

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

HUNG QUOC NGUYEN,

Petitioner,

v.

Case No. 3:26-cv-1173-JEP-PDB

WARDEN, NORTH FLORIDA
DETENTION CENTER, et al.,

Respondents.

**RESPONDENTS' RESPONSE TO AMENDED VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner Hung Nguyen challenges his continued detention by United States Immigration and Customs Enforcement ("ICE") and seeks immediate release. (Doc. 1). Respondents ask that the Court deny the Petition for the reasons set forth below.

BACKGROUND

Petitioner is a citizen and national of Vietnam. (Ex. A at 3). He was admitted into the United States as a Refugee on or about September 3, 1986. (*Id.*). On June 20, 1996, an Immigration Judge Ordered Petitioner removed to Vietnam. (Ex. B at 1–6). Petitioner was convicted of a host of crimes between 1992 and 2012, including sexual battery on a minor. (Ex. C).

On or about December 10, 2008, Petitioner was released on order of supervision ("OSUP"). (Ex. D). Petitioner violated the conditions of his release by failing to appear

for his scheduled check-in appointment with Enforcement and Removal Operations (“ERO”) on March 1, 2028. (Ex. F ¶ 6). Additionally, on or about November 12, 2025, Petitioner was arrested for possession of drug paraphernalia. (Ex. F ¶ 6; Ex. E). ERO encountered Petitioner in jail on November 12, 2025. (Ex. F ¶ 6). On November 13, 2025, a Warrant of Removal/Deportation and Immigration Detainer was issued. (Ex. G). Petitioner’s OSUP was revoked for violation of the conditions of his release. (Ex. F ¶ 5). Petitioner was taken into custody on December 16, 2025, and “issued revocation of order of supervision release paperwork.” (*Id.* ¶ 4). On April 29, 2026, Petitioner was issued a Notice to Alien of File Custody Review. (Ex. H).

Currently, Petitioner is being detained at the Baker Correctional Institute. (Ex. D; Ex. F ¶ 4).

CERTIFIED HABEAS RETURN

Petitioner is detained under 8 U.S.C. § 1231(a)(6). *See* 28 U.S.C. § 2243 (stating “[t]he person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

ARGUMENT

At its core, the petition argues that Petitioner’s detention violates the test set forth in *Zadvydas v. Davis*, 533 U.S. 678 (2001). (*Id.* at 6–7) (asserting that Petitioner challenges the “lawfulness of continued [his] continued detention,” but does not the underlying removal order). Petitioner contends that there is no significant likelihood that he will be released in the reasonably foreseeable future. (*Id.* at 8–9). Additionally,

Petitioner seemingly argues that his detention is actionable under the *Accardi* doctrine and the Administrative Procedure Act (APA). (*Id.*).

Respondents contend that the petition is premature because, as of the date of the petition and this response, Petitioner's current detention has not exceeded the 180-day period presumed to be reasonable in *Zadvydas*. Alternatively, Respondents contend that there is a significant likelihood that Petitioner will be removed to Vietnam in the reasonably foreseeable future. Respondents further contend that Petitioner has no action under the *Accardi* doctrine and the APA.

I. Petitioner's Due Process Claims are Premature

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, “until 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).

“District courts are split on whether prior time in ICE custody should be aggregated to satisfy the six-month *Zadvydas* clock.” *Tran v. Warden, Fla. Soft Side S. Det. Ctr.*, No. 2:25-CV-1224-KCD-NPM, 2026 WL 672969, at *4 (M.D. Fla. Mar. 10, 2026). Some courts treat the *Zadvydas* period as cumulative and, therefore, aggregate all periods of detention. *See e.g. Krechmar v. Parra*, No. 2:25-CV-01095-SPC-DNF, 2025 WL 3620802, at *3 (M.D. Fla. Dec. 15, 2025) (explaining only considering an isolated period of ICE custody and ignoring all prior detention “would effectively allow [ICE]

to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six month.”).

Other “courts have firmly rejected [the] cumulative approach”. *See id.* In *Tran*, the court “decline[d] to endorse a blanket rule that all prior periods of confinement automatically aggregate to satisfy the *Zadvydas* six-month clock.” *Id.* The *Tran* court held that the better approach is to:

afford the government a new six-month presumptively reasonable period for each discrete detention, unless there are facts suggesting the government is acting with an improper motive. If the record reveals a calculated pattern of catch-and-release designed merely to reset the *Zadvydas* clock or evade judicial review, aggregation may be entirely appropriate. But absent evidence of such bad faith or a deliberate strategy of looping confinement, courts should presume that a subsequent detention is a genuine, independent effort to effectuate removal.

Id.

Respondents respectfully disagree that Petitioner’s prior periods of post-removal order detention should be aggregated for purposes of calculating the presumptively reasonable six-month period under *Zadvydas*.

With respect to his current detention, Petitioner was taken into ICE custody on December 16, 2025. (Ex. D). Therefore, at the time he filed his petition—and to date—his current detention has not exceeded 180 days. Additionally, Petitioner has failed to offer any factual allegations or evidence suggesting that the government has acted with an improper motive to bypass the six-month presumption or avoid judicial oversight. Petitioner “remains within the six-month presumptively reasonable window established in *Zadvydas*.” *Lam v. Dir., Immigr. & Customs Enft*, Case No. 2:25-cv-1202-

KCD-DNF, 2026 WL 628248, at *4 (M.D. Fla. Mar. 6, 2026). Accordingly, Petitioner's challenge to the length of his detention is premature.

