

District Judge Jamal N. Whitehead

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

SON TRUONG VO,

Petitioner,

v.

BRUCE SCOTT¹, *et al.*,

Respondents.

Case No. 2:26-cv-00135-JNW

**FEDERAL RESPONDENTS'²
RETURN MEMORANDUM**

Noted for Consideration:
February 3, 2026.

I. INTRODUCTION

This Court should deny Petitioner Son Truong Vo'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 1994. In March 1997, in the Superior Court of Pierce County, Washington, Petitioner was convicted of assault in the first degree for stabbing his then-wife and sentenced to 93 months' incarceration.

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement Laura Hermosillo for Camilla Wamsley.

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 Based on this conviction, he was ordered removed to Vietnam on January 16, 2003, which has
2 since become administratively final. Petitioner was later released on an Order of Supervision
3 (OSUP) on May 30, 2003, due to the inability to obtain travel documents to Vietnam at that time.

4 U.S. Immigration and Customs Enforcement (“ICE”) took Petitioner into custody on
5 December 16, 2025. ICE revoked Petitioner’s order of supervision on that day based on ICE’s
6 determination that there was a significant likelihood of Petitioner’s removal in the reasonably
7 foreseeable future. Petitioner presents no evidence that his re-detention violates substantive or
8 procedural due process, nor that ICE failed to comply with governing 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, the travel document has been compiled and
12 translated into Vietnamese, and the travel document is currently being sent to Vietnam. From the
13 time that the request is issued to the government of Vietnam, travel documents can be issued in
14 approximately 30 days. ICE conducts frequent charter flights to Vietnam once a travel document
15 is issued. Accordingly, Petitioner’s removal is reasonably foreseeable, and any third-country
16 claim is unripe.

17 Petitioner’s detention is lawful. He is a noncitizen subject to an administratively final
18 order of removal, and he is lawfully detained under Section 241 of the Immigration and
19 Nationality Act (“INA”). *See* 8 U.S.C. § 1231. His detention also is not indefinite under *Zadvydas*,
20 533 U.S. 678, 701 (2001) because removal is significantly likely in the reasonably foreseeable
21 future. Accordingly, Federal Respondents respectfully request the Court deny the Petition. No
22 evidentiary hearing is necessary.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Post-Order Detention

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527-29 (2021). The general detention periods are commonly 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 mandated detention during the “removal period,” which is the 90-day period following the issuance of a final order of removal. 8 U.S.C. § 1231(a)(2). During the removal period, ICE is charged with attempting to effectuate removal of a noncitizen from the United States. 8 C.F.R. § 241.2(b); 8 U.S.C. § 1231(a)(1).

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. Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has identified six months as a presumptively reasonable time necessary to bring about a noncitizen’s removal. *Id.*, at 701. Once it is determined that there is no significant

likelihood of removal in the reasonably foreseeable future, noncitizens may be released on an Order of Supervision (“OSUP”). 8 C.F.R. § 241.13(h).

B. Petitioner Son Truong Vo

Petitioner is a native and citizen of Vietnam who was admitted to the United States as a refugee on or about March 4, 1994. Declaration of Anthony Rosa (“Rosa Decl.”) ¶ 3. On March 19, 1997, in the Superior Court of Pierce County, Washington, Petitioner was convicted of assault in the first degree for stabbing his then-wife and sentenced to 93 months incarceration. *Id.* ¶ 4.

On January 2, 2003, Petitioner was taken into DHS custody. *Id.* ¶ 5. On January 6, 2003, Petitioner was issued a Notice to Appear (“NTA”) due to this conviction. *Id.* ¶ 6; Declaration of Alixandria K. Morris (“Morris Decl.”), Exs. 1-2 (NTA; I-213). Petitioner was determined to be removable under Sections 237(a)(2)(A)(i) and 237(a)(2)(A)(iii) of the INA for being convicted of a crime involving moral turpitude within five years of admission and for being convicted of an aggravated felony: crime of violence, respectively. Rosa Decl. ¶ 6.

