

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DUNG MINH LE,

Petitioner,

Case No. 3:26-cv-1148-JEP-PDB

v.

WARDEN, NORTH FLORIDA
DETENTION FACILITY, et al.,

Respondents.

**RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Dung Minh Le seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking his immediate release from immigration custody on the basis that his detention is unlawful, and ICE improperly when revoked his order of supervision. His petition should be denied. In *Zadvydas v. Davis*, the Supreme Court held that detention following a final removal order is presumptively reasonable for six months. 533 U.S. 678 (2001). Dung Minh Le was detained for 90 days when he filed the present petition and therefore the petition was filed prematurely. ICE has also afforded proper notice of his revocation. Dung Minh Le's detention is therefore lawful.

BACKGROUND

Dung Minh Le is a national and citizen of Vietnam who was ordered removed to Vietnam on April 27, 2006 (Ex. 1 at 1, Notice of Revocation of Release, Dated May 18, 2026). He was placed on an order of supervision on July 28, 2006. (Ex. 2, Detention History). Dung Minh Le was returned to immigration custody on February 6, 2026. *See Id.*

On May 18, 2026, Dung Minh Le was served with a notice of revocation of release. (Ex. 1 at 2). The notice provides that Hung Minh Luu's release has been revoked pursuant to 8 C.F.R. § 241.13(i). *Id.* at 1. The notice indicates that Hung Minh Luu's release has been revoked because circumstances have changed such that there is a likelihood of removal in the reasonably foreseeable future and he violated a condition of release. *Id.* On May 21, 2026, Hung Minh Luu was provided with an informal interview. (Ex. 3 at 1, Alien Informal Interview Upon Revocation of Order of Supervision, Dated May 21, 2026).

On May 5, 2026, Hung Minh Luu filed a petition for writ of habeas corpus alleging his re-detention without changed circumstances is arbitrary and Unlawful and that his re-detention violates the Immigration and Nationality Act. (Doc. 1.)

He is currently detained at Baker Correctional Institution.

ARGUMENT

- I. Dung Minh Le's detention violates neither the Fifth Amendment's Due Process Clause nor the Immigration and Nationality Act.**

After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, the alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. This is called a “post-removal” period. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

There is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). Due to constitutional concerns, the U.S. Supreme Court has nevertheless interpreted the post-removal period to allow extended detention for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. In all, a reasonable length of detention “is presumptively six months.” *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale*, 287 F.3d at 1052 (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable period expires without removal, then a burden-shifting framework comes into play regarding the “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 689. If an alien “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government must either rebut that showing or release the alien. *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018). But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*,

Akinwale v. Ashcroft, 287 F.3d 1050, 1051-52 (11th Cir. 2002); *Guo Xing Song v. U.S. Attorney General*, 516 F. App'x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009). At bottom, “[U]ntil the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not ripe.” *E.g.*, *Khalil Al Ellary*, 2:26-cv-00112-KCD-DNF, Doc. 7 (M.D. Fla. Feb. 27, 2026); *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011).

Dung Minh Le filed the present petition before expiration of six months in detention. He was detained on February 6, 2026, and filed the present petition on May 5, 2026. At that point, Hung Minh Luu had been detained for approximately 90 days. At time of filing this response, Dung Minh Le has only been detained for 111 days. As previously stated, it is only after six months that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” *See Jennings*, 583 U.S. at 299 (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is “[a]fter this 6-month period”); *Khalil Al Ellary v. Noem*, 2:26-cv-00112-KCD-DNF (M.D. Fla. Feb. 27, 2026) (denying petition when alien had not been detained for six months). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal. *See Akinwale*, 287 F.3d at 1051-52. *See Zadvydas*, 533 U.S. at 700 (stating judicial review in foreign policy matters “require courts to listen with care when the

Government's foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise"). Dung Minh Le must have been detained beyond the 6 months at the time the petition was filed, or his filing was premature. *See Akinwale*, 287 F.3d 1050, 1052 (11th Cir. 2002) ("This six-month period thus must have expired at the time [the petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*.").¹

Even if the Court were to employ *Zavydas*'s burden shifting framework, Dung Minh Le has failed to show there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Jennings*, 583 U.S. at 299. In fact, Dung Minh Le does not even address the question in his petition and only addresses the revocation of his supervision.

II. ICE has complied with its regulations regarding revocation of an order of supervision.

Petitioner's Due Process Claim Fails on the Merits

¹ *See also Mehiglovesky v. U.S. Dep't of Homeland Sec.*, No. CIV. 12-902 RHK/JJG, 2012 WL 6878901, at *2 (D. Minn. Dec. 7, 2012), *report and recommendation adopted*, No. CIV. 12-902 RHK/JJG, 2013 WL 187553 (D. Minn. Jan. 17, 2013) ("There is a good policy reason for dismissing premature *Zadvydas* actions, even when post-removal-order detention has exceeded six months by the time the case is decided. If the rule were otherwise, removable aliens would have no incentive to wait for their potential *Zadvydas* claims to ripen, and the federal courts might then be inundated with pre-emptive *Zadvydas* claims brought by aliens who are unwilling to give the Government six months to effect their removal.")

