Vietnam. *Id.* ¶ 7. Accordingly, his OSUP was revoked and written notice
17 was given to the Petitioner. *Id.* Same day the Petitioner was taken in ICE custody and transferred
18 to Northwest Immigration Processing Center (“NWIPC”) in Tacoma, WA. *Id.*

19 On September 08, 2025, the Petitioner was served another OSUP revocation letter and
20 informal interview was conducted, but the Petitioner chose not to provide any statement. *Id.* ¶ 8.
21 On September 15, 2025, the Petitioner was interviewed, served with Form 229A and Notice to
22 Alien of the file custody review. *Id.* ¶ 9. The Petitioner refused to sign any document or provide
23 any information for travel document application. *Id.* On November 01, 2025, a Post-Order
24 Custody Review (“POCR”) review request of the Petitioner was sent to DHS headquarters. *Id.* ¶

1 10. Last request for PO CR was made on December 15, 2025, and currently PO CR is pending as
2 of December 30, 2025. *Id.*

3 On October 28, 2025, a travel document translation request was made to Lionbridge³. *Id.*

4 ¶ 11. Then on November 02, 2025, the travel document request was sent to Vietnam RIO for
5 review. *Id.* On December 31, 2025, the travel document request to Vietnam was forwarded for
6 processing. *Id.* ¶ 12.

7 Previous memoranda of understanding regarding removal of Vietnamese citizens based
8 on their entry date is no longer in effect. *Id.* ¶ 13. The date of entry is no longer relevant regarding
9 whether travel documents can be obtained from the government of Vietnam. *Id.* The government
10 of Vietnam has agreed to increase cooperation with the United States and generally seek to issue
11 travel documents within 30 days of a request being made. *Id.* ¶ 14. DHS has frequent charter
12 flights to Vietnam. *Id.*

13 As of September 11, 2025, for fiscal year 2025 there have been at least 569 removals of
14 Vietnamese citizens to Vietnam. *Id.* ¶ 16. Based on Deportation Officer Diaz's recent prior
15 experience, if DHS or the alien has documentation of Vietnamese citizenship, a travel document
16 will be issued without an interview. *Id.* ¶ 17. For aliens without documentation of Vietnamese
17 citizenship, the Vietnamese government will conduct an interview. *Id.* From the time that a
18 request for travel documents is made until the issuance of travel documents is typically within 30
19 days. *Id.*

20 The government of Vietnam continues to issue travel documents for their citizens. *Id.* ¶
21 18. As such, DHS has every reason to believe that the government of Vietnam will ultimately

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24 ³ Travel Documents are required to be translated into Vietnamese by the government of Vietnam.

1 issue one for Petitioner. *Id.* For these reasons, DHS believes that there is a significant likelihood
2 of Petitioner's removal in the reasonably foreseeable future. *Id.*

3 III. ARGUMENT

4 A. Petitioner's Administrative Procedure Act claims must be dismissed for lack of 5 Subject Matter Jurisdiction

6 Petitioner seeks to challenge his detention on grounds that violated Sections 706(2)(A),
7 (B) and (C) of the Administrative Procedure Act ("APA"). The Court has no subject matter
8 jurisdiction to hear these claims.

9 Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C.
10 § 704 ("Agency action made reviewable by statute and final agency action *for which there is no*
11 *other adequate remedy in a court* are subject to judicial review.") (emphasis added). Simply put,
12 "federal courts lack jurisdiction over APA challenges whenever Congress has provided another
13 'adequate remedy.'" *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

14 Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial
15 detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See*
16 *Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs'
17 claims necessarily implied the invalidity of the Plaintiffs' confinement and removal under the
18 "Alien Enemies Act" and so had to be brought as habeas corpus claims in the jurisdiction of their
19 confinement). As Justice Kavanaugh stated in his concurring opinion, "[e]specially given the
20 history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704,
21 which states that claims under the APA are not available when there is another 'adequate remedy
22 in a court,' I agree with the Court that habeas corpus, not the APA, is the proper vehicle here."
23 *Id.* at 674; *cf. O'Banion v. Matevousian*, 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that
24 "habeas actions" provide an "adequate remedy" displacing APA review under Section 704); *and*

1 *see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018)
2 (“Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in
3 a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.”).

