

ADAM GORDON
United States Attorney
MICHAEL D. WALLACE
Maryland Bar No. 9912160256
Assistant U.S. Attorney
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8714
Facsimile: (619) 546-7751
Email: Michael.Wallace4@usdoj.gov

Attorneys for Respondents

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LANH VAN TRAN,

Petitioner,

v.

WARDEN JEREMY CASEY,

Respondent.

Case No. 26-cv-2618-RSH-DEB

**RESPONDENTS' RETURN TO
PETITIONER'S HABEAS
PETITION**

I. INTRODUCTION

Petitioner Lanh Van Tran has filed a habeas petition. ECF No. 1. For the reasons set forth below, the Court should deny Petitioner's request for relief and dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Vietnam. Declaration of Deportation Officer Edgar Olvera (Olvera Decl.) at ¶ 3; Exhibit (Ex.) 1 (I-213). Petitioner entered the United States as a refugee on September 26, 1989. Ex. 1. On March 6, 1995, Petitioner was convicted of vehicle theft and sentenced to two years of incarceration followed by three

1 years of supervised probation. On April 11, 1997, Petitioner was convicted of First-
2 Degree Burglary while on probation, sentenced to 8 months of incarceration and three
3 years of probation. On January 29, 2003, Petitioner was convicted of felony possession
4 of a controlled substance and sentenced to 28 months. Petitioner was convicted of
5 Second-Degree Burglary on March 17, 2003, sentenced to sixteen months incarceration.
6 On April 2, 1999, an Immigration Judge ordered Petitioner removed to Vietnam. *Id.* at
7 ¶ 4. Between 2006 and 2023, Petitioner was arrested 10 more times. On three occasions,
8 Petitioner was taken into ICE custody and subsequently released from ICE custody on
9 bond or an Order of Supervision as the result of an inability to obtain a travel document
10 to Vietnam. *Id.* at ¶¶ 5, 6.

11 On June 11, 2025, ICE re-detained Petitioner to execute his removal to Vietnam.
12 *Id.* at ¶ 7. At the time of his re-detention, ICE served Petitioner with the Form I-205,
13 Warrant of Removal and Deportation, dated June 11, 2025. Ex. 2 (I-205). Petitioner
14 acknowledges he was aware that he is deportable, the reason he was detained, and that
15 ICE has sought his cooperation in obtaining the documents to deport him. *See* ECF No.
16 1.

17 In fiscal year 2025, ICE removed about 587 Vietnamese citizens to Vietnam. *Id.*
18 at ¶ 12. About 324 of the removals were of individuals who immigrated to the United
19 States before July 1995. *Id.* ICE is not seeking to remove Petitioner to a third country.
20 Olvera Decl. at ¶ 14. On May 4, 2026, ICE received a travel document from Vietnam
21 which is valid until November 4, 2026. *Id.* at ¶ 10. ICE is actively working to schedule
22 a removal flight for Petitioner to Vietnam. *Id.* at ¶ 11.

23 **III. ARGUMENT**

24 **A. Claims and Requests Barred by 8 U.S.C. § 1252.**

25 Petitioner bears the burden of establishing that this Court has subject matter
26 jurisdiction over his claims. *See Ass'n of Am. Med. Colls. v. United States*, 217 F.3d
27 770, 778–79 (9th Cir. 2000). To the extent Petitioner's claims arise from—or seek to
28 enjoin—the decision to execute his removal order, they are jurisdictionally barred under

8 U.S.C. § 1252(g). *See* 8 U.S.C. § 1252(g) (“Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation or prosecution of various stages in the deportation process.”) (quoting 8 U.S.C. § 1252(g)). In other words, section 1252(g) removes district court jurisdiction over “three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed). Here, Petitioner’s claims necessarily arise “from the decision or action by the Attorney General to . . . execute removal orders,” over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2) (“Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.”). Accordingly, to the extent Petitioner’s claims arise from—or seek to enjoin—the decision to execute his removal order, the Court should deny and dismiss those claims for lack of jurisdiction under 8 U.S.C. § 1252.

