

Chief District Judge Ricardo S. Martinez

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

GIAU VAN DANG,

Petitioner,

v.

BRUCE SCOTT, *et al.*,¹

Respondents.

Case No. 2:26-cv-00379-RSM

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
February 23, 2026.

I. INTRODUCTION

Petitioner Giau Van Dang's Petition for Writ of Habeas Corpus challenges his post-order detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional and unlawful. Dkt. 1 ("Pet."). Petitioner's detention is authorized under the Immigration and Nationality Act. Petitioner's claims regarding potential removal to a third country are speculative and not ripe for judicial review, and Petitioner's claims under the APA fail. Even if this Court were to grant the habeas, the relief requested in subsections (c)–(h) of Petitioner's Prayer for Relief should not be granted.

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by undersigned counsel.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Detention Authorities and Removal Procedures

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 (2021). The general detention periods are generally 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 has mandated detention while removal is being effectuated:

During the removal period, the [Secretary of Homeland Security]² shall detain the [noncitizen]. Under no circumstance during the removal period shall the [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.

8 U.S.C. § 1231(a)(2). During the removal period, ICE³ is charged with attempting to effect removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1).

² Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens, 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.

³ Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

1 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration
 2 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
 3 and does not place any temporal limit on the length of detention under that provision:

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

10 8 U.S.C. § 1231(a)(6) (emphasis added).

11 Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the
 12 Supreme Court has held that a noncitizen may be detained only “for a period reasonably necessary
 13 to bring about that [noncitizen’s] removal from the United States.” *Zadvydas*, 533 U.S. at 689.
 14 The Supreme Court has identified six months as a presumptively reasonable time to bring about
 15 a noncitizen’s removal. *Id.* at 701. The *Zadvydas* Court recognized that as the length of detention
 16 grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen’s
 17 post-order detention. *Id.* (stating that “for detention to remain reasonable, as the period of post-
 18 removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would
 19 have to shrink”). Thus, the Supreme Court implicitly recognized that six months is the *earliest*
 20 point at which a noncitizen’s detention could raise constitutional issues. *Id.*

21 **B. OSUP and Revocation**

22 Once it is determined that there is no significant likelihood of removal in the reasonably
 23 foreseeable future, DHS may release noncitizens on an Order of Supervision (“OSUP”). 8 C.F.R.
 24 § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is
 governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen “violates
 any of the conditions of release,” *id.* §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined “that

1 there is a significant likelihood that the alien may be removed in the reasonably foreseeable
2 future.” *Id.* § 241.13(i)(2). Whether there is a significant likelihood that the alien may be removed
3 in the reasonably foreseeable future is determined by assessing a series of factors, including “the
4 history of the alien’s efforts to comply with the order of removal, the history of the Service’s
5 efforts to remove aliens to the country in question or to third countries ... and the views of the
6 Department of State regarding the prospects for removal of aliens to the country or countries in
7 question.” *Id.* § 241.13(f). Alternatively, certain designated officials may also revoke an OSUP
8 as an act of discretion when revocation is in the public interest. *Id.* § 241.4(l)(2).

9 Section 241.13(i)(3) provides that upon revocation, the alien “will be notified of the
10 reasons for revocation of his or her release” and will receive an “initial informal interview
11 promptly” after being detained, to “afford the alien an opportunity to respond to the reasons for
12 revocation stated in the notification.” *Id.* § 241.13(i)(3). During such an interview, the noncitizen
13 “may submit any evidence or information that he or she believes shows there is no significant
14 likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not
15 violated the order of supervision.” *Id.* “The revocation custody review will include an evaluation
16 of any contested facts relevant to the revocation and a determination whether the facts as
17 determined warrant revocation and further denial of release.” *Id.* Then, if the alien’s request for
18 release is denied, he or she “may submit a request for review of his or her detention . . . six months
19 after [DHS’s] last denial of release[.]” *Id.* § 241.13(j).