4 Moreover, to be reviewable under the APA an action must be a “final agency action,”
5 which is to say that it is the “consummation of the agency's decision making process.” *See Bennett*
6 *v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of executing a
7 removal order is not within that category because it is only an intermediary step in the process.
8 *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly,
9 Petitioner’s claims based on alleged APA should be denied.

10 **B. Petitioner has failed to demonstrate that his OSUP revocation did not comport**
11 **with due process or was inconsistent with ICE’s procedural regulations**

12 “Due process is flexible and calls for such procedural protections as the particular situation
13 demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that
14 Petitioner’s detention is consistent with his due process rights. Under *Mathews*, “[t]he
15 fundamental requirement of due process is the opportunity to be heard at a meaningful time and
16 in a meaningful manner.” *Id.*, at 333 (internal quotation marks omitted). This calls for an analysis
17 of (1) “the private interest that will be affected by the official action,” (2) “the risk of an erroneous
18 deprivation of such interest through the procedures used, and probable value, if any, of additional
19 or substitute procedural safeguards,” and (3) the Government’s interest. *Id.*, at 334-35.

20 **1. Petitioner’s liberty interest in remaining released on conditions is**
21 **reduced.**

22 Respondents recognize the “weighty liberty interests implicated by the Government’s
23 detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y.
24 Aug. 20, 2021). However, Petitioner’s interest in his liberty *generally* does not mean that he
possesses a separate or heightened liberty interest in the continuation of his conditional release

on OSUP.⁴ The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz*, 53 F.4th at 1206 (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, “[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976).

Petitioner’s release on OSUP was always subject, in part, to him not committing any crimes. Diaz Decl. ¶ 6. However, the Petitioner violated terms of OSUP due to his criminal activities after getting OSUP. *Id.* ¶¶ 4(k)-(l). Accordingly, Petitioner cannot now claim that the Respondents promised him ongoing, limitless freedom from detention, especially in the face of his prolific criminal history. *Id.* ¶¶ 4, 6.

2. The existing procedures for OSUP revocation are constitutionally sufficient and Petitioner has failed to demonstrate that his detention violates ICE’s regulations.

Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of Petitioner’s liberty here is minimal, and Petitioner fails to show that ICE did not comply with procedural safeguards in this case. Petitioner presents no evidence for his claims that the agency failed to give him both notice and an opportunity to be heard regarding his OSUP revocation.

As outlined above, Congress established a clear statutory framework in 8 C.F.R. § 241.13(i) that sets forth the requirements and process for affecting an OSUP revocation. When an alien has violated any condition of their release, as Petitioner did many times over in committing numerous criminal offenses, or ICE determines that there is a “significant likelihood”

⁴ Federal Respondents acknowledge that courts in this District have found that noncitizens have a liberty interest in their release on OSUP but respectfully disagree with those decisions.

1 an alien can be removed from the United States within the “reasonably foreseeable future,” ICE
2 is clearly permitted to revoke the OSUP and take the alien into custody; nothing else is required
3 for revocation under these circumstances. *Id.* § 241.13(i)(1) and (2); *see also Nizar Esmail v.*
4 *Noem, et al.*, 2025 WL 3030590, at *2 (C.D. Cal. Sept. 12, 2025).⁵ Additionally, when ICE’s
5 revocation is based on an alien’s violation of a condition of release, the statute does not require
6 that only certain officials may revoke the OSUP. *See generally* 8 C.F.R. § 241.13(i); *see also*
7 *Nizar Esmail*, 2025 WL 3030590, at *2, n.3 (distinguishing between Sections 241.4 and 241.13,
8 explaining that “Section 241.13 applies to cases where a petitioner is in revocation proceedings,
9 whereas Section 241.4 applies to routine custody reviews for aliens detained after the 90-day
10 removal period.”).

11 8 C.F.R. § 241.13(i)(3) further outlines the OSUP revocation procedures and provides that
12 “upon revocation,” i.e., not before revocation, “the alien will be notified of the reasons for the
13 revocation” and to conduct an “initial interview promptly after his or return to Service custody to
14 afford the alien an opportunity to respond to the reasons for revocation stated in the notification.”
15 *Id.* § 241.13(3).