On January 16, 2003, Petitioner was ordered removed from the United States to Vietnam by an immigration judge (“IJ”). *Id.* ¶ 7; Morris Decl., Ex. 3 (IJ Order). This order of removal is administratively final. Rosa Decl. ¶ 7. On May 30, 2003, Petitioner was released from ICE custody on an Order of Supervision (“OSUP”) due to the inability to obtain a travel document from Vietnam at that time. *Id.*; Morris Decl., Exs. 4-6 (OSUP 2003, 2004, 2009). Between January 2, 2003, and May 30, 2003, Petitioner was detained in ICE custody for 148 days, or 4 months, 28 days excluding the end date. Rosa Decl. ¶ 9. Petitioner was not detained by ICE between May 30, 2003, and December 16, 2025. *Id.*

On December 16, 2025, upon a review of Petitioner’s case, ICE took him back into custody because it was determined that there was now a significant likelihood of removal in the reasonably foreseeable future to Vietnam. Rosa Decl. ¶ 10; Morris Decl., Ex. 7 (Notice of

1 Revocation). This is due to Vietnam's newfound willingness to issue travel documents for its
2 citizens in the United States as well as the rescission of the Memorandum of Understanding
3 ("MOU") between the United States and Vietnam that limited removal of pre-1995 entrants. Rosa
4 Decl. ¶ 10. ICE revoked his OSUP when he was taken into custody. *Id.*

5 Since February 2025, ICE has not received any denials for the issuance of a travel
6 document from the government of Vietnam. Rosa Decl. ¶ 11. ICE conducts frequent charter
7 flights to Vietnam once a travel document is issued. *Id.* ¶ 12. If there is documentation of
8 Vietnamese citizenship, a travel document will be issued without an interview. *Id.* ¶ 13. For those
9 without foreign documents, the government of Vietnam will conduct an interview. *Id.* From the
10 time that the request is issued to the government of Vietnam, travel documents can be issued in
11 approximately 30 days. *Id.*

12 In fiscal year 2025, 699 subjects were removed to Vietnam. Of these, 327 were pre-1995
13 arrivals in the United States that were previously subject to the now-rescinded MOU between the
14 United States and Vietnam. *Id.* ¶ 14. On December 16, 2025, ICE promptly began the process of
15 seeking a travel document for Petitioner. *Id.* ¶ 15. There are several forms required, but the ones
16 prepared on this date were the first steps in the process. *Id.*

17 On January 19, 2026, the completed travel document request was sent to a language
18 translation service for translation into Vietnamese because the government of Vietnam requires
19 travel documents be transmitted in Vietnamese. *Id.* ¶ 16. This typically takes approximately seven
20 days. *Id.* On January 26, 2026, the translated documents were received by ICE and the travel
21 documents request was prepared. *Id.* ¶ 17. Such request is now being sent to the Detention &
22 Deportation Officer ("DDO") within the ERO Removals Division for submission to the
23 government of Vietnam. *Id.* Petitioner is currently detained at the Northwest ICE Processing
24 Center. *Id.* ¶ 18.

III. LEGAL STANDARD

It is axiomatic that “[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

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

Petitioner seeks to challenge his detention on grounds that violated Sections 706(2)(A), (B) and (C) of the Administrative Procedure Act (“APA”). Pet., pg. 3. The Court lacks jurisdiction over those claims.

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

Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs’

claims necessarily implied the invalidity of the Plaintiffs' confinement and removal under the "Alien Enemies Act" and so had to be brought as habeas corpus claims in the jurisdiction of their confinement). As Justice Kavanaugh stated in his concurring opinion, "[e]specially given the history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 674; *cf. O'Banion v. Matevousian*, 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that "habeas actions" provide an "adequate remedy" displacing APA review under Section 704); *and see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018) ("Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.").

Moreover, to be reviewable under the APA an action must be a "final agency action," which is to say that it is the "consummation of the agency's decision making process." *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention pending execution of a removal order is an interim enforcement action, not the consummation of agency decision-making. *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly, Petitioner's claims based on alleged APA should be denied.

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

"Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that Petitioner's detention is consistent with his due process rights. Under *Mathews*, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.*, at 333 (internal quotation marks omitted). This calls for an analysis

1 of (1) “the private interest that will be affected by the official action,” (2) “the risk of an erroneous
2 deprivation of such interest through the procedures used, and probable value, if any, of additional
3 or substitute procedural safeguards,” and (3) the Government’s interest. *Id.*, at 334-35.

