UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HUNG THAI NGUYEN,

Petitioner,

v. Case No. 2:26-cv-01723-JES-NPM

ACTING SECRETARY MARKWAYNE MULLIN, et al.,

Respondents.
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FEDERAL RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Hung Thai ("Nguyen" or "Petitioner") seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking his immediate release from immigration custody on the basis that the length of his detention is unlawful. 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). Nguyen had been detained for 127 days when he filed the present petition. His present detention is therefore lawful.

BACKGROUND

Nguyen is a national and citizen of Vietnam. Composite Exhibit A at 4. On or October 14, 1998, he entered the United States at New York, New York. *Id.* at 2. His status was adjusted to that of a lawful permanent resident. *Id.* at 4.

On June 12, 2002, Nguyen was convicted of distribution of a Class A controlled substance within 1000 feet of a school. Ex. A at 2, 5. On May 21, 2003, he was issued a Notice to Appear and entered removal proceedings. *Id.* at 1-3. On September 11, 2003, he became subject of a final removal order. *Id.* at 5. He was previously detained from July 29, 2003, to December 31, 2003, when he was released on an Order of Supervision. *Id.* at 7. His prior detainment lasted 155 days of which 110 occurred after the final removal order. *Id.*

Nguyen entered immigration custody on January 13, 2026, after being detained by U.S. Immigration and Customs Enforcement ("ICE") during a scheduled report date. He is currently detained at the Florida Soft-Sided Facility South. *Id.* at 7.

On May 20, 2026, Nguyen filed a petition for writ of habeas corpus alleging his custody violates the Due Process Clause of the Fifth Amendment. Doc. 1 ¶¶ 23-29.

ARGUMENT

Nguyen's detention does not violate the Fifth Amendment's Due Process Clause.

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).

Nguyen filed the present petition well before expiration of six months in detention. He was detained on January 13, 2026, and filed the present petition on May 20, 2026. At that point, Nguyen been detained for 127 days; to date, he has been in detention for 147 days.

As previously stated, it is only after six months that the parties 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.[1] *See Akinwale*, 287 F.3d at 1051-52.

[1] Federal Respondents acknowledge this Court has previously disagreed. *See Rudenko v. Sec'y, Dep't of Homeland Sec.*, No. 2:25-CV-1157-JES-NPM, 2026 WL 291012, at

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").

Federal Respondents acknowledge that this Court has aggregated a petitioner's prior detention in other habeas cases when calculating the six-month period under *Zadyvas*. *See Ali v. United States Immigr. & Customs Enf't,* No. 2:26-cv-757-JES-DNF, 2026 WL 947950, at *2 (M.D. Fla. Apr. 8, 2026). Here, aggregating Nguyen's prior post-removal order detention (110 days) with his current detention (147 days) results in 247 days of detention, which the Federal Respondents acknowledge exceeds the presumptively reasonable six-month period under *Zadvydas*. Nonetheless, the Court should not aggregate Nguyen's prior detention in this case because it occurred over 20 years ago and has little relation to his current detention.

Even if the Court were to employ *Zavydas's* burden shifting framework, Nguyen has failed to show there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future ("SLRRFF"). *See Jennings*, 583 U.S. at 299. The undersigned has requested a declaration from ICE

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*3 (M.D. Fla. Feb. 4, 2026); *Perez v. Noem*, No. 2:25-CV-00429-JES-NPM, 2025 WL 2306735, at *3 (M.D. Fla. Aug. 11, 2025).

outlining its position as to SLRRFF. As of the time of filing, the undersigned has not received the requested declaration. If a declaration is received before the Court enters an Order on the petition, the undersigned will supplement this response.

The United States Attorney's Office anticipates that the Court will conclude that this response may lack sufficient detail to meet the government's burden in justifying continued prolonged detention. We await and will comply with any Order that may be issued.

CONCLUSION

Federal Respondents respectfully request Nguyen's petition be denied.

Dated: June 9, 2026

Respectfully submitted,

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