16 Here, ICE took custody of Petitioner based on its determination that Petitioner could be
17 removed expeditiously and based on Petitioner’s violations of the conditions of his release. Diaz
18 Decl., ¶¶ 6, 13-18. Upon revocation, ICE provided Petitioner with written notice of the specific
19 reasons for its determination, including Petitioner’s criminal offenses and a likelihood of removal.
20 *Id.* ¶¶ 7-8. That same day, ICE records reflect that an ICE Officer conducted an informal interview
21 with Petitioner. *Id.* ¶ 9. Accordingly, Petitioner fails to meet his burden to demonstrate his
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24 ⁵While ICE may also revoke an OSUP as an act of discretion if revocation is in the public interest, pursuant to 8
C.F.R. § 241.4(l)(2), this is not what ICE has chosen to do in this case.

1 unevicenced contentions that he was detained without cause, notice, and an opportunity to
2 respond.

3 **3. The Government has a strong interest in returning aliens to custody who**
4 **violate conditions of release.**

5 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
6 test “must account for the heightened government interest in the immigration detention context.”
7 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth
8 Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
9 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,
10 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). The government likewise has an interest in
11 enforcing compliance with its orders of release and returning individuals to custody who violate
12 their terms. This is especially the case when such violations involve putting public safety at risk
13 –such as the case with Petitioner’s long history of repeated criminal activity.

14 In sum, the three *Mathews* factors demonstrate that Petitioner’s detention comports with
15 procedural due process and that ICE adhered to its own regulations in revoking Petitioner’s
16 OSUP.

17 **C. Petitioner’s detention comports with substantive due process.**

18 Petitioner argues that his detention is unlawful in violation of *Zadvydas*. The burden is on
19 Petitioner to show that there is “good reason to believe that there is no significant likelihood of
20 removal in the reasonably foreseeable future.” *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir.
21 2003) (citing *Zadvydas*). If a petitioner meets his evidentiary burden, the government must then
22 introduce evidence to refute the petitioner’s assertion. *Id.*

23 In *Zadvydas*, the Supreme Court noted the six-month “presumptively reasonable” post-
24 order detention period “does not mean that every [noncitizen] not removed must be released after

1 six months. 533 U.S. at 701. To the contrary, [a noncitizen] may be held in confinement until it
2 has been determined that there is no significant likelihood of removal in the reasonably
3 foreseeable future.” *Id.* The *Zadvydas* Court recognized that as the length of detention grows, a
4 sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order
5 detention. *Id.* (stating that “for detention to remain reasonable, as the period of post-removal
6 confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to
7 shrink”). However, the Supreme Court determined that it is “presumptively reasonable” for the
8 Government to detain a noncitizen for six months following entry of a final removal order, while
9 it worked to remove the noncitizen from the United States. *Id.* at 701. Thus, the Supreme Court
10 implicitly recognized that six months is the *earliest* point at which a noncitizen’s detention could
11 raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption
12 “does not mean that every [noncitizen] not removed must be released after six months. To the
13 contrary, [a noncitizen] may be held in confinement until it has been determined that there is no
14 significant likelihood of removal in the reasonably foreseeable future.” *Id.*

15 Here, the Federal Respondents do not concede that Petitioner’s presumptively reasonable
16 period has passed due to his failure to cooperate with ICE in obtaining his travel document.⁶ Diaz
17 Decl. ¶ 9. Even assuming arguendo that the period has ended, Petitioner fails to demonstrate that
18 there is good reason to believe that there is no significant likelihood of removal in the reasonably
19 foreseeable future.

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22 ⁶ Federal Respondents acknowledge that Courts in this district disagree as to whether the presumptively reasonable
23 period expires six months after a final order, regardless of detention. *See Tran v. Bondi*, No. CV-25-01897-JLR,
2025 WL 3140462 (W.D. Wash. Nov. 10, 2025); *but see Thach Wana v. Bondi, et al.*, No. 2:25-CV-02321-RSL,
2025 WL 3628634, at *3, n.2 (W.D. Wash. Dec. 15, 2025). For the reasons set forth in their briefing in the *Tran*
24 case, Federal Respondents do not agree with this decision. In any event, Petitioner’s detention is still lawful even
past the presumptively reasonable period for the reasons stated herein.