4 **1. Petitioner’s liberty interest in remaining released on conditions is**
5 **reduced.**

6 Respondents recognize the “weighty liberty interests implicated by the Government’s
7 detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y.
8 Aug. 20, 2021). However, Petitioner’s interest in his liberty *generally* does not mean that he
9 possesses a separate or heightened liberty interest in the continuation of his conditional release
10 on OSUP.³ The recognized liberty interests of U.S. citizens and aliens are not coextensive: the
11 Supreme Court has “firmly and repeatedly endorsed the proposition that Congress may make rules
12 as to aliens that would be unacceptable if applied to citizens.” *Rodriguez Diaz*, 53 F.4th at 1206
13 (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, “[i]n
14 the exercise of its broad power over naturalization and immigration, Congress regularly makes
15 rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80
16 (1976).

17 Petitioner’s release on OSUP was always subject to many conditions, including that he
18 was being released solely because ICE was unable to secure a travel document from Vietnam at
19 the time. Accordingly, Petitioner cannot now claim that the Respondents promised him ongoing,
20 limitless freedom from detention.

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23
24 ³ 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.

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" an alien can be removed from the United States within the "reasonably foreseeable future," ICE is clearly permitted to revoke the OSUP and take the alien into custody; nothing else is required for revocation under these circumstances. *Id.* § 241.13(i)(1) and (2); *see also Nizar Esmail v. Noem, et al.*, 2025 WL 3030590, at *2 (C.D. Cal. Sept. 12, 2025).⁴

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

Here, ICE took custody of Petitioner based on its determination that Petitioner could be removed expeditiously. *Morris Decl.*, Ex. 7. Upon revocation, ICE provided Petitioner with written notice of the specific reasons for its determination. *Id.* That same notice informed

⁴While 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 Petitioner that ICE would conduct an informal interview with Petitioner promptly. *Id.* Petitioner's
2 fails to meet his burden to demonstrate his unevidenced contentions that he was detained without
3 cause, notice, and an opportunity to respond. Pet. ¶ 84; Dkt. 5, Declaration of Jennifer Pasquarella
4 ("Pasquarella Decl.") ¶ 5. Petitioner's assertion that ICE did not provide Petitioner notice of the
5 reason for revocation is controverted by the evidence demonstrating that Petitioner was provided
6 notice and evidencing Petitioner's own signature of receipt of that notice on the date of his
7 detention. *See* Morris Decl., Ex. 7; *but see* Pet., ¶ 84; Pasquarella Decl. ¶ 5.

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

10 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
11 test "must account for the heightened government interest in the immigration detention context."
12 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth
13 Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in
14 preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*,
15 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). The government likewise has an interest in
16 removing individuals once there is a significant likelihood of their removal. This is especially true
17 where, as here, Petitioner's crime underlying his removal is particularly egregious—the stabbing
18 of his then-wife.

19 In sum, the three *Mathews* factors demonstrate that Petitioner's detention comports with
20 procedural due process and that ICE adhered to its own regulations in revoking Petitioner's
21 OSUP.

22 **4. Petitioner's detention comports with substantive due process.**

23 Petitioner argues that his detention is unlawful in violation of *Zadvydas*. The burden is on
24 Petitioner to show that there is "good reason to believe that there is no significant likelihood of

1 removal in the reasonably foreseeable future.” *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir.
2 2003) (citing *Zadvydas*). If a petitioner meets his evidentiary burden, the government must then
3 introduce evidence to refute the petitioner’s assertion. *Id.*

4 It is undisputed that Petitioner is subject to an administratively final removal order. Morris
5 Decl., Ex. 3. Following his removal order, Petitioner remained in custody for approximately four
6 months (148 days⁵), until he was released on OSUP. Rosa Decl. ¶ 9, Ex. 4 (2003 OSUP). Here,
7 Petitioner has only been detained in his current period of detention for 44 days⁶—well within the
8 presumptively reasonable period established by *Zadvydas*. While the government does not
9 concede that detention time should be calculated in the aggregate, even if this Court were to Count
10 time Petitioner was detained in 2003, this would mean that Petitioner’s total time in post-order
11 detention totals 192 days⁷ as of the date of this filing—12 days above the six month presumptively
12 reasonable period in *Zadvydas*.

