UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-03669-LMP-LIB

Kong Lee

Petitioner,

v.

Todd Blanche, *et al.*,

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner challenges the lawfulness of his detention while Respondents make progress to execute Petitioner's final order of removal. Petitioner argues he was unlawfully detained, and his order of supervision was not properly revoked. Dkt. 1. Respondents submit this response to explain why Petitioner's current detention is lawful under 8 U.S.C. § 1231 and why the Court should deny the Petition in its entirety.

Section 1231 establishes the framework for noncitizens who have a final order of removal. During the removal period, detention is mandatory. 8 U.S.C. § 1231(a)(2). After that period, Congress authorized continued detention for specified categories of noncitizens, including inadmissible noncitizens, criminal noncitizens, and noncitizens who have been determined to be a risk to the community or unlikely to comply with the order of removal. 8 U.S.C. § 1231(a)(6). The Supreme Court in *Zadvydas v. Davis* construed that post-removal-period authority contains an implicit reasonableness limitation: detention may continue for the period reasonably necessary to accomplish removal, and six months is presumptively reasonable. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). But *Zadvydas*

did not create an automatic release rule. After the six-month period, the noncitizen must first provide good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future before the Government must respond with rebuttal evidence. *Id.* at 701.

That framework defeats the Petition. Petitioner erroneously claims Respondents lack significant likelihood of removal in the reasonably foreseeable future (SLRRFF) with no real evidence. The factual record will rebut this. *Zadvydas* addresses whether present detention has become unreasonable because removal is not reasonably foreseeable; it does not require release based on delay alone.

BACKGROUND

All facts not specifically admitted herein are denied. The following derives from the Declaration of Deportation Officer William J. Robinson (Decl.) and its accompanying exhibits, and the filed habeas petition.

Petitioner is a native of Thailand and citizen of Laos that entered the United States on May 24, 1989 as a refugee and gained lawful permanent resident status on May 24, 1989. Decl., Ex. **A**. On July 1, 2004, Petitioner was convicted of 1st degree burglary in Ramsey County District Court. Decl., ¶ 7, Ex. A. This conviction triggered the removal proceedings leading to his final order of removal on May 17, 2005. Decl., Ex. C. Petitioner was ordered removed to Laos. Decl., Ex. C. A warrant of removal was issued on May 17, 2005 and Petitioner was released on OSUP on August 18, 2005, because the Respondents could not obtain travel documents. Decl., Exs. D-E. For the last 21 years Petitioner was released on OSUP while travel documents were being obtained. Decl., ¶ 13.

Respondents received travel documents for the Petitioner on June 18, 2026. Decl. ¶ 13. On August 18, 2026, at a scheduled reporting with ICE/ERO, Petitoner was notified that travel documents had been obtained and that his OSUP was being revoked. Decl., ¶ 16, and Exs. F. ICE/ERO issued a new I-205, because the prior I-205 was located in another field office. Decl. ¶ 15, Ex. G. Petitioner was promptly given an opportunity to respond the OSUP, and gave a brief written statement. Decl., Ex. F. Petitioner was taken into custody and transferred to the Sherburne County Jail where he remains pending his removal to Laos.

JURISDICTION AND BURDEN OF PROOF

Petitioner bears the burden of proving he is entitled to relief. *Copenhaver v. Bennett*, 355 F.2d 417, 422 (8th Cir. 1966); *Harris v. Tahash*, 353 F.2d 119, 123 (8th Cir. 1965). Petitioner bears the burden of proving his detention is unlawful by a preponderance of the evidence. *Jose J. O. E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025); *Aditya W. H. v. Trump*, 782 F. Supp. 3d 691, 703 (D. Minn. 2025) (collecting cases).

While district courts may not review discretionary decisions made by immigration authorities, they may review immigration-related detentions for their lawfulness. *See Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 901 (D. Minn. 2020) (following *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)). The initial pleading in a habeas must "specify *all* the grounds for relief available to the petitioner." *Mayle v. Felix*, 545 U.S. 644, 645 (2005) (referencing in part *Rules Governing Section 2254 and 2255 Proceedings for the United States District Courts*).