Petitioner's own refusal to cooperate in obtaining a travel document extends the reasonable timeframe by which ICE can detain him. *Id.* Implicit in the removal process, ICE must take steps, along with the noncitizen's efforts, to effectuate removal, including working with the appropriate foreign countries. To the extent that Petitioner's removal has been delayed, this Court should recognize Petitioner's refusal to cooperate with ICE's efforts to obtain a travel document. Because he continues to refuse to comply in good faith with ICE's removal efforts, he "cannot meet his burden to show that there is no significant likelihood of removal in the foreseeable future." *Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003). Consequently, Petitioner has failed to demonstrate a good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Accordingly, Petitioner's detention does not violate principals of substantive due process.

D. Petitioner is not Entitled to a Pre-Detention Hearing in the Post-Order Context

The cases Petitioner invokes in arguing that due process requires a hearing prior to Petitioner's being re-detained are inapposite. Pet., pgs. 9-12 (Section VIII). Petitioner cites *E.A. T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, *Ledesma Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, and other recent out-of-district cases, which are all not applicable under post-removal §1231 detention. *See* Pet., pgs. 9-12. Petitioner does not dispute that he is subject to an administratively final order of removal. Each of the cases cited by Petitioner to support that a pre-detention hearing is warranted are decided in the context of pre-order detention or under regulatory schemes wholly distinct from the post-order detention framework at issue here.⁷ As such, the authorities cited in this section to argue a requirement for a hearing prior to being detained provide little meaningful guidance.

⁷ Federal Respondents acknowledge that some opinions in this District have recently found that the Due Process Clause requires a pre-deprivation hearing before revocation of an OSUP. *See, e.g., Thach Wana v. Bondi, et al.*, FEDERAL RESPONDENTS' RETURN MEMORANDUM [Case No. 2:25-cv-02674-SKV] - 15

E. Petitioner's Third Country Claims Are Without Merit and Not Ripe for Review

Petitioner presents *no evidence* of any intention by ICE to remove Petitioner to a third country. *See* Pet., pgs. 15-21. Petitioner purports to bring claims challenging the constitutionality of his possible removal to a third country as a likely violation of the Fifth Amendment, 8 U.S.C. § 1231, the Eighth Amendment, the Convention Against Torture, the INA, the APA, and relevant implementing regulations. *Id.* Such claims are based on the hypothetical scenario of his removal to a third country other than Vietnam, which are entirely speculative and not ripe for review. Petitioner has a removal order to Vietnam. Morris Decl., Ex. 4. ICE has made multiple requests for Petitioner to complete documents for acquisition of travel documents solely for Vietnam. Diaz Decl. ¶ 14. Despite Petitioner's refusals to cooperate in completing a travel document request, it will submit that request to the Vietnamese consulate, ICE has been able to complete a travel document request for Petitioner which is now currently under review by DHS. Diaz Decl. ¶¶ 9-12. Vietnam has agreed to issue travel documents for returning aliens within 30 after a travel document request is submitted to the consulate. *Id.* ¶ 14. DHS anticipates that a travel document will be issued by Vietnam. *Id.* ¶¶ 9-12. ICE believes Petitioner will be removed to Vietnam shortly after the travel document request for Vietnam is completed. *Id.* ¶¶ 9-18. There is no case or controversy because there is no concrete indication that removal to any third country will occur.

In any event, at least one court in this district has found that such claims are not the proper subject of an immigration habeas petition, considering that Petitioner presents no evidence that Federal Respondents seek to remove him to a third country. *See Tran*, 2025 WL 3140462, at *4 (citing *Zadvydas*, 533 U.S. at 688).

No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *5 (W.D. Wash. Dec. 15, 2025); *Sieng Kim Khim v. Bondi, et al.*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at *4 (W.D. Wash. Dec. 17, 2025). Federal Respondents respectfully submit, however, that in the context of a noncitizen with a final order of removal already in place, pre-deprivation hearings are not mandated by the Due Process Clause where the rationale for the detention is to effectuate the order of removal.

1 Accordingly, Petitioner's claims are speculative and not part of a live controversy because
2 there is no concrete indication that removal to a third country will occur. Thus, these claims should
3 be dismissed as premature.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
6 the Petition.

7 DATED this 12th day of January, 2026.

8 Respectfully submitted,

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17 I certify that this memorandum contains 5,159
18 words, in compliance with the Local Civil Rules.