13 In *Zadvydas*, the Supreme Court noted the six-month “presumptively reasonable” post-
14 order detention period “does not mean that every [noncitizen] not removed must be released after
15 six months. 533 U.S. at 701. To the contrary, [a noncitizen] may be held in confinement until it
16 has been determined that there is no significant likelihood of removal in the reasonably
17 foreseeable future.” *Id.* The *Zadvydas* Court recognized that as the length of detention grows, a
18 sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order
19 detention. *Id.* (stating that “for detention to remain reasonable, as the period of post-removal
20 confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to
21 shrink”). However, the Supreme Court determined that it is “presumptively reasonable” for the

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23 ⁵ Federal Respondents calculated 148 days between the date of the final order of removal by the immigration judge
on January 2, 2003, and the date of Petitioner’s release on OSUP on May 30, 2003. *See* Rosa Decl. ¶¶ 7-9.

24 ⁶ Federal Respondents calculated 44 days between December 16, 2025, to the date of this filing, January 29, 2026.

⁷ Federal Respondents calculated 192 days by combining Petitioner’s 2003 detention time of 148 days plus the 44
days of the current detention period.

1 Government to detain a noncitizen for six months following entry of a final removal order, while
2 it worked to remove the noncitizen from the United States. *Id.* at 701. Thus, the Supreme Court
3 implicitly recognized that six months is the *earliest* point at which a noncitizen's detention could
4 raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption
5 "does not mean that every [noncitizen] not removed must be released after six months. To the
6 contrary, [a noncitizen] may be held in confinement until it has been determined that there is no
7 significant likelihood of removal in the reasonably foreseeable future." *Id.*

8 While the Government does not concede that Petitioner's presumptively reasonable period
9 has ended⁸, even assuming *arguendo* that it has, Petitioner fails to demonstrate that there is good
10 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
11 future. In approximately 44 days of detention, ICE has compiled the travel document, translated
12 the document into Vietnamese, and sent the document for submission to the government of
13 Vietnam. Rosa Decl. ¶¶ 15-17. Vietnam is cooperating with the United States on removal of pre-
14 1995 entrants. *Id.* ¶ 10. In deportation officer Rosa's experience, from the time that the request is
15 issued to the government of Vietnam, travel documents can be issued in approximately 30 days.
16 *Id.* ¶ 13. Once the travel document is received, ICE can remove Petitioner expeditiously as ICE
17 conducts frequent charter flights to Vietnam once a travel document is issued. *Id.* ¶ 12.

18 Thus, Petitioner has failed to demonstrate a good reason to believe that there is no
19 significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at
20 701. Accordingly, Petitioner's detention does not violate principals of substantive due process.

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22 ⁸ 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.

C. 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. As such, the authorities cited in this section to argue a requirement for a hearing prior to being detained provide little meaningful guidance.

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.*, 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). However, this Court should not infer arguments or case law which the Petitioner did not argue. *Romero-Aguilar v. Holder*, 397 Fed.Appx. 399, 2010 WL 3825644 (9th Cir. Sept. 29, 2010).

This is especially true where district court decisions do not freeze the law or require universal acquiescence by the government. *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.") (internal quotations omitted). Although *Camreta* arose in the qualified-immunity context, the Court's reasoning applies with equal force here. As the Supreme Court further explained in *Camreta*,

1 “district court decisions—unlike those from the courts of appeals—do not necessarily settle
2 constitutional standards or prevent repeated claims.” *Id.* This principle is particularly true in the
3 context of habeas litigation where injunctive relief must be based on the facts of individuals
4 petitioner’s circumstances and cannot be granted to a class of petitioners. *See* 8 U.S.C. §
5 1252(f)(1).

6 In the context of a noncitizen with a final order of removal already in place, pre-
7 deprivation hearings are not mandated by the Due Process Clause where the rationale for the
8 detention is to effectuate the order of removal, and removal appears not only significantly likely
9 but imminent.

