

Chief District Judge David G. Estudillo

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

VU TRONG LE,

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,¹

Respondents.

Case No. 2:26-cv-01156-DGE

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
April 27, 2026.

I. INTRODUCTION

This pro se habeas petition presents a single question: whether Petitioner's post-removal-order detention has become unconstitutionally prolonged under *Zadvydas*. *Zadvydas v. Davis*, 533 U.S. 678 (2001). It has not.

Although Petitioner's detention has extended beyond the six-month presumptive period discussed in *Zadvydas*, his detention remains lawful. The controlling question is whether there is a significant likelihood of removal in the reasonably foreseeable future, evaluated in light of the

¹ Respondent Facility Administrator, Northwest ICE Processing Center, is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 particular facts and the government's ongoing efforts. Here, the record reflects sustained and
2 concrete steps to effectuate Petitioner's removal, including the identification of a third country
3 willing to accept him and the procurement of a country willing to accept him where the United
4 States has received diplomatic assurances from Palau that any aliens removed there will not be
5 persecuted or tortured. In any event, Petitioner's "recalcitrant refusal to cooperate in effectuating
6 his removal" is the reason he remains in detention. *Pelich v. INS*, 329 F.3d 1057, 1062 (9th Cir.
7 2003). For this additional reason, the length of Petitioner's detention "triggers no constitutional
8 concerns." *Id.*

9 The Petition should therefore be denied.

10 II. FACTUAL AND PROCEDURAL BACKGROUND

11 A. Legal Background

12 1. 8 U.S.C. 1231(a)(6)

13 The detention of noncitizens with final orders of removal is governed by 8 U.S.C. §
14 1231(a), which establishes a 90-day removal period during which detention is mandatory to
15 facilitate removal. 8 U.S.C. §§ 1231(a)(1)(A), (a)(2). For noncitizens who are inadmissible,
16 removable for criminal offenses, or determined to be a risk to the community or unlikely to
17 comply with the removal order, detention may extend beyond this period. 8 U.S.C. § 1231(a)(6).
18 To address potential due process concerns under the Fifth Amendment, the Supreme Court in
19 *Zadvydas v. Davis*, 533 U.S. 678 (2001), construed 8 U.S.C. § 1231(a)(6) to limit detention to a
20 period reasonably necessary to accomplish removal, establishing a presumptively reasonable six-
21 month period after the removal period begins. *Id.* at 689, 701. After six months, the noncitizen
22 bears the initial burden to provide good reason to believe there is no significant likelihood of
23 removal in the reasonably foreseeable future; if met, the burden shifts to the government to rebut
24 that showing with evidence of foreseeability. *Id.* at 701. The "reasonably foreseeable future" is

1 not rigidly defined but considers factors such as diplomatic efforts, travel document procurement,
2 and alternative removal options, without requiring a specific timeline. *See Prieto-Romero v.*
3 *Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008). This framework applies equally to inadmissible
4 noncitizens. *Clark v. Martinez*, 543 U.S. 371, 377-78 (2005). Detention does not violate due
5 process merely because it exceeds six months; rather, it must be shown to be potentially indefinite,
6 lacking a legitimate immigration purpose. *Zadvydas*, 533 U.S. at 690-91; *see also Rodriguez Diaz*
7 *v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022).

8 **2. Third Country Removal**

9 When the government seeks to remove an individual, it may do so through removal
10 proceedings involving an evidentiary hearing before an Immigration Judge (“IJ”). 8 U.S.C. §
11 1229a. In removal proceedings, the IJ determines both whether the individual may be removed
12 from the United States and designates a country or countries to which they will be removed,
13 subject to DHS’s statutory authority under 8 U.S.C. § 1231(b)(2). *Id.*; 8 U.S.C. § 1231(b)(2)(A);
14 8 C.F.R. § 1240.10(f). The INA sets out the process for determining the country of removal. 8
15 U.S.C. §§ 1231(b)(2)(C)-(E); 8 C.F.R. § 1240.10(f).