II. There is a Significant Likelihood that Petitioner Will Be Removed in the Reasonably Foreseeable Future

Should the Court aggregate Petitioner's current and prior detention periods, the petition should still be denied. "[I]n order to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

Here, Petitioner claims that there is no significant likelihood that he will be removed in the foreseeable future because he was previously detained under the same removal order and subsequently released due to the government's inability to remove him to Vietnam. (Doc. 1 at 7, 8). At least one court has held that a prior unsuccessful removal is insufficient to meet a petitioner's initial burden under *Zadvydas*.

Should the Court find that Petitioner has satisfied his initial burden, ICE submits the declaration of Deportation Officer Angel Diaz ("Diaz"). (Ex. F). Diaz declares that "ICE intends to remove the [P]etitioner to his country of origin, Vietnam". (See Ex. F ¶ 7). Diaz further declares that there is a "significant likelihood that [Petitioner] may be removed to Vietnam in the reasonably foreseeable future" because there are procedures in place for third country removals to Vietnam and ICE is working to obtain Petitioner's travel documents. (See Ex. F ¶¶ 7–12). Because the

Zadvydas clock has not run, Respondents ask that the Court allow ICE to re-attempt and effectuate Petitioner's removal.

III. Petitioner's *Accardi* Doctrine Claim Does Not Warrant Habeas Relief

Petitioner's arguments under the *Accardi* doctrine are insufficient to warrant the extraordinary remedy of habeas relief. *See Tran*, 2026 WL 672969, at *10. The *Accardi* doctrine is derived from *Accardi v. Shaughnessy*, 374 U.S. 260 (1954). *See Chevron Oil Co. v. Andrus*, 588 F.2d 1383, 1386 (5th Cir. 1979). It stands for the "proposition that an agency must abide by its own regulations." *Id.* Here, Petitioner argues that ICE failed to lawfully revoke Petitioner's OSUP because they did not follow the regulations in 8 C.F.R. § 212.5 because, in his opinion, he is not a "flight risk or danger". (Doc. 1 at 7).

However, the revocation of Petitioner's supervised release is governed by 8 C.F.R. § 241.3. *Tran*, 2026 WL 672969, at *7. "When the Government decides it is time to again detain someone on that specific track, it must follow the revocation procedures in § 241.13." *Id.* This section "contains no rigid signature requirement limiting revocation authority to field office directors or other specific high-ranking officials. It simply says the agency can revoke an order of supervision if changed circumstances mean removal is now significantly likely." *Id.* "When ICE decides to revoke an existing order of supervision and bring someone back into custody," 8 C.F.R. § 241.13(i) "asks only that the agency determine circumstances have changed and notify the noncitizen of its decision." *Id.* at *8.

“Section 241.13(i) leaves the determination of whether circumstances have changed squarely in the agency’s hands.” *Id.* at *8. “To the extent this Court has any role in questioning that operational judgment, [its] posture must be highly deferential.” *Id.* “As the Supreme Court has cautioned, [federal courts] must take appropriate account of the greater-expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive efforts to enforce in this complex area of law, and the Nation’s need to speak with one voice in immigration matters.” *Id.* (citing *Zadvydas*, 533 U.S. at 700). Accordingly, “the Court’s review of the [R]espondents’ determination that there are changed circumstances in this case is necessarily limited.” *Id.*

Assuming the agency’s “initial administrative process was somehow lacking, [Petitioner] can hardly complain that he is being denied a meaningful opportunity to be heard *now*.” *Id.* at *9 (emphasis in original). “Through this very habeas proceeding, he has had a full change to review the Government’s evidence, file his briefs, and press his legal arguments before an Article III court.” *Id.* “He has had his say.” *Id.* “Because this litigation itself has provided him with the exact procedural safeguards he claims to have missed,” the Court should “decline to use the extraordinary tool of habeas relief to simply wipe the slate clean.” *Id.* “Because habeas is not backward-looking, the process provided now renders forward-looking relief separately inappropriate.” *Id.* As such, the Court should deny Petitioner’s claim based on the alleged *Accardi* violation.

IV. Petitioner Cannot Raise Claims under the APA Here

Petitioner cannot bring his claims under the APA. “The APA is the law’s version of a backup plan—a residual remedy that kicks in only when there is no other adequate remedy in a court.” *Id.* at *7 (quoting 5 U.S.C. § 704). “Here, [Petitioner] has a perfectly adequate remedy: the very habeas petition he used to get through the courthouse doors in the first place.” *Id.* “Because the writ of habeas corpus exists specifically to challenge the fact or duration of physical confinement, it leaves no room for a redundant APA tag-along.” *Id.* Consequently, Petitioner’s APA claims should be denied.

CONCLUSION

Based on the foregoing, the Petition for Writ of Habeas Corpus (Doc. 1) should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or before May 27, 2026, a copy of the foregoing documents will be sent by U.S. Mail to:

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/s/ Lakisha Davis
Lakisha Davis
Assistant United States Attorney