B. Petitioner’s detention is lawful, and he has not established that there is no significant likelihood of removal in the reasonably foreseeable future.

ICE’s authority to detain, release, and re-detain noncitizens who are subject to a final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found

1 to be unlawfully present in the United States and a final order of removal has been
2 entered, the government ordinarily secures the alien's removal during a subsequent 90-
3 day statutory "removal period." 8 U.S.C. § 1231(a)(1). The statute provides that the
4 Attorney General "shall detain" the alien during this removal period. 8 U.S.C.
5 § 1231(a)(2).

6 The Supreme Court held in *Zadvydas* that when removal is not accomplished
7 during the 90-day removal period, the statute "limits an alien's post-removal-period
8 detention to a period reasonably necessary to bring about the alien's removal from the
9 United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689.
10 The Supreme Court has held that six months constitutes a "presumptively reasonable
11 period of detention." *Id.* at 701. Courts have repeatedly declined to grant habeas relief
12 where the presumptively reasonable six-month period has not yet elapsed. *See*
13 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22,
14 2025) ("The government is entitled to its six-month presumptive period before
15 Petitioner's continued § 1231(a)(6) detention poses a constitutional issue."); *Guerra-*
16 *Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July
17 17, 2025) ("The Court finds that the Petition is premature because Petitioner has not
18 been detained for more than six months. Petitioner has been in detention since May 29,
19 2025; therefore, his two-month detention is lawful under *Zadvydas*."). (citations
20 omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn.
21 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
22 the release based on changed circumstances, "the revocation would merely restart the
23 90-day removal period, not necessarily the presumptively reasonable six-month
24 detention period under *Zadvydas*").

25 Even after the period of presumptive reasonableness has run, release is not
26 required under *Zadvydas* unless "there is *no* significant likelihood of removal in the
27 reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701 (emphasis added). As the
28 Supreme Court instructed, "the habeas court must ask whether the detention in question

1 exceeds a period reasonably necessary to secure removal. It should measure
2 reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the*
3 *alien's presence at the moment of removal.*" *Id.* at 699 (emphasis added). In so holding,
4 the Supreme Court recognized that detention is presumptively reasonable pending
5 efforts to obtain travel documents, because the noncitizen's assistance is often needed
6 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
7 executable warrant of removal becomes a significant flight risk, especially if he or she
8 is aware that it is imminent.

9 The Supreme Court also instructed that detention could exceed six months: "This
10 6-month presumption, of course, does not mean that every alien not removed must be
11 released after six months. To the contrary, an alien may be held in confinement until it
12 has been determined that there is no significant likelihood of removal in the reasonably
13 foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good
14 reason to believe that there is no significant likelihood of removal in the reasonably
15 foreseeable future, the Government must respond with evidence sufficient to rebut that
16 showing." *Id.* The Ninth Circuit has emphasized, "*Zadvydas* places the burden on the
17 alien to show, after a detention period of six months, that there is 'good reason to believe
18 that there is no significant likelihood of removal in the reasonably foreseeable future.'"
19 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
20 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

21 Here, Petitioner contends that his current detention runs afoul of *Zadvydas*. But
22 even if Petitioner's total time in detention since his initial detention in 2008 does exceed
23 the six months of presumptive reasonableness, his claim still fails at the next step
24 because he cannot meet his burden to establish "that there is no significant likelihood
25 of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Petitioner
26 was re-detained on June 11, 2025, after ICE had been successfully obtaining travel
27 documents for Vietnamese citizens and routinely effectuating removals to Vietnam for
28 almost 5 months. Olvera Decl. at ¶ 12. ICE is actively working to schedule a flight to