Petitioner asserts that he cannot be returned to immigration detention unless the government first proves to someone—presumably an immigration judge—that changed circumstances warrant his re-detention and that he presents a flight risk or danger to the community. Petitioner relies on authorities that have imposed limits on ICE’s unilateral ability to revoke a bond issued under 8 U.S.C. § 1226(a). *See* Doc. 1 at ¶ 13. Dung Minh Le’s argument is incorrect because his detention is governed by 8 U.S.C. § 1231(a). Significantly, 8 U.S.C. § 1231(a), unlike 8 U.S.C. § 1226(a), authorizes detention without a pre-detention hearing, and detention under U.S.C. § 1231(a) during both the 90-day removal period and during the post-removal period is constitutionally permissible without any pre-deprivation process. *Zadvydas v. Davis*, 533 U.S. 678, 688-89 (2001). Due process does not require the extra-regulatory, pre-detention procedures that Petitioner is asking this Court to engraft upon 8 U.S.C. § 1231(a) and its regulatory framework.

A. Petitioner’s OSUP was properly revoked.

In *Zadvydas*, the Supreme Court recognized that the “basic purpose” of 8 U.S.C. § 1231 is “assuring the alien’s presence at the moment of removal.” 533 U.S. at 699. When removal is not reasonably foreseeable, continued detention under 8 U.S.C. § 1231 is no longer authorized, but “the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions.” *Id.* at 700 (citing 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5).

Petitioner's OSUP was revoked pursuant to 8 C.F.R. § 241.13. (*See* Ex. 1). The regulation provides that release can be revoked if the alien violates the conditions of release or if ICE believes it can remove the alien. 8 C.F.R. § 241.13(i)(1), (2). As relevant here, "[t]he Service may revoke an alien's release under this section and return the alien to custody, if on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). Section 241.13(i)(3) provides the procedures for revoking release and states that "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release." 8 C.F.R. § 241.13(i)(3). Promptly after the alien is returned to custody, ICE is to conduct an initial informal interview to "afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision" *Id.*

The Notice of Revocation of Release was provided to Petitioner when he was detained and informed him that his OSUP had been revoked and he was being detained because ICE had determined there were "changed circumstances" in his case. (Ex. 1). Specifically, ICE notified Petitioner that it had determined "circumstances have changed such that there is a significant likelihood of removal in the reasonably foreseeable future and on 4/27/2006 you were ordered removed to Viet Nam." *Id.*

Nothing in the statute or regulation limits ICE's authority to revoke release only if the alien has violated a condition of release. Although 8 C.F.R. § 241.13(i)(1) provides for revocation in that circumstance, § 241.13(i)(2) provides for revocation of release "for removal"—as occurred here. Additionally, the regulation makes clear that ICE is not required to provide the alien with advanced notice of its intention to revoke the alien's release or to prospectively provide the alien with an opportunity to contest ICE's reasons for revoking release. The regulation provides that "upon revocation" the alien is to be notified of the reasons therefore and that "after" his return to custody he be interviewed and given an opportunity to respond to the reasons for revocation stated in the notice. The plain language makes clear that notice and opportunity happen after—not before—the revocation has occurred. The regulation does not contemplate, and nothing in the statute or Constitution requires, that those events occur before ICE can revoke release, and such a requirement would impair the fundamental purpose of 8 U.S.C. § 1231, which is to ensure the alien's presence at the moment of removal.

Admittedly, ICE did not serve the revocation until May 19, 2026, and did not conduct the initial informal interview until May 21, 2026. (*See* Ex. 1 and Ex. 3). However, ICE's failure to provide the revocation immediately and conduct the interview promptly after Petitioner's return to custody did not violate the Petitioner's due process rights. "A court's duty to enforce an agency regulation is most evident when compliance with the regulation is mandated by the Constitution or federal law."

United States v. Caceres, 440 U.S. 741, 749 (1979). Here, ICE was not required by the Constitution to adopt the regulation at 8 C.F.R. § 241.13, and any failure to promptly provide the initial informal interview described in 8 C.F.R. § 241.13(i)(3) does not raise constitutional concern given that Petitioner's OSUP was ultimately revoked to effectuate his imminent removal. Any inconsistency that Petitioner might complain about is one of form with no effect on the action taken by ICE and its treatment of Dung Minh Le. In any event, the error has already been remedied.

CONCLUSION

Respondents respectfully request Dung Minh Le's petition be denied.

DATED this 26th day of May, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 26, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send notice of filing and a downloadable copy of the filed document to the following CM/ECF participant listed below:

Dung Minh Le

Sanderson, FL 32087
Tel: (386) 719-4500

Petitioner

/s/ Matthew T. Brodersen
Matthew T. Brodersen
Special Assistant United States Attorney

EXHIBIT LIST

Exhibit No.	Title	Description
1	Revocation	Notice of Revocation of Release, Dated May 18, 2026
2	Detention History	Detention History
3	Informal Interview	Alien Informal Interview Upon Revocation of Order of Supervision, Dated May 21, 2026