

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

PHONG VANG,	)	
	)	
Petitioner,	)	C/A No.
v.	)	3:26-cv-00117-KC
MARY DE ANDA-YBARRA, <i>in her official</i>	)	
<i>capacity</i> as Field Office Director of	)	
Enforcement and Removal Operations, El	)	PETITIONER'S REPLY
Paso Field Office, Immigration and Customs	)	
Enforcement; Warden of ERO El Paso Camp	)	
East Montana;	)	
	)	
TODD M. LYONS, <i>in his official capacity</i> as	)	
Acting Director, Immigration and Customs	)	Agency #
Enforcement, U.S. Department of Homeland	)	
Security;	)	
	)	
KRISTI NOEM, <i>in her official capacity</i> as	)	
Secretary, U.S. Department of Homeland	)	
Security;	)	
	)	
and	)	
	)	
PAMELA JO BONDI, <i>in her official capacity</i>	)	
as Attorney General of the United States;	)	
Respondents.		

INTRODUCTION

Respondents revoked Petitioner's order of supervision and detained him decades after his final order of removal without warning. Respondents claim they can show a significant likelihood of removal in the reasonably foreseeable future. *See* ECF Doc. 3. However, they produce no evidence, provided no explanation that constitutes "changed circumstances" at the time of detention that would permit them to revoke Petitioner's release and re-detain him, or provided any notice. *There is no evidence, and therefore Respondents are devoid of any credibility.* Respondents in Minneapolis engaged in what has become its new, illegal norm – snatch, grab, fly away from one's family, *and then divine a reason after the fact.* Respondents shirked their legal responsibilities and now contrive a less than significant possibility without showing any compliance with § 1231. The Court should be appalled.

REPLY ARGUMENT

I. RESPONDENTS VIOLATED THEIR REGULATIONS.

Respondents do not allege any violation of conditions to justify Petitioner's re-detention. Respondents only claim Petitioner has not met the detention requirements of *Zadvydas v. Davis*, 533 U.S. 678 (2011). Respondents provide no basis for why Petitioner was detained at the time of his *re*-detention aside from generally effectuating removal. *See generally* ECF Doc. 3; Respondents' Exh. A.

This paltry, singular reason is woefully insufficient to justify the constitutional intrusion on Petitioner's freedom.

8 C.F.R. § 241.13(h)(4) permits re-detention in order to effect removal in the *reasonably* foreseeable future states that ICE may “return the alien to custody if, on account of **changed circumstances**, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2) (emphasis added). “Petitioner may **only** be re-detained if he violates a condition of release, or ‘changed circumstances’ demonstrate a ‘significantly likelihood that [he] may be removed in the reasonably foreseeable future.’” *Ashqar v. LaRose*, 2019 WL 1793000, at *11 (N.D. Ohio Mar. 26, 2019) (emphasis added). 8 C.F.R. § 241.13 requires that ICE “determine[]” that “on account of changed circumstances,” there “is a significant likelihood that the [noncitizen] will be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). “[T]he regulations at issue in this case place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future.” *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (“it is the Service's burden to show a significant likelihood that the alien may be removed”). These

circumstances must have changed before the Service re-detained. *See* 8 C.F.R. § 241.13(i)(3). Respondents have not met their burden here.

Furthermore, if ICE elects to revoke a noncitizen's release under 8 C.F.R. § 241.13(i)(2), the noncitizen must "be notified of the reasons for revocation of his or her release," and ICE must "conduct an initial informal interview promptly after [the noncitizen's] return to [ICE] custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(i)(3) (emphasis added). The determination as to whether a non-citizen like Petitioner can be re-detained must be based on "(1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (quoting 8 C.F.R. § 241.13(i)(2)). Respondents claim to have served Petitioner a Notice of Revocation of Release on February 2, 2026 - 27 days after his re-detention. *See* Respondents' Exh. A, ¶ 29. However, Respondents have not produced any notice revoking Petitioner's order of supervision or record that an interview occurred.

Respondents aver, despite the mandate to do much more, in hindsight, Petitioner was detained "due to ERO's determination that he could now be removed to a third country in the reasonably foreseeable future." *See* Respondents' Exh. A, ¶ 17. However, Respondents did not initially pursue third country removal, requesting

Petitioner's deportation to Laos. *See id.*, at ¶ 21. Twenty days after Petitioner was detained, Respondents conducted a "closer review" and discovered could not be removed to Laos, as Petitioner was ordered removed to "any country other than Laos." *See id.*, at ¶¶ 14, 22. The Court cannot ignore the disorder and lack of diligence ICE in Minneapolis exemplified in recent months.

