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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

DIEU VINH HUYNH,

Petitioner,

v.

MARKWAYNE MULLIN, et al.,

Respondents.

Case No. 26-cv-3257-JO-AHG

**RETURN IN OPPOSITION TO PETITIONER'S HABEAS PETITION**

## I. INTRODUCTION

Petitioner Dieu Vinh Huynh has filed a habeas petition. ECF No. 1. For the reasons set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

## II. FACTUAL AND PROCEDURAL BACKGROUND

The Petitioner is a thief who has 56 convictions between October 5, 1984 and January 8, 2025, for larcenies, thefts, burglaries, drug possessions, and assault. Exhibit (Ex.) 1 (I-213). Petitioner is a citizen and national of Vietnam who was admitted to the United States as a Refugee and granted legal permanent resident status on July 11, 1980. *Id.;* Declaration of Deportation Officer Maria Navarro (Decl.) at ¶ 4. As a result of having committed numerous criminal offenses which qualify as aggravated felonies and as crimes of moral turpitude under 8 U.S.C. § 1226(c), Immigration and Customs Enforcement (ICE) took Petitioner into custody and served Petitioner with a Notice to Appear (NOA) initiating removal proceedings pursuant to 8 U.S.C. § 1229(a) on October 23, 2009.

On April 3, 2015, an immigration judge ordered Petitioner removed to Vietnam. Ex. 2 (IJ Removal Order). Petitioner waived appeal, and the order became final. *Id.* Petitioner was released on multiple Orders of Supervision (OSUP) as a result of the lack of an ability to remove Petitioner to Vietnam which changed in early 2025. *See, e.g.* Ex. 3 (OSUP orders); Decl. at ¶¶ 12, 20-24. At the time of each release, Petitioner was issued a standard OSUP ICE form I-220B which imposed numerous conditions to include that Petitioner will not commit any crimes while on the order of supervision and that any violations may result in Petitioner's detention. Ex. 3; Decl. at ¶ 12. On March 4, 2025, after Petitioner had been detained by the Orange County Sheriff's Department for a violation of his Post-Release Community Supervision, Petitioner was released to ICE custody. Ex. 1. He has remained in custody since that date. ICE requested and received travel authorization for a removal flight to Vietnam. Decl. at ¶ 17. An ICE charter flight for removal of the Petitioner was scheduled for June 2, 2026. *Id.* On May

7, 2026, Petitioner refused to participate in an interview to review his custody status. *Id.* at ¶ 18. Upon the filing of this habeas petition and this Court's order staying removal, ICE removed Petitioner from the manifest of the charter flight. *Id.* Petitioner remains mandatorily detained pursuant to 8 U.S.C. § 1231(a) pending the lift on the stay on removal at which time, ICE may promptly remove Petitioner to Vietnam.

## III. ARGUMENT

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

The Supreme Court held in *Zadvydas* that when removal is not accomplished during the 90-day removal period, the statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that six months constitutes a "presumptively reasonable period of detention." *Id.* at 701. Courts have repeatedly declined to grant habeas relief where the presumptively reasonable six-month period has not yet elapsed. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) detention poses a constitutional issue."); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) ("The Court finds that the Petition is premature because Petitioner has not been detained for more than six months. Petitioner has been in detention since May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*.") (citations

omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes the release based on changed circumstances, "the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*").

Even after the period of presumptive reasonableness has run, release is not required under *Zadvydas* unless "there is *no* significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701 (emphasis added). As the Supreme Court instructed, "the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the alien's presence at the moment of removal*." *Id.* at 699 (emphasis added). In so holding, the Supreme Court recognized that detention is presumptively reasonable pending efforts to obtain travel documents, because the noncitizen's assistance is often needed to obtain the travel documents, and because a noncitizen who is subject to an imminent, executable warrant of removal becomes a significant flight risk, especially if he or she is aware that it is imminent.