20 **C. Petitioner Giau Van Dang**

21 On June 27, 1990, Petitioner, a citizen of Vietnam entered the United States as a refugee.
22 Declaration of Deportation Officer Anthony Rosa (“Rosa Decl.”) ¶ 3. On September 20, 1993,
23 the Pierce County Sheriff’s Office in Tacoma, WA, arrested Petitioner for possession of stolen
24 property in the first degree. *Id.* ¶ 4(a). On November 8, 1993, Petitioner was found guilty of

1 possession of stolen property in the second degree, a class C felony. *Id.* He was sentenced to 49
2 days in jail and 12 months of supervised release. *Id.*

3 On December 20, 1993, the Pierce County Sheriff's Office of Tacoma, WA, arrested
4 Petitioner for firearms, a dangerous weapon violation, and possession of stolen property in the
5 first degree. *Id.* ¶ 4(b). On September 26, 1994, Petitioner was found guilty of possession of stolen
6 property in the second degree and sentenced to six months in confinement and twelve months of
7 supervised release. *Id.*

8 On May 24, 1994, the Clark County Sheriff's Office Vancouver, WA, arrested Petitioner
9 for assault in the first degree. *Id.* ¶ 4(c). Clark County Court found Petitioner guilty of class B
10 felony assault on August 16, 1994. *Id.* Petitioner was sentenced to 25 months in prison and one
11 year of supervised release. *Id.*

12 On March 21, 2005, Petitioner was arrested on the charge of kidnapping an adult for
13 ransom by U.S. Marshals in Atlanta, Georgia. *Id.* ¶ 4(d). Petitioner pleaded guilty to the
14 kidnapping charge on December 17, 2007, and was sentenced to 137 months in prison with five
15 years of supervised release. *Id.*

16 Petitioner was issued a Notice to Appear ("NTA") on February 10, 2010, because of his
17 conviction of Assault in the Second Degree and Possession of Stolen Property (two counts) in
18 1994. *Id.* ¶ 5; Declaration of Alixandria K. Morris ("Morris Decl."), Exs. 1-2 (Memorandum of
19 Investigation; I-213). On December 20, 1995, an immigration judge ordered Petitioner excluded
20 and deported from the United States. Rosa Decl. ¶ 5. Petitioner was released on an Order of
21 Supervision ("OSUP") due to the inability to obtain travel documents to Vietnam. *Id.* ¶ 6; Morris
22 Decl., Exs. 3-4 (1999 OSUP; 2001 OSUP). Petitioner violated the terms of his OSUP when he
23 was convicted of kidnapping for ransom in 2007. Rosa Decl. ¶ 7. On March 16, 2015, Petitioner
24 was issued another OSUP because removal was not likely to occur in the reasonably foreseeable

1 future. *Id.* ¶ 8. On September 5, 2025, Petitioner was enrolled in the Alternative to Detention
2 (“ATD”) program. *Id.* ¶ 9.

3 On December 23, 2025, a warrant for Petitioner’s arrest, form I-200 was issued by ERO
4 and Petitioner was taken into ICE custody. *Id.* ¶ 10. On February 5, 2026, Petitioner’s OSUP was
5 revoked pursuant to 8 C.F.R. 241.13(i) and the determination that there is a significant likelihood
6 of removal in the reasonably foreseeable future. *Id.* ¶ 11. While an informal interview may have
7 occurred, Federal Respondents are unable to find evidence that such an interview occurred. ICE
8 is currently seeking removal to Vietnam and no other country. *Id.* ¶ 12.

9 III. ARGUMENT

10 A. 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., ¶¶ 3, 86-103. Petitioner purports to bring claims challenging the
13 constitutionality of his possible removal to a third country as a likely violation of the Fifth
14 Amendment, 8 U.S.C. § 1231, the Eighth Amendment, the Convention Against Torture, the INA,
15 the APA, and relevant implementing regulations. Pet., ¶¶ 117-119. Such claims are based on the
16 hypothetical scenario of his removal to a third country other than Vietnam, which are entirely
17 speculative and not ripe for review. Rosa Decl. ¶ 12. Petitioner has a removal order to Vietnam.
18 *Id.* ¶ 5. Thus, there is no case or controversy because there is no concrete indication that removal
19 to any third country will occur.

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

24 Accordingly, Petitioner’s claims are speculative and not part of a live controversy because

1 there is no concrete indication that removal to a third country will occur. Thus, these claims should
2 be dismissed as premature.

