

District Judge John H. Chun

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

DUY TRUNG TRUONG,

Petitioner,

v.

TODD BLANCHE,¹ *et al.*,²

Respondents.

Case No. 2:26-cv-00950-JHC

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
April 8, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Duy Trung Truong, a noncitizen subject to an administratively final order of removal, pursuant to Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner brings this habeas litigation pursuant to 28 U.S.C. § 2241 to challenge the lawfulness of his immigration detention.

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting United States Attorney General Todd Blanche for Pamela Bondi.

² Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Department of Homeland Security Secretary Markwayne Mullin for Kristi Noem.

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

Petitioner is a citizen of Vietnam. In 2025, he was encountered by immigration authorities shortly after unlawfully crossing the border from Mexico into the United States. On July 25, 2025, an immigration judge ordered Petitioner removed from the United States, but withheld removal to Vietnam. Immigration authorities have queried Mexico and Uganda about potential removal to those countries. A post order custody review decision by immigration officials is pending.

Petitioner asserts that his detention of more than six months violates due process because it is not reasonably related to a legitimate government purpose. Dkt. 1, ¶¶ 34-35. Petitioner alleges that there is no significant likelihood of removal in the reasonably foreseeable future. Dkt. 1, ¶¶ 38-42. Petitioner requests release from immigration detention and additional conditions prior to redetention. Dkt 1, Prayer for Relief, ¶¶ c, d.

II. 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:

1 During the removal period, the [Secretary of Homeland Security]³ shall detain the
2 [noncitizen]. Under no circumstance during the removal period shall the
3 [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.

4 8 U.S.C. § 1231(a)(2). During the removal period, ICE⁴ is charged with attempting to effect
5 removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1).

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

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

15 8 U.S.C. § 1231(a)(6) (emphasis added).

16 Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the
17 Supreme Court has held that a noncitizen may be detained only “for a period reasonably necessary
18 to bring about that [noncitizen’s] removal from the United States.” *Zadvydas*, 533 U.S. at 689.
19 The Supreme Court has identified six months as a presumptively reasonable time to bring about
20 a noncitizen’s removal. *Id.* at 701. The *Zadvydas* Court recognized that as the length of detention
21 grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen’s
22 post-order detention. *Id.* (stating that “for detention to remain reasonable, as the period of post-
23

24 ³ 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.

⁴ 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 removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would
 2 have to shrink”). Thus, the Supreme Court implicitly recognized that six months is the *earliest*
 3 point at which a noncitizen’s detention could raise constitutional issues. *Id.*

4 **B. Third Country Removal**

5 When the Government seeks to remove an individual, it may do so through removal
 6 proceedings involving an evidentiary hearing before an Immigration Judge (“IJ”). 8 U.S.C. §
 7 1229a. In removal proceedings, the IJ determines whether the individual may be removed from
 8 the United States and also the country to which they will be removed. *Id.*; 8 U.S.C. §
 9 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). The INA sets out the process for determining the country
 10 of removal.

11 First, the alien may select a country. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). If
 12 the alien declines, the IJ will designate one and may also designate alternative countries. 8 U.S.C.
 13 § 1231(b)(2)(C)-(D); 8 C.F.R. § 1240.10(f). In selecting an alternative country of removal, the IJ
 14 must first select the “country of which the alien is a subject, national, or citizen[.]” 8 U.S.C. §
 15 1231(b)(2)(D). If removal to that country is impossible, the IJ may remove the alien to “any of
 16 the following countries” listed in 8 U.S.C. § 1231(b)(2)(E):

- 17 (i) The country from which the alien was admitted to the United States.
- 18 (ii) The country in which is located the foreign port from which the alien left for the United
 States or for a foreign territory contiguous to the United States.
- 19 (iii) A country in which the alien resided before the alien entered the country from which
 the alien entered the United States.
- 20 (iv) The country in which the alien was born.
- 21 (v) The country that had sovereignty over the alien's birthplace when the alien was born.
- (vi) The country in which the alien's birthplace is located when the alien is ordered
 removed.

22 Lastly, Section 1231(b)(2)(E)(vii) provides that “[i]f impracticable, inadvisable, or impossible to
 23 remove the alien to each country” described above, the statute permits removal to any “country
 24 whose government will accept the” noncitizen. *Id.* § 1231(b)(2)(E)(vii).

1 The government is prohibited from removing a person to a third country where they may
 2 be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. §
 3 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove
 4 a person to a country where they would be tortured, a form of protection known as protection
 5 under the Convention Against Torture (“CAT”). *See* Foreign Affairs Reform and Restructuring
 6 Act of 1998 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8
 7 U.S.C. § 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. Withholding of
 8 removal and CAT protection are mandatory, but “only restrict *where* the Government may remove
 9 a noncitizen to, not *whether* the noncitizen is subject to removal.” *Kumar v. Wamsley*, No. C25-
 10 2055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). “Thus, even if the IJ grants
 11 such protection, the removal order remains valid and enforceable, albeit not to the identified
 12 country or countries of risk.” *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson*
 13 *v. Guzman Chavez*, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir.
 14 2004).

15 If the government has a removal order but no country to which an IJ has authorized
 16 removal, it can remove the noncitizen to a third country, meaning any country not designated on
 17 the removal order. *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL
 18 942948, at *1 (D. Mass. Mar. 28, 2025).

19 It remains the case that the government cannot remove an alien to any third country where
 20 they would face persecution or torture. 8 U.S.C. § 1231(b)(3)(A); 28 C.F.R. § 200.1; 8 C.F.R. §§
 21 208.16–18, 1208.16–18.