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

701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

Petitioner has been detained over six months since his removal order became final on April 3, 2015. His claim still fails because there is a significant likelihood of removal in the reasonably foreseeable future. ICE has obtained travel authorization from Vietnam and had scheduled a flight for his removal on June 2, 2026. Decl. at ¶ 17. It was only the filing of this habeas petition and existing stay on removal issued by the Court which prevented his removal. Petitioner's claim fails because Petitioner cannot meet Petitioner's burden to establish "that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Respondents have affirmatively shown that there is a significant likelihood of Petitioner's removal to Vietnam in the reasonably foreseeable future.

Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1 (W.D. Wash. April 2, 2008) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Office Dir.*, No. C13–0092–RSM, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner "failed to satisfy his 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 order).

**B. Petitioner's complaints about procedural defects in his re-detention do not establish a basis for habeas relief.**

Petitioner's argument that ICE failed to comply with its regulations in detaining the Petitioner is also deficient. A noncitizen, who is not removed within the removal period, may be released from ICE custody "pending removal . . . subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C. § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the order may be revoked under 8 C.F.R. § 241.4(*l*)(2)(iii) where "appropriate to enforce a removal order." *See also* 8 C.F.R. § 241.5 (conditions of

release after removal period). ICE may also revoke the order of supervision where, "on account of changed circumstances, [ICE] 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).

Even if Petitioner's alleged regulatory failures actually amount to a regulatory violation, Petitioner cannot establish any prejudice resulted from those omissions nor that a constitutional-level violation has occurred. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("[T]he mere failure of an agency to follow its regulations is not a violation of due process."); *United States v. Tatoyan,* 474 F.3d 1174, 1178 (9th Cir. 2007) (holding that "[c]ompliance with . . . internal [customs] agency regulations is not mandated by the Constitution") (simplified); *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* "enunciate[s] principles of federal administrative law rather than of constitutional law").

Each time Petitioner was placed on an order of supervision, he was provided the conditions of that release which included not committing any crimes. Ex. 3. At the bottom of the same forms, Petitioner signed and acknowledged the conditions of his release and that "failure to comply with the terms of this order may subject me to a fine, detention, or prosecution." *Id.* Re-detention under these circumstances where a Petitioner is repeatedly put on notice that commission of crimes would subject him to detention by ICE, the lack of a duplicative notice stating that Petitioner is being detained as a result of his criminal convictions is a technical violation which had no effect on the outcome of the action by the Agency and does not rise to the level of a un-Constitutional deprivation of liberty. *See Cervantes v. Bondi,* ___ F. Supp. 3d ___, 2026 WL 898301, 26-cv-1446-RSH (S.D. Cal March 30, 2026)

Because Respondents may detain Petitioner without a right to a bond hearing pursuant to 8 U.S.C. § 1231(a), any challenge that Petitioner would have raised prior to the re-detention would have failed. Because Petitioner cannot show prejudice under these circumstances, the alleged violation of agency regulations does not warrant

release here. *See, e.g.*, *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) ("While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation 'when, in the opinion of the revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.'") (emphasis in original) (citing 8 C.F.R. §§ 241.4(*l*)(2)(i), (iv)); *Carnation Co. v. Sec'y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) ("violations of procedural regulations should be upheld if there is no significant possibility that the violation affected the ultimate outcome of the agency's action" (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS' failure to follow regulations requiring that an arrested alien be advised of his right to speak to his consul was not prejudicial and thus not a ground for challenging the conviction); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by failing to inquire into the alien's background, any error was harmless because there was no showing that the petitioner was qualified for relief from deportation).

To the extent Petitioner is challenging ICE's decision to detain him for the purpose of removal, such a challenge is precluded by statute. *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); *see also 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."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

## IV. CONCLUSION

Because Petitioner cannot meet his burden to show there is no good reason to believe he will be removed in the reasonably foreseeable future and Respondent has affirmatively proven Petitioner will be removed in the reasonably foreseeable future, this Court should deny this petition.

DATED: June 3, 2026

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