16 The government is prohibited from removing a person to a third country where they may
17 be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. §
18 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove
19 a person to a country where they would be tortured, a form of protection known as protection
20 under the Convention Against Torture (CAT). *See* Foreign Affairs Reform and Restructuring Act
21 of 1998 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C.
22 § 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. Withholding of removal and
23 CAT protection are mandatory, but “only restrict *where* the Government may remove a noncitizen
24 to, not *whether* the noncitizen is subject to removal.” *Kumar v. Wamsley*, No. C25-2055-KKE,

2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). “Thus, even if the IJ grants such protection, the removal order remains valid and enforceable, albeit not to the identified country or countries of risk.” *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004)).

B. Petitioner

Petitioner is a native and citizen of Vietnam. Declaration of Anthony Rosa (“Rosa Decl.”) ¶ 3. On October 22, 2024, Petitioner was encountered by Customs and Border Protection (“CBP”) near Otay Mesa, California and transferred to the San Diego Processing Center for processing for further processing as an Expedited Removal pursuant to Section 235(b)(1) of the Immigration and Nationality Act (“INA”). *Id.* ¶ 4. Petitioner admitted to intentionally crossing the international boundary into the United States while not having documentation providing him with lawful admission. *Id.* Based on Petitioner’s date and manner of entry, he was subject to the Circumvention of Lawful Pathways (“CLP”) pursuant to 8 CFR § 235.15 and INA § 212(f). *Id.*

On November 12, 2024, Petitioner was transferred and booked into the NWIPC. *Id.* ¶ 5. On November 20, 2024, Petitioner told ICE claimed a fear of return to Vietnam. *Id.* ¶ 6. That claim was referred to United States Citizenship and Immigration Services (“USCIS”) for a credible fear review. *Id.* On January 16, 2025, a Notice to Appear (“NTA”), Form I-862, was issued charging Petitioner with a violation of INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). *Id.* ¶ 7; Declaration of Alixandria K. Morris (“Morris Decl.”), Exs. 1-2 (NTA; I-213).

On August 21, 2025, Petitioner and his counsel appeared for his scheduled merits hearing. Rosa Decl. ¶ 8. The Immigration Judge (“IJ”) denied asylum but granted withholding of removal pursuant to INA §241(b). *Id.*; Morris Decl., Ex. 3 (IJ Order). Both parties waived appeal. Rosa Decl. ¶ 8; Morris Decl., Ex. 3.

On November 17, 2025, Petitioner indicated his refusal to accept removal to any third country or assist ICE. *Id.* ¶ 9. On December 4, 2025, Petitioner was served Form I-229a, instructions regarding assistance in removal. *Id.* ¶ 10. Petitioner refused to sign and indicated he would not accept removal to any third country. *Id.*

On December 4, 2025, Petitioner was served with a notice of a Post Order Custody Review (“POCR”) form and interviewed pursuant to that review. *Id.* ¶ 11. Petitioner refused to sign the notice. *Id.* On December 30, 2025, Petitioner was asked if he would consider removal to a third country and was provided a list of countries that do not require a visa for Vietnamese nationals. *Id.* ¶ 12. Petitioner refused to assist. *Id.* On April 5, 2026, Petitioner’s removal to Palau was approved. *Id.* ¶ 13. A travel document, separate from Petitioner’s passport, is not required. *Id.* ERO (Enforcement and Removal Operations) is in possession of Petitioner’s passport. *Id.*

ERO has been informed that Palau has provided the United States with diplomatic assurances that aliens removed from the United States to that country will not be persecuted or tortured and those assurances have been deemed credible by the United States Department of State. *Id.* ¶ 14. ERO is working to schedule Petitioner for removal to Palau. *Id.* ¶ 16.

III. LEGAL STANDARD

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

To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.

1 § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

2 **IV. ARGUMENT**

3 Petitioner's sole claim under *Zadvydas v. Davis*, 533 U.S. 678 (2001), must fail because
4 he has not carried his initial burden to demonstrate good reason that his removal is not
5 significantly likely in the reasonably foreseeable future, and even if he had, the government's
6 active and diligent removal efforts combined with Petitioner's refusals to cooperate, rebut that
7 showing.

