

District Judge Lauren King

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

BAO LINH PHAM,

Petitioner,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT FIELD OFFICE
DIRECTOR,

Respondent.

Case No. 2:26-cv-00027-LK

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
January 26, 2026

I. INTRODUCTION

This Court should dismiss Petitioner Bao Linh Pham'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. After his recent detention, Petitioner has been in custody for less than a month and ICE has already begun the process to obtain travel documents. Unlike in prior years, Vietnam is now cooperating with the United States in obtaining travel documents and Petitioner is likely to be removed in the near future.

1 Petitioner is a citizen of Vietnam who entered the United States as a legal permanent
2 resident in 1979. Petitioner was ordered removed on June 6, 2001. Subsequently, Petitioner has
3 had a number of criminal convictions including sale of controlled substance, fraud, and probation
4 violations.

5 Petitioner was released on an Order of Supervision ("OSUP") on September 7, 2001, but
6 over the course of the last decade Petitioner came into custody several additional times after
7 criminal convictions and OSUP violations. Most recently, Petitioner was re-detained on
8 December 8, 2025, and an I-200 Warrant for Arrest was issued. That same day, Petitioner was
9 transferred to the Northwest Immigration Processing Center ("NWIPC") and ICE issued a Notice
10 of Revocation of Release. Most recently, Petitioner has been in detention for 43 days, however,
11 over the last thirty years Petitioner has been in custody for approximately 352 days.

12 Contrary to his allegations, Petitioner's detention is lawful. He is a noncitizen subject to
13 an administratively final order of removal, and he is lawfully detained under Section 241 of the
14 Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner's detention also is not
15 indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). With increased cooperation from
16 the government of Vietnam, ICE is working to effectuate Petitioner's removal to Vietnam. Now
17 that he has completed all the travel document forms, when translations of those documents are
18 received, ICE will submit those to Vietnam. ICE anticipates that it will receive travel documents
19 shortly thereafter, and he will be removed to Vietnam in the reasonably foreseeable future.
20 Petitioner's detention is not unconstitutionally indefinite. *See Zadvydas*, 533 U.S. at 701.

21 Accordingly, Federal Respondents respectfully request that the Court deny the Petition.
22 This return is supported by the pleadings and documents on file in this case, the Declaration of
23 Deportation Officer Anthony Rosa ("Rosa Decl."), and the Declaration of Kayla C. Stahman
24

1 (“Stahman Decl.”) with accompanying exhibits. Federal Respondents do not believe any hearing
2 is necessary.

3 II. FACTUAL AND PROCEDURAL BACKGROUND

4 A. Detention Authorities and Removal Procedures

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

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

16 During the removal period, the [Secretary of Homeland Security]¹ shall detain the
17 [noncitizen]. Under no circumstance during the removal period shall the
18 [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.

19 8 U.S.C. § 1231(a)(2).

20 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the
21 expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not
22

23 ¹ Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens,
24 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 mandate detention and does not place any temporal limit on the length of detention under that
2 provision:

3 [A noncitizen] ordered removed who is inadmissible under section 1182,
4 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or
5 who has been determined by the [the Secretary of Homeland Security] to be a risk
6 to the community or unlikely to comply with the order of removal, *may* be
7 detained *beyond the removal period* and, if released, shall be subject to the terms
8 of supervision in paragraph (3).

9 8 U.S.C. § 1231(a)(6) (emphasis added).

10 During the removal period, ICE² is charged with attempting to effect removal of a
11 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time
12 limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen
13 may be detained only “for a period reasonably necessary to bring about that [noncitizen’s]
14 removal from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further
15 identified six months as a presumptively reasonable time to bring about a noncitizen’s removal.
16 *Id.* at 701.

17 Here, Petitioner is the subject of an administrative order of removal that became final on
18 June 6, 2001. Rosa Decl. ¶ 5; Stahman Decl., Exhibit B. Since that order was issued and while
19 on OSUP, Petitioner was convicted of multiple crimes and had several OSUP violations. *Id.* ¶6.
20 Since his arrest, he has been in custody 352 days as of the date of this filing. While in the
21 aggregate, the “presumptively reasonable” six-month custody period has expired – Petitioner has
22 been in ICE custody for just over a month since his re-detention. *Zadvydas*, 533 U.S. at 701.

23 **B. Petitioner Bao Linh Pham**

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.

