

**United States District Court
Western District of Texas
El Paso Division**

Phong Vang,

Petitioner,

v.

No. 3:26-CV-117-KC

Mary De Anda-Ybarra et. al.

Respondents.

**ABBREVIATED RESPONSE TO HABEAS PETITION AND REQUEST TO
PROCEED WITHOUT ORAL ARGUMENT**

STATEMENT OF ISSUES

1. Whether Petitioner's detention under 1231 is lawful given that Petitioner has a final order of removal.

Federal Respondents timely submit this response per this Court's Order directing service and ordering a response. In his petition for writ of habeas Petitioner seeks release from civil immigration detention, claiming that his 1-month post-removal-order detention has become indefinite, contrary to statute and the Due Process Clause. *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Petitioner has been detained only since January 6, 2026. Detention can be extended past the removal period in the exercise of discretion where removal is reasonably foreseeable. 8 U.S.C. § 1231(a)(6). ICE decided in its discretion to continue Petitioner's detention past the 90-day removal period, which is a decision protected from judicial review. 8 U.S.C. § 1252(a)(2)(B).

Petitioner has not shown here that there is no likelihood of removal in the reasonably foreseeable future. Even if Petitioner were able to make such a showing, the burden would shift to Respondents who can show that removal in fact, significant likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner Vang is a native and citizen of Laos. Ex. A, Affidavit ¶ 6. On or about September 13, 1989, Vang was admitted to the United States at St. Paul, Minnesota as a Refugee. *Id.* ¶ 6. Vang adjusted his status to that of a lawful permanent resident on or about May 20, 1991. *Id.* ¶ 7. On or about March 18, 1993, Vang was convicted in La Cross County Circuit Court, Branch I, Wisconsin for the offense of party to the crime of burglary, in violation of sections 939.05 and 943.10(1)(a) of the Wisconsin Statutes Annotated. *Id.* ¶ 8. Vang was sentenced to six years imprisonment for this offense. *Id.* On February 1, 1995, deportation proceedings were initiated against Vang with the Immigration Court by the filing of an Order to Show Cause. *Id.* ¶ 9.

Vang was found to be removable under the following: (1) section 241(a)(2)(A)(i) of the Immigration and Nationality Act, as an alien convicted of a crime involving moral turpitude committed within five years of entry and sentenced to confinement, or has been confined, therefore, in prison or a correctional institution for one year or longer; (2) section 241(a)(2)(A)(iii) of the Immigration and Nationality Act, as an alien who has been convicted of an aggravated felony as defined in section 101(a)(43) of the Act; and (3) section 241(a)(2)(C) of the Immigration and Nationality Act, as an alien who at any time after entry has been convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, any weapon, part, or accessory, which is a firearm or a destructive device, in violation of any law. *Id.* ¶ 10. On March 10, 1998, Vang was ordered deported to Laos by an Immigration Judge out of Bloomington, Minnesota. *Id.* ¶ 11.

On March 25, 1998, Vang filed an appeal with the Board of Immigration Appeals (BIA), appealing the Immigration Judge's March 10, 1998, deportation order. *Id.* ¶ 12. On June 7, 2000, the BIA remanded the case in part back to the Immigration Judge for further proceedings. *Id.* ¶ 13. On February 24, 2003, the Immigration Judge granted Vang deferral of deportation from Laos and subsequently ordered him deported to any country other than Laos. *Id.* ¶ 14. August 5, 2005, Vang was released from the Ramsey County Adult Detention Center in St. Paul, Minnesota after serving time for a separate conviction for a dangerous weapons charge. *Id.* ¶ 15. Vang was released from custody under an Order of Supervision (OSUP) after his removal to a third country did not appear reasonably foreseeable at the time. *Id.* ¶ 16. As a condition of his OSUP, Vang was to report monthly to immigration officials. Since at least 2013, Vang was then required to report yearly to immigration officials. *Id.*

On January 6, 2026, Vang was arrested during an immigration operation in Minneapolis, Minnesota. ERO arrested Vang to effectuate his deportation order due to ERO's determination that he could now be removed to a third country in the reasonably foreseeable future. *Id.* ¶ 17. On January 7, 2026, Vang was transferred to the El Paso Camp East Montana detention facility in El Paso, Texas. *Id.* ¶ 18. On January 12, 2026, Vang was served with Form I-205, Warrant of Removal/Deportation, and Form I-294, Warning to Alien Ordered Removed or Deported. *Id.* ¶ 19. Since being arrested by ERO, Vang has stated multiple times that if he were to be deported, he wished to be deported to Laos. *Id.* ¶ 20. For this request, Vang cited that things are much different in Laos now than when he was granted deferral of deportation 2003, and that he knew the language in Laos. *Id.* On January 21, 2026, upon Vang's request for deportation to Laos, ERO El Paso erroneously submitted a deportation request for Laos to ICE Headquarters (HQ) Removal International Operations (RIO). *Id.* ¶ 21. After a closer review, on January 26, 2026, it was brought to ERO El Paso's attention that Vang could not be deported to Laos. *Id.* ¶ 22. ERO advised Vang that deportation to Laos would not be possible due to the Immigration Judge's February 24, 2003, order preventing deportation to Laos. *Id.* ¶ 23.

