

Magistrate Judge Grady J. Leupold

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

VU LOC NGUYEN,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:26-cv-00335-GJL

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
February 17, 2026.

I. INTRODUCTION

This Court should deny Petitioner Vu Loc Nguyen's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). Petitioner challenges his post-order detention at the Northwest ICE Processing Center ("NWIPC"), but this is a straightforward case under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner has been detained only 14 days beyond the presumptively reasonable six-month period, and there is a significant likelihood that he will be removed in the reasonably foreseeable future. However, Petitioner's "recalcitrant refusal to cooperate in effectuating his removal" is the reason why he remains in detention. *Pelich v. INS*, 329 F.3d 1057, 1062 (9th Cir. 2003). As a

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 result, the length of Petitioner's detention "triggers no constitutional concerns." *Id.*

2 Petitioner is a native and citizen of Vietnam who entered the United States in 2025. After
3 being denied asylum and withholding of removal, his removal order became administratively final
4 on July 28, 2025. Although Petitioner characterizes his detention as prolonged under *Zadvydas*,
5 his post-order detention, six months and 14 days at the time of filing, is only marginally beyond
6 the presumptively reasonable period. Indeed, when he filed his Petition, he was still within the
7 six-month period recognized in *Zadvydas*.

8 Moreover, removal is reasonably foreseeable. ICE is actively working to obtain a travel
9 document from Vietnam, and the Vietnamese government cooperates with the United States in
10 issuing travel documents for its nationals. Once a request is submitted, travel documents are
11 typically issued in approximately 30 days. ICE regularly conducts charter flights to Vietnam after
12 travel documents are secured. These facts establish a significant likelihood of removal in the
13 reasonably foreseeable future.

14 Petitioner's references to potential removal to a third country do not alter the analysis. He
15 presents no evidence that ICE intends to pursue removal to any country other than Vietnam, and
16 he concedes there is no indication that third-country removal is contemplated. His removal order
17 is to Vietnam, and ICE is pursuing that removal. Any claim regarding third-country removal is
18 therefore speculative and unripe.

19 Petitioner also misapplies *Banda*. The analysis in *Banda* concerns pre-order detention.
20 There is no dispute that Petitioner is subject to an administratively final order of removal and is
21 therefore in post-order detention. Accordingly, *Banda* does not govern this case.

22 Petitioner's detention is lawful. As a noncitizen subject to a final order of removal, he is
23 detained pursuant to Section 241 of the Immigration and Nationality Act ("INA"), 8 U.S.C. §
24 1231. His detention is not indefinite under *Zadvydas*, 533 U.S. at 701, because removal is

1 significantly likely in the reasonably foreseeable future. The Court should deny the Petition. No
2 evidentiary hearing is warranted.

3 II. FACTUAL AND PROCEDURAL BACKGROUND

4 A. Post-Order Detention

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, 527-29 (2021). The general
7 detention periods are commonly 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) (authorizing
10 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
14 for removal and to protect the community from noncitizens who may present a danger, Congress
15 mandated detention during the “removal period,” which is the 90-day period following the
16 issuance of a final order of removal. 8 U.S.C. § 1231(a)(2). During the removal period, ICE is
17 charged with attempting to effectuate removal of a noncitizen from the United States. 8 C.F.R.
18 § 241.2(b); 8 U.S.C. § 1231(a)(1).

19 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration
20 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
21 and does not place any temporal limit on the length of detention under that provision. Although
22 there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court
23 has held that a noncitizen may be detained only “for a period reasonably necessary to bring about
24 that [noncitizen’s] removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

1 The Supreme Court has identified six months as a presumptively reasonable time necessary to
2 bring about a noncitizen's removal. *Id.*, at 701. Once it is determined that there is no significant
3 likelihood of removal in the reasonably foreseeable future, noncitizens may be released on an
4 Order of Supervision ("OSUP"). 8 C.F.R. § 241.13(h).

