

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GIAO PHONG LE NGUYEN,

Petitioner,

v.

No. 2:25-cv-01198-KWR-JMR

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States; TODD M. LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; MARY DE ANDA-YBARRA, in her official capacity as Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; and DORA CASTRO, in her official capacity as Warden of the Otero County Processing Center,

Respondents.

RESPONSE TO PETITION FOR HABEAS CORPUS (DOC. 1)

Respondents, Immigration and Customs Enforcement (“ICE”) and the Department of Homeland Security (“DHS”) (collectively “Respondents”), hereby submit this Response to the Petition for Writ of Habeas Corpus (Doc. 1) pursuant to Court order (Doc. 4). Petitioner argues his continued detention pending removal under 8 U.S.C. § 1231 violates the Fifth Amendment (Counts I, II) and the Administrative Procedures Act (“APA”). *See* Doc. 1 at 7-8. Respondents respectfully request the Court deny the Petition (Doc. 1) as there has been no statutory or constitutional violation, an APA claim is independently barred and there is a substantial likelihood of removal within the reasonably foreseeable future.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Vietnam who entered the United States as a refugee on February 24, 1989. *See* [REDACTED]. On July 10, 1990, Petitioner's status was adjusted to Lawful Permanent Resident ("LPR"). *Id.* However, on March 7, 1996, Petitioner was convicted¹ in California for charges stemming from a drive by shooting incident. *Id.* On August 6, 1998, Petitioner was formally charged as removable from the United States under Immigration and Nationality Act ("INA") § 237(a)(2)(C) due to this criminal conviction. On April 30, 2024, an Immigration Judge ("IJ") sustained the charges of removability, denied Petitioner's application for asylum/withholding and ordered Petitioner removed to Vietnam. *See* [REDACTED], [REDACTED]. [REDACTED]. Petitioner appealed the IJ's findings to the Board of Immigration Appeals ("BIA"). On September 13, 2005, the BIA dismissed Petitioner's appeal, which made the IJ's removal order administratively final. *See* [REDACTED], [REDACTED]. Petitioner was subsequently released from detention under an order of supervision.

On January 20, 2025, Petitioner was encountered at a traffic check point. *See* Doc. 1 at 4. Upon review of Petitioner's immigration and criminal history, Petitioner was detained to effectuate the final order of removal. Upon information and belief², Respondents have taken the following actions to effectuate Petitioner's removal to Vietnam:

- On January 29, 2025, pre-removal checks were completed for [REDACTED]. His file was forwarded to the travel team for removal.
- On February 13, 2025, ERO provided [REDACTED] with a DHS Form I-217, Information for Travel Document or Passport, and a passport application. [REDACTED] filled out the provided documents.

¹ Petitioner seeks to minimize the circumstances and nature of this offense as "a single conviction from conduct that occurred when he was a minor." *See* Doc. 1 at ¶ 18. Upon information and belief, Petitioner was 17 years old at the time of the offense, charged as an adult and sentenced to 120 days in jail and five years of probation.

² This timeline was provided by Assistant Field Office Director ("AFOD") Jose Ortez, to be verified by way of written declaration. An executed copy of AFOD Ortez's declaration was not available at the time of filing due to travel arrangements. Respondents expect the executed copy of AFOD Ortez's declaration to be received within the next 24 hours and respectfully request the opportunity to supplement the record upon receipt.

- On March 11, 2025, the request for a travel document was mailed.
- On April 22, 2025, ERO reached out to the assigned Detention and Deportation Officer to request a status update on the issuance of travel documents for Nguyen.
- On November 17, 2025, ERO contacted the Vietnamese Consulate to request a status update on the issuance of travel documents for Nguyen.
- On November 19, 2025, ERO contacted translation services to request translation of three documents from English to Vietnamese and was informed the translation would be complete on December 3, 2025.
- On December 3, 2025, the translated documents were received, and the travel document request was submitted to ERO headquarters.
- On January 27, 2025, ERO was informed by the assigned Detention and Deportation Officer that the travel document request is still being processed and there is a backlog³ of travel document requests for Vietnam.

Petitioner presently remains detained under 8 U.S.C. § 1231 pending ongoing efforts to effectuate the final order of removal to Vietnam.

LEGAL ANALYSIS

It is well established that detention is a constitutionally valid aspect of the deportation process. *See generally Zadvydas v. Davis*, 533 U.S. 678 (2001); *see also Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Congress has made clear that a removable noncitizen may be detained *during* removal proceedings *and after* an order of removal becomes final. *See* 8 U.S.C. §§ 1225, 1226, 1231. “An alien is not adjudged deportable until an order enters concluding that the alien is deportable or ordering deportation, and such an order is not final until affirmed by the Board of Immigration Appeals or until the time expires for seeking review.”

Demore v. Kim, 538 U.S. 510, 542 n. 3 (2003) (Justices Souter, Stevens, Ginsburg *concurring*

³ Upon information and belief, in 2025 ICE successfully removed over 400 Vietnamese nationals to Vietnam. Generally, Vietnam has issued travel documents on average within thirty days of the request. ICE submitted the travel document request for Petitioner on December 3, 2025. Respondents do not anticipate impediments to securing the travel document and repatriating Petitioner to Vietnam in the reasonably foreseeable future.

(*internal citation omitted*)). However, once a noncitizen becomes subject to an administratively final removal order, the authority for his detention shifts to 8 U.S.C. § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 528-29 (2021); *see also* 8 U.S.C. § 1231(a).