Contrary to Respondents' claims that Petitioner was re-detained "due to ERO's determination that he could now be removed to a third country in the reasonably foreseeable future[,]" Respondents admit that ICE did not begin third country removal coordination until January 27, 2026. *See* Respondents' Exh. A, ¶¶ 17, 25. Currently, Respondents are considering removal to Bangladesh but have yet to submit that request to Bangladesh. *See* ECF Doc. 5. This is insufficient to show changed circumstances. *See Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *9 (S.D. Tex. Oct. 16, 2025) (citing *Roble v Bondi*, 2025 WL 2443453 at *4) (finding Government didn't meet its burden of showing changed circumstances by "bare fact that ICE officials ... requested third-country removal assistance from ICE headquarters"). Respondents have deprived the Court with notice "as to *what* changed circumstances exist such that [his] removal [was] now significantly likely in the reasonably foreseeable future" *at the time they detained him*. *See Roble*, 2025 WL 2443453, at *3. There is a difference "between the 'reasons for revocation' mentioned in 8 C.F.R. § 241.13(i)(3) and the *categories* of

revocation listed in 8 C.F.R. § 241.13(i)(1) and (2).” *Sarail A. v. Bondi*, No. 25-CV-2144 (ECT/JFD), 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). There is no tolerance for manufacturing reasons after the fact..

Respondents do not suggest ICE provided Petitioner with any notice of a new country designation and afford him the opportunity to assert 8 U.S.C. § 1231(b)(3). “And even if ICE were to identify a country that would accept Petitioner, ‘any efforts to remove [him] to a third country would likely be delayed by proceedings contesting his removal to the third country finally identified.’” *Aguilar v. Noem*, No. 25-CV-03463-NYW, 2025 WL 3514282, at *4 (D. Colo. Dec. 8, 2025) (quoting *Villanueva v. Tate*, 2025 WL at *10). “When a petitioner ‘likely will have the opportunity to seek further relief from the Immigration Court, and then potentially file appeals from any adverse rulings,’ the circumstances ‘further demonstrate[] that removal is not likely in the reasonably foreseeable future.’” *Shengelia v. Ortega*, No. 5:25-CV-1545-JKP, 2025 WL 3654368, at *4 (W.D. Tex. Dec. 16, 2025) (quoting *Zavvar*, 2025 WL 2592543). Respondents’ regulatory violations are clear, and Petitioner’s detention is unlawful. This Court should grant the Petition and order Petitioner’s immediate release.

The litany of regulations that Respondent discard is endless. Respondents did not provide Petitioner with notice “[u]pon revocation” for the reasons of revocation, 8 C.F.R. § 241.13(i)(3). Respondents did not conduct an informal interview. 8

C.F.R. § 241.13(i)(3). Respondents failed to provide Petitioner with a meaningful opportunity to respond to the reasons for revocation stated in the notice, in violation of 8 C.F.R. § 241.13(i)(3). Petitioner could not possibly respond when given nothing. Respondents have shown a total disregard for the safeguards in place to prevent the unconstitutional detention of a person. The Court must release Petitioner.

II. RESPONDENTS VIOLATED PETITIONER'S DUE PROCESS RIGHTS.

“[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process.” *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 157 (W.D.N.Y. 2025). Respondents violated their own regulations. *See supra* § II. Respondents attempt to place the burden on Petitioner in contravention with regulations and caselaw. *See id.* Respondents were provided the opportunity to show why there is a significant likelihood of removal in the reasonably foreseeable future, as the law requires them to, and yet Respondents have provided no evidence or arguments on the matter. Respondents' actions violate Petitioner's right to due process, and the Court should grant this Petition. Petitioner's detention is unreasonable under *Zadvydas*.

Petitioner's 90-day removal period passed in 2005, and *Zadvydas* applies to the circumstances of re-detention. *See, e.g., Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18 (S.D. Tex. Dec. 23, 2025); *Momennia v. Bondi*, No. 5:25-cv-01067-J, Doc. No. 18, at 18 n8 (W.D. Okla. Oct. 15, 2025); *Qui v. Carter*, 2025 WL 2770502, at

*4 (D. Kan. Sept. 26, 2025) (explaining, in re-detention case, that “petitioner’s release is warranted under the Supreme Court’s *Zadvydas* framework”). The removal period does not reset simply because a noncitizen is re-detained. “[T]here is no language in 8 U.S.C. § 1231 or in *Zadvydas* to support the contention that the presumption of reasonable detention resets at the time a noncitizen is re-detained after being released on an order of supervision.”

The removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B). Therefore, once the 90-day removal period ran, the only thing that would reset it to the beginning is a new administratively final removal order, a final order from a reviewing Court of Appeals that had previously entered a stay of removal, or a noncitizen’s release from criminal detention or confinement. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *8 (W.D. La. Oct. 15, 2019), *R&R adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019) (citing *Bailey v. Lynch*, 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). Petitioner was released from criminal detention on August 5, 2005, and none of the other subsections of the statute apply here. *See* Respondents’ Exh. A, ¶ 15. Therefore, the 90-day removal period ran.

The *Zadvydas* 180-day period runs from the date of the final order and does not reset or require time-in-custody. *See Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18, at 13 (S.D. Tex. Dec. 23, 2025) (“Based on a plain reading of 8 U.S.C. § 1231(a)(1)(A) and the Supreme Court’s reasoning in *Zadvydas*, Mrs. Zhu’s six-month period of presumptively reasonable detention expired in April of 2009, six months after her removal order became administratively final. Therefore, Mrs. Zhu’s current detention is not presumed to be reasonable.”). Numerous cases,¹ as well as common sense, reject Respondents’ assertion that the 180-day *Zadvydas* clock should automatically reset every time a noncitizen is released from custody on an Order of Supervision. If Respondents’ interpretation wins out, Respondents should simply release noncitizens at 179 days of custody for a 24-hour period before re-detaining the noncitizen. This sort of gamesmanship would be rewarded and prevent *Zadvydas* claims from ever arising. It is unlikely the Supreme Court intended such a result.

¹ *See, e.g., Zadvydas*, 533 U.S. at 701; *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) (“ICE’s decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE’s own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.”); *Va V. v. Bondi*, No. 25-CV2836 (LMP/JFD), slip op. at *6-12 (D, Minn. Aug. 11, 2025) (holding that until ICE proved it had a travel document allowing for immediate deportation, it failed to demonstrate changed circumstances justifying redetention of an individual under 8 C.F.R. § 241.13(i)).

The presumptively constitutional period of detention here has long passed. Petitioner lived under an order of supervision for more than twenty years. Petitioner's most recent detention has now passed 62 days. Respondents "could have been making the required travel arrangements or securing approval from other countries throughout that time, and the presumption of reasonable detention 'differ[s] in circumstances where, before the period of detention began, the Government had a period of time . . . to make the arrangements for removal.'" *Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18, at 13 (S.D. Tex. Dec. 23, 2025) (citing *Zavvar v. Scott*, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025)). The 180-day clock passed long ago, and Petitioner should be released.

Even if the *Zadvydas* six-month presumptively reasonable period only counts days spent behind bars during the current period of detention, that presumption of reasonableness *is still rebuttable* prior to that period's expiration. *See Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18, at 13 (S.D. Tex. Dec. 23, 2025).² Petitioner's

² *See also Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008) ("Nothing about [the *Zadvydas*] scheme supports the conclusion drawn by many courts that the presumptive legality of detention within the first six months is irrebuttable."); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 395 (D.N.J. 2025) ("Although the Supreme Court established a six-month period of presumptively reasonable detention, it did not preclude a detainee from challenging the reasonableness of his detention before such time."); *Medina v. Noem*, 794 F. Supp. 3d 365, 375 (D. Md. 2025) ("The reasoning in *Zadvydas* suggests that before the six-month period expires, the burdens of production and persuasion remain with a person who has been detained, to establish that removal is not reasonably foreseeable."); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) ("Whereas the

removal is not reasonably foreseeable. Respondents have offered no evidence to show a change of circumstances. Petitioner's removal is not reasonably foreseeable, and he must be released.

CONCLUSION

Respondents again disregarded its regulations to detain an individual in Minnesota absent any changed circumstances. *See* Petitioner's Exh. A-F. This is happening over and over again - regulations are disregarded and detainees are scattered to suffer indeterminate amounts of unlawful detention. Respondents present no evidence to support any changed circumstances justifying re-detention. The Court cannot validate such lawlessness. Petitioner respectfully requests that the Court grant his petition and order his immediate release.

Zadvydas Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.”); *Sagastizado v. Noem*, 2025 WL 2957002, at *13 n.3 (S.D. Tex. Oct. 2, 2025) (rejecting this argument on the ground that there is no “controlling precedent or legal support to indicate that six months must have elapsed at the time of filing” and concluding that the six-month period is a rebuttable not preclusive presumption); *Villanueva v. Tate*, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025) (“nothing in *Zadvydas* precludes a challenge to detention before the presumptively constitutional time period has elapsed”); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D. N.J. 2025) (recognizing that the *Zadvydas* presumption is rebuttable and that “[t]o hold otherwise would condone detention in cases where removal is not reasonably foreseeable or even functionally impossible, so long as it did not exceed six months.” (citations omitted)).

Respectfully submitted,

/s/ David L. Wilson

March 9, 2026

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 9, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ David L. Wilson

David L. Wilson

Attorney for Petitioner