10 **D. Petitioner’s Third Country Claims are Without Merit and Not Ripe for Review**

11 Petitioner presents no evidence of any intention by ICE to remove Petitioner to a third
12 country. *See* Pet., pgs. 15-21. Petitioner purports to bring claims challenging the constitutionality
13 of his possible removal to a third country as a likely violation of the Fifth Amendment, 8 U.S.C.
14 § 1231, the Eighth Amendment, the Convention Against Torture, the INA, the APA, and relevant
15 implementing regulations. *Id.* Such claims are based on the hypothetical scenario of his removal
16 to a third country other than Vietnam, which are entirely speculative and not ripe for review.
17 Petitioner has a removal order to Vietnam. Morris Decl., Ex. 3. ICE has completed travel
18 documents for Vietnam, had them translated in Vietnamese, and is currently in the process of
19 submitting them to the Vietnamese government. Rosa Decl. ¶¶ 15-17. From the time that the
20 request is issued to the government of Vietnam, travel documents can be issued in approximately
21 30 days. *Id.* ¶ 13. Based on these facts, there is no case or controversy because there is no concrete
22 indication that removal to any third country will occur.

23 In any event, at least one court in this district has found that such claims are not the proper
24 subject of an immigration habeas petition, considering that Petitioner presents no evidence that

1 Federal Respondents seek to remove him to a third country. *See Tran*, 2025 WL 3140462, at *4
2 (citing *Zadvydas*, 533 U.S. at 688).

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

6 **E. Petitioner's Equitable Defense of Laches Argument is Without Merit.**

7 Petitioner concedes that laches does not apply against the federal government yet
8 nonetheless attempts to recast his claim as one of "affirmative misconduct" based on the passage
9 of time between his final removal order and his re-detention. Pet. ¶¶ 123–129. This argument is
10 legally unsupported and factually flawed.

11 As an initial matter, delay alone—particularly delay attributable to a foreign sovereign—
12 cannot constitute affirmative misconduct by the United States. *See e.g., INS v. Miranda*, 459 U.S.
13 14, 18 (1982). Here, the delay in executing Petitioner's removal was the direct result of Vietnam's
14 prior unwillingness to issue travel documents, not any improper conduct by ICE. In compliance
15 with *Zadvydas*, ICE released Petitioner when removal was not reasonably foreseeable and re-
16 detained him only after circumstances materially changed. Rosa Decl. ¶¶ 8–10.

17 Nothing in *Zadvydas*, the INA, or governing regulations creates an equitable defense
18 barring re-detention once removal again becomes foreseeable. To the contrary, the statutory
19 scheme expressly contemplates conditional release followed by re-detention when removal
20 prospects change. *See* 8 C.F.R. § 241.13(i).

21 Petitioner's theory would improperly transform compliance with Supreme Court
22 precedent into a permanent bar on enforcement of a valid removal order. Neither equity nor law
23 supports such a result.

1 **F. Even if this Court were to grant Petitioner habeas relief, it should not grant all the**
2 **Relief requested.**

3 Even if this Court were to grant habeas relief here, it lacks jurisdiction to award some of
4 the relief Petitioner requests. Specifically, Petitioner asks the Court to enjoin Respondents from
5 “re-detaining and removing or seeking to remove Petitioner without first reopening removal
6 proceedings.” Pet., Prayer ¶ (f). This request is squarely barred by statute.

7 Under 8 U.S.C. § 1252(g), no court has jurisdiction over claims arising from the decision
8 to “execute removal orders.” The Supreme Court has repeatedly confirmed that § 1252(g) strips
9 courts of authority to enjoin removal-related actions, even when framed as constitutional claims.
10 Granting Petitioner’s requested relief would directly contravene this jurisdictional bar.

11 Moreover, Petitioner already possesses an administrative avenue to seek reopening of
12 removal proceedings if he believes he is entitled to asylum, withholding of removal, or
13 Convention Against Torture protection. *See* 8 C.F.R. § 1003.23(b)(4)(i). That process does not
14 require judicial intervention, nor does ICE policy prohibit its use during post-order detention.

15 To date, Respondents are unaware of Petitioner having pursued any such relief. Habeas
16 corpus is not a substitute for administrative remedies that Petitioner may—but has not—chosen
17 to pursue. Accordingly, even if detention relief were appropriate, the Court should deny
18 Petitioner’s requested injunctive relief as jurisdictionally barred and substantively unwarranted.

19 **V. CONCLUSION**

20 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
21 the Petition.

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24 //

1 Dated this 29th day of January, 2026.

2 Respectfully submitted,

3 CHARLES NEIL FLOYD
4 United States Attorney

s/ Alexandria K. Morris

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15 I certify that this memorandum contains 4,886
16 words, in compliance with the Local Civil Rules.