The seminal case on detention following final orders of removal is *Zadvydas v. Davis*, 533 U.S. 678 (2001). In *Zadvydas* the Supreme Court reviewed cases where “resident aliens” had been ordered removed yet remained detained for more than ninety days following their final orders of removal. The question presented was whether potentially indefinite detention was constitutionally permissible. *See Zadvydas*, 533 at 693; *see also Demore v. Kim*, 538 U.S. 510, 511 (2003) (brief discussion of central issue in *Zadvydas*). The Supreme Court held that following a final order of removal, detention of up to six (6) months was presumptively valid and did not implicate constitutional considerations. *Id.* at 701. After this six-month presumptively constitutional period, continued detention may still be constitutionally permissible depending upon the significant likelihood of removal in the reasonably foreseeable future. *Id.* Thus, to challenge detention under *Zadvydas* a noncitizen must “provide good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.” *See Zadvydas*, 533 at 701. Only upon the noncitizen meeting this threshold burden, must the government then produce evidence sufficient to rebut that showing. *Id.*

ARGUMENT

A. Petitioner’s Detention Did Not Violate Due Process (Counts I, II)

Petitioner argues that Respondents had no legitimate, non-punitive reason to revoke Petitioner’s release, thus violating the Fifth Amendment (Count I). *See* Doc. 1 at 15. However, detention to effectuate a final order of removal is a well understood and longstanding principle of U.S. Immigration law. *See, e.g., Zadvydas*; 8 U.S.C. § 1231(a). For example, release may be revoked, even absent any violations of conditions of release, specifically for the purpose of

enforcing an order of removal. *See* 8 C.F.R. § 241.4(l)(2)(iii). Petitioner’s detention is thus clearly rationally related to a legitimate government interest.

Similarly, Petitioner argues that Respondents “[failed] to follow the requisite procedural safeguards” by not providing advanced “notice and an opportunity to respond” (Count II). *See* Doc. 1 at 15-17. However, the applicable statutes and regulations cited by Petitioner do not require advanced notice or hearing prior to detention⁴. *See* Doc. 1 at ¶ 97 (citing 8 U.S.C. § 1231(a)(6), 8 C.F.R. § 241.4(l)(2), 8 C.F.R. 241.13(i)). Further, revocation for removal is expressly authorized, without advanced notice, under each of these statutory and regulatory authorities to effectuate an order of removal.

To the extent Petitioner’s Fifth Amendment allegations (Counts I, II) could be inferred as challenging the entire statutory or regulatory scheme as a whole, Petitioner provides no case law to support such a challenge. Nor does Petitioner cite authority that the appropriate relief would be *release* in cases with otherwise valid final removal orders and a significant likelihood of removal in the reasonably foreseeable future. For these reasons, Counts I and II should be denied.

B. Petitioner’s APA Challenge (Count III) is Barred

The APA is only available for final agency action “for which there is no other adequate remedy in court.” 5 U.S.C. § 704. For example, in *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement” those claims “must be brought in habeas.” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, “given 5 U.S.C. § 704, which states that claims under the APA are not available when

⁴ However, there are regulatory procedures by which a petitioner may challenge that detention. *See, e.g.*, 8 C.F.R. 241.13(d)(1). Contrary to Petitioner’s general assertions, the relevant analysis is not flight risk or dangerousness, but the significant likelihood of removal in the reasonably foreseeable future. *Id.*; *see also Zadvydas*. There is no indication in the Petition (Doc. 1) that Petitioner challenged his detention pursuant to 8 C.F.R. 241.13(d)(1).

there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention. Even if Petitioner’s APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court’s holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

Thus, Petitioner’s APA claim is independently barred by the limitation in 5 U.S.C. § 704 and should be dismissed.

C. Petitioner’s Allegations Related to Third Countries

Petitioner makes several allegations and legal arguments related to removal to third countries. *See, e.g.*, Doc. 1 at 7, 9-13. However, upon information and belief, Respondents are not presently seeking removal to a third country. Thus, these allegations and legal arguments are not relevant to the applicable legal analysis and should be discarded.

D. Petitioner’s Continued Detention is Lawful

Petitioner challenges his detention solely based upon the initial decision and process by which his release was revoked. *See generally* Doc. 1. Petitioner does not challenge his detention based upon the length of detention, nor upon the significant likelihood of removal in the reasonably foreseeable future. *Id.*

Respondents argue that this analysis has not been properly brought before the Court. However, to the extent such a challenge could be inferred, Petitioner has not produced evidence sufficient for a showing that “there is no significant likelihood of removal in the reasonably foreseeable future.” *See Zadvydas*, 533 at 701. Even had Petitioner raised such a challenge and met this initial burden, it has been rebutted by Respondents. *See supra* n. 3.

CONCLUSION

Petitioner's detention to effectuate removal has not violated Fifth Amendment due process nor the APA. Additionally, Petitioner's APA claim is independently barred and should be dismissed. Further, Petitioner has not brought a *Zadvydas* challenge properly before the Court. To the extent that such a challenge could be inferred, Respondents have produced sufficient details regarding ongoing removal efforts to rebut an allegation that removal is not significantly likely in the reasonably foreseeable future. For these reasons, the Petition (Doc. 1) should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 27, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Ryan M. Posey
RYAN M. POSEY
Assistant United States Attorney