8 In *Zadvydas*, the Supreme Court interpreted 8 U.S.C. § 1231(a)(6) to limit post-removal-
9 order detention to a period reasonably necessary to effectuate removal, establishing a six-month
10 presumptively reasonable period. *Id.* at 689, 701. Detention beyond this period does not
11 automatically violate due process; rather, the inquiry focuses on whether there is a significant
12 likelihood of removal in the reasonably foreseeable future, a flexible concept that accounts for
13 ongoing diplomatic negotiations, procurement of travel documents, and exploration of alternative
14 removal destinations. *Id.* at 701; *see also Prieto-Romero v. Clark*, 534 F.3d 1053, 1063-65 (9th
15 Cir. 2008).

16 The Ninth Circuit has clarified that this analysis requires a case-specific evaluation of
17 factors including the government's good-faith efforts, the duration of detention relative to
18 removal prospects, and the availability of third-country options. *Rodriguez Diaz v. Garland*, 53
19 F.4th 1189, 1208 (9th Cir. 2022). "Foreseeable future" is flexible, considering diplomatic efforts
20 and alternatives. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063-65 (9th Cir. 2008). *Clark v.*
21 *Martinez*, 543 U.S. 371, 377-78 (2005), extended *Zadvydas* to inadmissible noncitizens. Third-
22 country removals are authorized under 8 U.S.C. § 1231(b)(2)(E), requiring diplomatic assurances
23 against persecution. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018).

1 Here, because his removal order became administratively final on August 21, 2025,
2 Petitioner's detention exceeded the six-month presumptive period on February 24, 2026. Morris
3 Decl., Ex. 3. However, mere duration does not suffice to meet Petitioner's burden. Petitioner must
4 provide affirmative evidence that removal lacks significant likelihood, such as proof of
5 insurmountable barriers like severed diplomatic relations or categorical refusals by all potential
6 countries. *Zadvydas*, 533 U.S. at 701. Petitioner offers no such evidence.

7 Even assuming that Petitioner met his threshold burden, there is a significantly likelihood
8 of removal in the reasonably foreseeable future here. An immigration judge ordered Petitioner
9 removed to Vietnam and granted withholding of removal; thus, Petitioner's removal must be a
10 third country. Morris Decl., Ex. 3. ICE has attempted to work cooperatively with Petitioner on
11 multiple occasions to identify a suitable third country for removal, but Petitioner has repeatedly
12 refused to cooperate. Rosa Decl. ¶¶ 11-14. Despite Petitioner's refusals to cooperate, ICE has
13 obtained agreement to accept Petitioner from the third country of Palau, and ICE is in possession
14 of Petitioner's passport for travel. *Id.* ¶ 15. Because ICE has identified a third country willing to
15 accept Petitioner and a passport for travel, Petitioner's removal is significantly likely in the
16 reasonably foreseeable future. Thus, his detention is lawful pursuant to 8 U.S.C. § 1231(a)(6)
17 pending his removal.

18 In any event, the Ninth Circuit has made clear, when a noncitizen's "recalcitrant refusal
19 to cooperate" prevents removal, continued detention does not raise constitutional concerns.
20 *Pelich*, 329 F.3d at 1062. Implicit in the removal process, ICE must take steps, along with the
21 noncitizen's efforts, to effectuate removal, including working with the appropriate foreign
22 countries. To the extent that Petitioner's removal has been delayed, this Court should recognize
23 his refusal to cooperate with ICE's efforts. Because he did not comply in good faith with ICE's
24 removal efforts, he "cannot meet his burden to show that there is no significant likelihood of

1 removal in the foreseeable future.” *Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003). Accordingly,
2 the Petition should be denied for this additional reason.

3 **V. CONCLUSION**

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

6 DATED this 20th day of April, 2026.

7 Respectfully submitted,

8 s/ Alixandria K. Morris

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19 I certify that this memorandum contains 1,996
20 words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers.

I further certify on today's date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify on today's date, I arranged for service of the foregoing on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, marked "Legal Mail, Open in Presence of Detainee," addressed as follows:

Vu Trong Le, *Pro Se Petitioner*
A# [REDACTED]
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DATED this 20th day of April, 2026.

s/ Hung Nguyen
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