1 remove Petitioner to Vietnam. *Id.* at ¶ 11. It is true that that 18 years ago the government
2 was not able to remove Petitioner to Vietnam, as with other similarly situated
3 individuals, because the prior political relationship between the United States and
4 Vietnam prevented their removals. That produced significant litigation from detainees
5 who argued that they could not be removed to their home nations due to the lack of
6 cooperation, and so their detentions were indefinite. But that barrier to removal was
7 removed. This issue was exhaustively addressed in more recent litigation addressing
8 detainees facing removal to Vietnam. In 2020, the *Trinh* court explained the then-
9 current state of affairs:

10 The parties now agree that Vietnam does not maintain a blanket policy of
11 refusing to repatriate pre-1995 immigrants. . . . Instead, Vietnam now
12 considers each request from ICE on a case-by-case basis. ICE frequently
13 requests travel documents from Vietnam for pre-1995 immigrants, and
14 Vietnam issues them in a non-negligible portion of cases. . . .

15 Petitioners do not appear to dispute that once Vietnam issues a travel
16 document, removal becomes significantly likely, rendering class members
17 unable to meet their initial burden under *Zadvydas*.

18 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1090 (C.D. Cal. 2020) (citations omitted).

19 ICE has a travel document and needs only to schedule a flight for Petitioner's
20 removal. Thus, Petitioner not only fails to meet his burden, but Respondents have
21 affirmatively shown that there is a significant likelihood of Petitioner's removal to
22 Vietnam in the reasonably foreseeable future.

23 Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi*
24 *v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1 (W.D. Wash. April 2, 2008)
25 (denying *Zadvydas* petition where petitioner had been detained more than 14 months
26 post-final order); *Nicia v. ICE Field Office Dir.*, No. C13-0092-RSM, 2013 WL
27 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner "failed to satisfy his
28 burden of showing that there is no significant likelihood of his removal in the reasonably
foreseeable future" where he had been detained more than seven months post-final

1 order).

2 That Petitioner does not yet have a specific date of anticipated removal does not
3 make his detention unconstitutionally indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222,
4 1233 (9th Cir. 2008) (explaining that a demonstration of “no significant likelihood of
5 removal in the reasonably foreseeable future” would include a country’s refusal to
6 accept a noncitizen or that removal is barred by our own laws). On the contrary, as
7 courts in this district have found, “evidence of progress, albeit slow progress, in
8 negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s
9 detention grows unreasonably lengthy.” *Kim v. Ashcroft*, Case No. 02-cv-1524-J-LAB,
10 ECF No. 25 at 8:8–10 (S.D. Cal. June 2, 2003) (finding that petitioner’s one year and
11 four-month detention does not violate *Zadvydas* given respondent’s production of
12 evidence showing governments’ negotiations are in progress and there is reason to
13 believe that removal is likely in the foreseeable future); *see also Marquez v. Wolf*, No.
14 20-cv-1769-WQHBLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying
15 petition because “Respondents have set forth evidence that demonstrates progress and
16 the reasons for the delay in Petitioner’s removal”); Exhibit D, *Sereke v. DHS*, Case No.
17 19-cv-1250-WQH-AGS, ECF No. 5 at 5:4–6 (S.D. Cal. Aug. 15, 2019) (“the record at
18 this stage in the litigation does not support a finding that there is no significant
19 likelihood of Petitioner’s removal in the reasonably foreseeable future.”).

20 Petitioner’s continued detention is thus not unconstitutionally prolonged under
21 *Zadvydas*.

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1 IV. CONCLUSION

2 For the foregoing reasons, Respondents respectfully request that the Court deny
3 Petitioner's motion for a temporary restraining order and dismiss Petitioner's habeas
4 petition.

5 DATED: May 8, 2026

6 ADAM GORDON
United States Attorney

7 s/ Michael D. Wallace
8 MICHAEL D. WALLACE
Assistant United States Attorney
9 Attorneys for Respondents