On January 27, 2026, ERO El Paso withdrew the deportation request for Laos from ICE HQ RIO. *Id.* ¶ 24. That same day, ERO El Paso contacted ICE HQ RIO for assistance in coordinating Vang's deportation to a third country. ICE HQ RIO tasked ERO El Paso with providing a complete travel document request. *Id.* ¶ 25. A completed travel document request includes: (1) removal order; (2) charging document; (3) Form I-217, Information for Travel Document or Passport; (4) Information for Travel Document or Passport; (5) Copy of any minor child information, if applicable; (6) copy of National ID; (7) Copy of other identification document; (8) copy of passport; (9) copy of self-declaration form; (10) copy of summary criminal

page; (11); copy of applicable Checklist; and (12) biometric information. *Id.* ¶ 26. ERO El Paso is still actively working to compile a completed travel document request to submit to ICE HQ RIO using the above criteria. *Id.* ¶ 27. ICE HQ RIO is actively working to identify a third country to deport Vang to. *Id.* ¶ 28. On February 2, 2026, ERO El Paso served Vang with a Notice of Revocation of Release. *Id.* ¶ 29. ERO anticipates no impediments to deporting Vang to a third country upon ICEHQ RIO identification of such country and prompt submission of a travel document request. *Id.* ¶ 30.

II. Detention Is Lawful Under 8 U.S.C. §1231(a)(6).

The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231(a). That statute affords ICE a 90-day mandatory detention period within which to remove the alien from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of three dates: the date (1) the order becomes “administratively final,” (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B).

Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Under § 1231, the removal period can be extended in at least three circumstances. *See Glushchenko v. U.S. Dep’t of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien presents a flight risk or other risk to the community. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). An alien may be held in confinement until there is “no significant likelihood of removal in a reasonably foreseeable future.” *Zadvydas*, at 533 U.S. at 680.

III. There Is No Good Reason to Believe That Removal to a third country Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show “good reason” to believe that removal to a third country is unlikely. In *Zadvydas*, the U.S. Supreme Court held that § 1231(a)(6) “read in light of the Constitution’s demands, limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States” but “does not permit indefinite detention.” 533 U.S. at 689. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute.” *Id.* at 699. The Court designated six months as a presumptively reasonable period of post-order detention but made clear that the presumption “does not mean that every alien not removed must be released after six months.” *Id.* at 701.

Once the alien establishes that he has been in post-order custody for more than six months at the time the habeas petition is filed, the alien must provide a “good reason” to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006); *Gonzalez v. Gills*, No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien establishes the requisite “good reason,” the burden will not shift to the government to prove otherwise. *Id.*

The “reasonably foreseeable future” is not a static concept; it is fluid and country-specific, depending in large part on country conditions and diplomatic relations. *Ali v. Johnson*, No. 3:21–CV–00050-M, 2021 WL 4897659 at *3 (N.D. Tex. Sept. 24, 2021). Additionally, a lack of visible progress in the removal process does not satisfy the petitioner’s burden of showing that there is no significant likelihood of removal. *Id.* at *2 (collecting cases); *see also Idowu v. Ridge*, No. 3:03–CV–1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003). Conclusory allegations are also insufficient to meet the alien’s burden of proof. *Nagib v. Gonzales*, No. 3:06–CV–0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and*

Customs Enforcement, No. 1:03-CV-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004)). One court explained:

To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that “the circumstances of his status” or the existence of “particular individual barriers to his repatriation” to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4 (citation omitted).

Since the entry of a final order of removal, Petitioner was released under an order of supervision and required to report monthly to immigration officials. Ex. A ¶ 16. Petitioner was subsequently taken back into immigration custody on January 6, 2026. Ex. A, ¶ 17. Furthermore, even though Petitioner has stated that he wants to be deported back to Laos, there is an order stating that he cannot be deported there. Ex. A ¶¶ 20-22. The period of detention at issue therefore began in late January following re-apprehension by immigration authorities and has continued in connection with the existing final order of removal and ongoing removal efforts. Ex. A.

Petitioner’s conclusory and speculative claims are wholly insufficient to meet his burden of proof under *Zadvydas*. See *Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); see also *Andrade*, 459 F.3d at 543–44; *Boroky v. Holder*, No. 3:14-CV-2040-L-BK, 2014 WL 6809180, at *3 (N.D. Tex. Dec. 3, 2014). As such, Petitioner cannot meet his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. See *Thanh v. Johnson*, No. EP-15-CV-403-PRM, 2016 WL 5171779, at *4 (W.D. Tex. Mar. 11, 2016) (denying habeas relief where government travel documents). The burden of proof, therefore, does not shift to Federal Respondents to prove that removal is likely.

Nothing in the record indicates that removal is impracticable or barred, nor does Petitioner identify any individualized legal or factual obstacle that would prevent repatriation. Instead, the record reflects an active custodial status pursuant to a final order of removal, and recent agency processing. Ex. A. The mere passage of about one months in post-order custody, without more, does not establish that removal is not reasonably foreseeable, particularly where the detention period remains well within the timeframe routinely upheld by courts applying § 1231(a)(6) and *Zadvydas*.

IV. Conclusion

There is no good reason to believe that removal to a third country in the reasonably foreseeable future is unlikely. Continued detention under 1231(a)(6), therefore, is lawful. Accordingly, the Court should deny this petition.

Respectfully submitted,

JUSTIN R. SIMMONS
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