22 C. Petitioner Duy Trung Truong

23 Petitioner is a native and citizen of Vietnam. Declaration of Jordan Steveson (“Steveson
 24 Decl.”), Exh. A, Form I-213. On January 18, 2025, he was encountered by U.S. Border Patrol

1 (“USBP”) near Campo, California. *Id.* USBP determined that Petitioner had unlawfully entered
2 the United States from Mexico, and detained him. *Id.* Petitioner was issued an expedited order of
3 removal. *Id.* On February 11, 2025, Petitioner was transferred to the Northwest ICE Processing
4 Center (“NWIPC”) in Tacoma, Washington. Declaration of Deportation Officer Anthony Rosa
5 (“Rosa Decl.”), ¶ 4.

6 On March 7, 2025, Petitioner was referred to an asylum officer after claiming fear of
7 return to Vietnam. Rosa Decl., ¶ 5. On March 19, 2025, the asylum officer determined that
8 Petitioner had credible fear of return to Vietnam. *Id.*, ¶ 6. The expedited removal order was
9 cancelled and Petitioner was issued a notice to appear. Steveson Decl., Exh. B, Notice to Appear.
10 Petitioner was charged as removable pursuant to 8 U.S.C. §§ 1182(a)(6)(A)(i) and
11 1182(a)(7)(A)(i)(I). *Id.*

12 On July 25, 2025, Petitioner was ordered removed from the United States by an
13 immigration judge. Steveson Decl., Exh. C, IJ Order. However, removal to Vietnam was
14 withheld. *Id.* On July 31, 2025, ICE interviewed Petitioner about potential removal to a third
15 country. Rosa Decl., ¶ 9. Petitioner declined to specify a third country for removal and also
16 reported that he did not wish to be removed to any other country. *Id.*

17 On January 16, 2026, ICE provided Petitioner with notice that it would perform a custody
18 review. Steveson Decl., Exh. D, Custody Review Notice. Petitioner told ICE again that he did not
19 want to be removed to any other country. Rosa Decl., ¶ 10. A decision on Petitioner’s post order
20 custody remains pending with ICE. *Id.*, ¶ 13. On January 28, 2026, ICE reached out to the
21 Mexican Consulate to attempt to remove Petitioner to Mexico. *Id.*, ¶ 11. On February 13, 2026,
22 ICE sent a removal request to the Uganda Consulate to attempt to remove Petitioner to Uganda.
23 *Id.*, ¶ 12. ICE is currently requesting assistance from its headquarters on potential third country
24 removal of Petitioner. *Id.*, ¶ 14.

III. ARGUMENT

A. Petitioner is detained pursuant to 8 U.S.C. § 1231(a)(6)

Petitioner's removal order is final and he is detained pursuant to 8 U.S.C. § 1231(a)(6). 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 order of removal. Petitioner has been detained approximately eight months after his order of removal became final.

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.*

1 In this case, ERO is seeking removal to a third-country but does not yet have a travel
2 document for removal.

3 **B. Petitioner's arguments regarding re-detention are premature.**

4 Petitioner requests this Court to order that Petitioner not be taken into custody unless he
5 receives "meaningful notice" and an opportunity to "raise a country-specific claim" against
6 removal to a third country. Dkt. 1, Prayer for Relief, ¶ d.

7 There is already a process for revoking an Order of Supervision ("OSUP"). DHS
8 established a clear regulatory framework in 8 C.F.R. §§ 241.4 and 241.13 that sets forth the
9 requirements and process for affecting an OSUP revocation, which is the process due to an alien
10 released on OSUP. When an alien has violated any condition of their release, or ICE determines
11 that there is a "significant likelihood" an alien can be removed from the United States within the
12 "reasonably foreseeable future," ICE is clearly permitted to revoke the OSUP and take the alien
13 into custody; nothing else is required for revocation under these circumstances. 8 C.F.R. §§
14 241.4(b)(4), 241.13(i)(1) and (2). This Court should examine ICE's compliance with the
15 procedures set forth for revocation of OSUP – not create new procedures.

16 Furthermore, Petitioner's request relies on the assumption that the only reason he could
17 be detained again in the future would be to effectuate removal to a third country. Dkt. 1, Prayer
18 for Relief, ¶ d. However, if Petitioner were to commit a particularly serious crime, removal
19 proceedings could be reopened and Petitioner may be subject to mandatory detention pursuant to
20 8 U.S.C. § 1226(c) while a decision on removal is made. *See* 8 C.F.R. 1208.24(f); *Bare v. Barr*,
21 975 F.3d 952, 959 (9th Cir. 2020) (case in which petitioner was previously granted asylum, but
22 immigration proceedings were reopened due to commission of a particularly serious crime, which
23 made him ineligible for withholding of removal).

1 The Government recognizes that some courts in this District have found a re-detention
2 hearing required to revoke OSUP while others have found that the Government must comply with
3 8 C.F.R. § 241.13. *See e.g., Emara v. Bondi, et al.*, No. C26-0116-KKE, 2026 WL 266067, at *6
4 (W.D. Wash. Feb. 2, 2026); *Temahagari v. Bondi*, No. 25-CV-02484-LK, 2026 WL 353264, at
5 *8 (W.D. Wash. Feb. 9, 2026); *Nguyen v. Bondi*, No. 2:25-CV-02723-RAJ, 2026 WL 183819, at
6 *7 (W.D. Wash. Jan. 23, 2026).

7 **IV. CONCLUSION**

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

10 DATED this 3rd day of April, 2026.

11 Respectfully submitted,

12 s/ Jordan C. Steveson

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22 I certify that this memorandum contains 2,447
23 words, in compliance with the Local Civil Rules.
24