5 Pertinent to this case, the removal period may also be extended if a noncitizen "fails or
6 refuses to make timely application in good faith for travel or other documents necessary to the
7 [noncitizen's] departure or conspires or acts to prevent the [noncitizen's] removal subject to an
8 order of removal." 8 U.S.C. § 1231(a)(1)(C). In that instance, the removal period is extended
9 until the noncitizen complies with his statutory obligations to cooperate. 8 C.F.R.
10 § 241.4(g)(1)(ii). Once the noncitizen has complied, ICE "shall have a reasonable period of time
11 in order to affect the [noncitizen's] removal." *Id.*

12 **B. Petitioner Vu Loc Nguyen**

13 Petitioner is a native and citizen of Vietnam, who entered the United States without being
14 admitted or inspected on or about January 19, 2025. Declaration of Deportation Officer Andre
15 Ouk ("Ouk Decl." or "DO Decl.") ¶ 4. On January 20, 2025, Petitioner was arrested and processed
16 for Expedited Removal with Credible Fear by the United States Border Patrol ("CBP"), pursuant
17 to Section 235(b)(1) of the Immigration and Nationality Act ("INA"). *Id.* ¶ 5. On February 2,
18 2025, Petitioner was booked into the Northwest ICE Processing Center after being transported
19 from the San Diego Central Processing Center in San Diego, California. *Id.* ¶ 6.

20 On April 18, 2025, the United States Citizenship and Immigration Services ("USCIS")
21 conducted a credible fear interview with the Petitioner. *Id.* ¶ 7. USCIS found the Petitioner to not
22 credible and also found that the Petitioner did not establish a credible fear of persecution or
23 torture. *Id.* On May 12, 2025, DHS personally served Petitioner with a Notice to Appear pursuant
24

1 to Section 212(a)(7)(A)(i)(I) of the INA. *Id.* ¶ 8; Declaration of Alixandria K. Morris (“Morris
2 Decl.”), Exs. 1-2 (NTA; I-213).

3 On June 1 and July 18, 2025, Petitioner filed an asylum, withholding of removal, and
4 convention against torture application with the United States Department of Justice Executive
5 Office for Immigration Review (“EOIR”), in Tacoma, Washington. DO Decl. ¶ 9. On July 28,
6 2025, an EOIR Immigration Judge (“IJ”) in the Tacoma, Washington, immigration court denied
7 all relief being requested by the Petitioner and ordered the Petitioner removed to Vietnam. *Id.* ¶
8 10; Morris Decl., Ex. 3 (IJ Order). Petitioner reserved appeal. Ouk Decl. ¶ 10. No appeal has been
9 filed. *Id.*

10 On November 7, 2025, Petitioner volunteered to a Deportation Officer that he will
11 complete and return the form I-217 (Information for Travel Document or Passport) required to
12 effectuate his removal on November 10, 2025. Ouk Decl. ¶ 11. On November 10, 2025, Petitioner
13 refused to complete the I-217 and stated that he will not return to Vietnam and will stay
14 indefinitely. *Id.* ¶ 12; Morris Decl., Exs. 4-5.

15 III. LEGAL STANDARD

16 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited
17 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil*
18 *Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he
19 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
20 day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C.
21 § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

22 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
23 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
24 § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

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IV. ARGUMENT

A. Petitioner's detention comports with due process.

Petitioner argues that his detention is unlawful in violation of *Zadvydas*. The burden is on Petitioner to show that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003) (citing *Zadvydas*). If a petitioner meets his evidentiary burden, the government must then introduce evidence to refute the petitioner's assertion. *Id.* It is undisputed that Petitioner is subject to an administratively final removal order. Pet. ¶¶ 1, 15; Morris Decl., Ex. 3.

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

However, the Supreme Court determined that it is "presumptively reasonable" for the Government to detain a noncitizen for six months following entry of a final removal order, while it worked to remove the noncitizen from the United States. *Id.* at 701. Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen's detention could raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption "does not mean that every [noncitizen] not removed must be released after six months. To the

1 contrary, [a noncitizen] may be held in confinement until it has been determined that there is no
2 significant likelihood of removal in the reasonably foreseeable future.” *Id.*

3 While the Government does not concede that Petitioner’s presumptively reasonable period
4 has ended, even assuming arguendo that it has, Petitioner fails to demonstrate that there is good
5 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
6 future.