3 **B. Petitioner's Administrative Procedure Act claims must be dismissed for lack of**
4 **Subject Matter Jurisdiction**

5 Petitioner seeks to challenge his detention on grounds that violated Sections 706(2)(A),
6 (B) and (C) of the Administrative Procedure Act ("APA"). Pet., ¶ 4. The Court has no subject
7 matter jurisdiction to hear these claims.

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

13 Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial
14 detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See*
15 *Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs'
16 claims necessarily implied the invalidity of the Plaintiffs' confinement and removal under the
17 "Alien Enemies Act" and so had to be brought as habeas corpus claims in the jurisdiction of their
18 confinement). As Justice Kavanaugh stated in his concurring opinion, "[e]specially given the
19 history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704,
20 which states that claims under the APA are not available when there is another 'adequate remedy
21 in a court,' I agree with the Court that habeas corpus, not the APA, is the proper vehicle here."
22 *Id.* at 674; *cf. O'Banion v. Matevousian*, 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that
23 "habeas actions" provide an "adequate remedy" displacing APA review under Section 704); and
24 *see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018)

1 (“Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in
2 a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.”).

3 Moreover, to be reviewable under the APA an action must be a “final agency action,”
4 which is to say that it is the “consummation of the agency’s decision-making process.” *See*
5 *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of
6 executing a removal order is not within that category because it is only an intermediary step in
7 the process. *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025).
8 Accordingly, Petitioner’s APA claims should be denied.

9 **C. Even if the Court grants the habeas petition, it should deny Petitioner’s remaining**
10 **requests for relief**

11 Subsections (c)-(i) in Petitioner’s Prayer for Relief exceed the narrow scope of habeas
12 review under 28 U.S.C. § 2241, the Court’s subject matter jurisdiction, and conflict with the
13 detention and removal scheme set forth in 8 U.S.C. § 1231. To the extent Petitioner seeks to
14 challenge or reopen his removal proceedings, exclusive jurisdiction lies with the courts of appeals,
15 not this Court. Under 8 U.S.C. § 1252, judicial review of removal orders is vested solely in the
16 courts of appeals. This Court therefore lacks jurisdiction to grant the relief sought in subsections
17 (d)-(g). The jurisdictional bar relating to orders of removal is explicit. Under 8 U.S.C. § 1252(g),
18 “no court shall have jurisdiction to hear any cause or claim ... arising from the decision or action
19 by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.”
20 Enjoining Petitioner’s immigration proceedings would directly contravene this provision.

21 Nor can Petitioner satisfy the traditional requirements for injunctive relief. The requested
22 orders would impose extra-statutory conditions on detention and removal, interfere with
23 enforcement discretion delegated by Congress, and intrude upon matters committed to the
24 political branches. The Court should therefore deny the relief requested in subsections (c)-(g).

Petitioner's request for fees is also premature. Under the Equal Access to Justice Act, 28 U.S.C. § 2412, a party may recover fees only if he prevails, the government's position was not substantially justified, the fees are reasonable, and he files a timely application. A fee application must be filed within 30 days of a "final judgment"—that is, when the judgment is no longer appealable. *See* 28 U.S.C. § 2412(d)(1)(B), (d)(2)(G). The appeal period has not expired here, and there has been no final judgment. The request is therefore untimely. Moreover, Petitioner offers no basis to conclude that the government's position was not substantially justified; indeed, he could not have known the government's position at the time of filing.

Accordingly, even if this Court were to grant habeas relief, the Court should deny the additional relief requested in Prayer for Relief subsections (c)-(i).

IV. CONCLUSION

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

DATED this 17th day of February, 2026.

Respectfully submitted,

s/ Alixandria K. Morris

ALIXANDRIA K. MORRIS, TX No. 24095373

Assistant United States Attorney

United States Attorney's Office

Western District of Washington

700 Stewart Street, Suite 5220

Seattle, Washington 98101

Phone: 206-553-7970

Fax: 206-553-4067

Email: alixandria.morris@usdoj.gov

Attorney for Federal Respondents

I certify that this memorandum contains 2,489 words, in compliance with the Local Civil Rules.