Petitioner is a native and citizen of Vietnam. Rosa Decl. ¶ 4. He was lawfully admitted as a refugee on October 24, 1979. *Id.* On April 30, 2001, Petitioner was issued a Notice to Appear (Stahman Decl., Exhibit A) and on June 6, 2001, Petitioner was ordered removed to Vietnam (Rosa Decl. ¶ 5; Stahman Decl., Exhibit B). On September 7, 2001, ICE released Petitioner on an Order of Supervised Release because there was not a significant likelihood of removal. Rosa Decl. ¶ 5. Several years later on December 4, 2004, Petitioner was again issued a Notice to Appear. (Stahman Decl., Exhibit C), but was again released on an Order of Supervised Release on December 30, 2004 (Stahman Decl., Exhibit D). Petitioner was detained several more times and again released pursuant to Orders of Supervised Release (Stahman Decl., at Exhibits E; F). A Warrant was issued for Petitioner's arrest on December 8, 2025. Stahman Decl., Exhibit H). On December 9, 2025, CBP took custody of Petitioner. Rosa Decl. ¶ 10; Stahman Decl., Exhibit G. Ultimately, Petitioner's detention since 2001 totaled 352 days; however, his most recent detention period is 43 days.

The Government of Vietnam has recently increased cooperation with the United States and increased the issuance of travel documents in less than 30 days. Rosa Decl. ¶ 16. Following this increased cooperation ICE took Petitioner into custody on December 8, 2025. Rosa Decl. ¶ 10. On December 29, 2025, ICE sent a travel document request packet to a Detention and Deportation Officer at Headquarters Removal and International Operations for review. Rosa Decl. ¶ 14.

III. ARGUMENT

Petitioner's detention is not indefinite or unconstitutionally prolonged

Petitioner has not demonstrated that his detention has become "indefinite" or unconstitutional. In *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an

1 implicit limitation of post-removal detention “to a period reasonably necessary to bring about
2 that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. It was further specified
3 that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, “once removal is no longer
4 reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

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

17 Here, ICE has detained Petitioner for less than two months since he was arrested on
18 December 8, 2025. Rosa Decl. ¶ 8. While the Government does not concede that Petitioner’s
19 detention should be measured in the aggregate, even assuming arguendo that it is, Petitioner’s
20 total detention after his removal became administratively final order is 352 days. While this does
21 exceed six months, Petitioner’s detention remains reasonable given the factors in this case
22 including his criminal conviction and the timeframe in which detention was spread out.

1 The danger Petitioner poses to the community must be considered when determining the
2 reasonableness of his detention to date. Section 1231(a)(6) dictates that an alien who is
3 removeable for having been convicted of an aggravated felony (as Petitioner has been), or who
4 has been determined by the Attorney General to be a risk to the community “may be detained
5 beyond the removal period.” Here, the public safety risk the Petitioner represents is meaningful
6 given his criminal convictions.

7 Furthermore, Petitioner’s detention is not indefinite. ICE is taking active and concrete
8 steps to remove Petitioner to Vietnam. ICE anticipates receiving travel documents expeditiously
9 because the government of Vietnam has agreed to issue travel documents within 30 days. *Id.* ¶¶
10 15-17. Indeed, it has issued travel documents in hundreds of cases just this fiscal year, including
11 154 Vietnamese citizens who entered the United States before July 12, 1995. *Id.*; *Nguyen v.*
12 *Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025) Because of
13 this increased cooperation with the government of Vietnam, Petitioner’s removal will likely
14 occur in the reasonably foreseeable future. *See Rosa Decl.* ¶ 19.

15 The fact that Petitioner does not yet have a specific date of anticipated removal does not
16 make his detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008). Detention
17 becomes indefinite in situations where the country of removal refuses to accept the noncitizen or
18 if removal is legally barred. *Id.* There is no reason to believe that is the situation here.
19 Consequently, Petitioner has failed to demonstrate a good reason to believe that there is no
20 significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at
21 701.

22 IV. CONCLUSION

23 With his removal pending, the government has significant legitimate interests in
24 Petitioner’s continued detention to ensure he will appear for removal and to keep the public safe.

1 Petitioner's detention has not become unconstitutionally "indefinite." Furthermore, because ICE
2 is only seeking to remove him to Vietnam, his third country claim is premature and should be
3 denied. Accordingly, this Court should not order that he be released or otherwise order that
4 Petitioner cannot be removed to a third country.

5 DATED this 20th day of January, 2026.

6 Respectfully submitted,

7 CHARLES NEIL FLOYD
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18 *Attorneys for Respondent*

19 *I certify that this memorandum contains 1,991*
20 *words, in compliance with the Local Civil Rules*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers;

I further certify that on this date, I electronically filed the foregoing, Declaration of Deportation Officer Anthony Rosa, and the Declaration of Kayla C. Stahman with the Supporting Exhibits 1 through 7, with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify that on this date, I arranged for service of the foregoing on the following non-CM/ECF participant, via Certified Mail, return receipt requested, postage prepaid, addressed as follows:

Bao Linh Pham, *Pro Se* Petitioner
A# 
Northwest Detention Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

DATED this 20th day of January, 2026.

s/ Stephanie Huerta-Ramirez
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