7 Petitioner’s continued detention “triggers no constitutional concerns” and there is no
8 viable claim of indefinite detention currently. *Pelich*, 329 F.3d at 1062. “[T]he same concerns
9 regarding indefinite detention do not arise where the length of detention is in direct proportion to
10 the detainee’s recalcitrant refusal to cooperate in effectuating his removal.” *Id.* Petitioner “cannot
11 legitimately object to his continued detention when that very detention is caused by his own
12 conduct.” *Id.*, at 1061. Since November 10, 2025, Petitioner has refused to cooperate with his
13 removal or assist in obtaining a travel document. Ouk Decl. ¶ 12. Even after receiving a notice
14 for failure to comply in December 2025, Petitioner continues to refuse to comply with ICE’s
15 requests to assist with his travel document request, stating he will not return to Vietnam and will
16 stay in the United States indefinitely. *Id.* ¶ 13; Morris Decl., Exs. 4-5.

17 Implicit in the removal process, ICE must take steps, along with the noncitizen’s efforts,
18 to effectuate removal, including working with the appropriate foreign countries. To the extent
19 that Petitioner’s removal has been delayed, this Court should recognize Petitioner’s refusal to
20 cooperate with ICE’s efforts until last month. Because he did not comply in good faith with ICE’s
21 removal efforts, he “cannot meet his burden to show that there is no significant likelihood of
22 removal in the foreseeable future.” *Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003).

1 Here, Petitioner's presumptively reasonable period is extended beyond the presumptively
2 reasonable period after his removal order was issued because he refuses to cooperate with ICE's
3 efforts to obtain travel documents to effectuate his removal to Vietnam.

4 Petitioner has no claim under *Zadvydas*. His confinement is not indefinite because he is
5 solely responsible for prolonging his detention and delaying his removal.

6 **B. Petitioner errs in citing to *Banda***

7 Petitioner invokes *Banda* in arguing that his detention is prolonged. *Banda v. McAleenan*,
8 385 F. Supp. 3d 1099, 1117 (W.D. Wash. 2019). However, *Banda* applies to pre-order detention.
9 *Id.* There is no dispute that Petitioner is subject to an administratively final order of removal. Pet.
10 ¶¶ 1, 15; Morris Decl., Ex. 3. Thus, *Banda* does not apply here in this post-order context.

11 **C. Petitioner's Third Country Claims are Without Merit and Not Ripe for Review**

12 Petitioner presents no evidence of any intention by ICE to remove Petitioner to a third
13 country. *See* Pet., ¶¶ 17-18. Indeed, he concedes ICE has provided no notice of any intention to
14 remove him to a third country. *Id.* ¶ 17. Petitioner purports to bring claims challenging the
15 constitutionality of his possible removal to a third country as a likely violation of the Fifth
16 Amendment, the Eighth Amendment, the Convention Against Torture, and the INA. *Id.* ¶¶ 35-
17 40. Such claims are based on the hypothetical scenario of his removal to a third country other
18 than Vietnam, which are entirely speculative and not ripe for review. Petitioner has a removal
19 order to Vietnam. Morris Decl., Ex. 3. ICE is currently working to obtain a travel document from
20 Vietnam. Ouk Decl. ¶¶ 11-13; Morris Decl., Exs. 4-5. The only reason a travel document has not
21 been completed is Petitioner's refusal to cooperate with the process. Ouk Decl. ¶¶ 11-13; Morris
22 Decl., Exs. 4-5. Based on these facts, there is no case or controversy because there is no concrete
23 indication that removal to any third country will occur.

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

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

8 **V. CONCLUSION**

9 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
10 the Petition.

11 Dated this 12th day of February, 2026.

12 Respectfully submitted,

13 *s/ Alixandria K. Morris*

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24 I certify that this memorandum contains 2,388
words, in compliance with the Local Civil Rules.