ARGUMENT

I. No Due Process Violation

Under the Supreme Court's decision in Zadvydas v. Davis, 533 U.S. 678 (2001), a person subject to a final order of removal cannot, consistent with the Due Process Clause, be detained indefinitely pending removal. Id. at 699-700. Zadvydas established a temporal marker: post-final order of removal detention of six months or less is presumptively constitutional. 533 U.S. at 701; see also Sokpa-Anku v. Paget, No. 17-cv-1107 (DWF/KMM), 2018 WL 3130681, at *3 (D. Minn. June 8, 2018) (report and recommendation) ("Once a person is finally ordered removed from the United States, it is presumptively constitutional for the government to detain him for a 6-month period."), R&R adopted, 2018 WL 3129002 (June 26, 2018). The Zadvydas six-month benchmark, however, does not mean continued detention becomes unconstitutional after six months. To the contrary, detention longer than six months still comports with due process if there is a "significant likelihood of removal in the reasonably foreseeable future." Zadvydas, 533 U.S. at 701. The Court in Zadvydas explained:

> 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. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. *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. (emphasis added). Thus, under *Zadvydas*, a habeas petitioner has the initial burden of demonstrating that there is no significant likelihood of his removal in the reasonably foreseeable future. *Id.* If the petitioner does so, the government must rebut that showing. *Id.*

Petitioner is a citizen of Laos in travel documents have been obtained. This fact alone shows Petitioner has not established a due process violation under *Zadvydas* as he has not met his initial burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *See id.* (Emphasis added); *Mehighlovesky v. U.S. Dep't of Homeland Sec.*, No. CIV. 12-902 RHK/JJG, 2012 WL 6878901, at *4 (D. Minn. Dec. 7, 2012), report and recommendation adopted, No. CIV. 12-902 RHK/JJG, 2013 WL 187553 (D. Minn. Jan. 17, 2013). Petitioner's continued detention serves a clear purpose and has an obvious endpoint: removal to Laos within the foreseeable future. Thus, the Court should find Petitioner has failed to establish that his detention under 8 U.S.C. § 1231(a)(6) violates his due process rights.

Generally, there are five circumstances where courts have found no significant likelihood of removal:

> (1) where the detainee is stateless and no country will accept him; (2) where the detainee's country of origin refuses to issue a travel document; (3) where there is no repatriation agreement between the detainee's native country and the United States; (4) where political conditions in the country of origin render removal virtually impossible; and (5) where a foreign country's delay in issuing travel documents is so extraordinarily long that the delay itself warrants an inference that the documents will likely never issue.

Ahmed v. Brott, 2015 WL 1542131, *4 (D. Minn. March 17, 2015) ("In other words, for there to be *no* significant likelihood of removal in the foreseeable future, there must be some indication that the government is either unwilling or, due to seemingly insurmountable barriers, incapable executing an alien's removal." (emphasis in original)).

Here, none of the factors identified in *Ahmed* are present. Indeed, ICE has shown that it is neither unwilling to remove, nor incapable of removing Petitioner to Laos. *See Akinwale v. Ashcroft,* 287 F.3d 1050, 1052 (11th Cir. 2002) (affirming the dismissal of an alien's § 2241 petition where there were no "facts indicating that the INS is incapable of executing his removal to Nigeria and that his detention will, therefore, be of an indefinite nature"); *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001) (rejecting a *Zadvydas* claim where there were no institutional or individual barriers to removal, and "[p]rogress, however slow, [was] being made").

Petitioner has most recently been in detention since August 18, 2026, but "the mere passage of time . . . is not alone sufficient to show that no such likelihood exists" without more. *See Chen v. Banieke*, No. CIV. 15-2188 DSD/BRT, 2015 WL 4919889, at *4 (D. Minn. Aug. 11, 2015); *Jaiteh v. Gonzales*, No. 07-cv-1727, 2008 WL 2097592 at *2–3 (D. Minn. Apr. 28, 2008). Accordingly, Petitioner has failed to meet his initial burden under *Zadvydas*. *See e.g., Chen,* 2015 WL 4919889, at *5 ("That Chen has now been detained for over nine months, that approximately two months have passed since ICE resubmitted its request for travel documents, and that the Chinese government has yet to respond to that renewed request do not alone show that travel documents will not issue in the foreseeable future. . .").

Second, even assuming *arguendo* that Petitioner has met his initial burden of proof under *Zadvydas*, Respondents have rebutted any presumption that there is no significant likelihood of his removal to Laos in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701; *Ahmed*, 2015 WL 1542131, at *4 (finding that where "ICE has made diligent and reasonable efforts to obtain travel documents," the alien's native country "ordinarily accepts repatriation," and "that country is acting on an application for travel documents," most courts conclude that there is a significant likelihood of removal in the foreseeable future."). Respondents are in possession of travel documents and plan to have him on a flight to Laos in the near future. Decl. ¶ 20.

Indeed, the Court's decision in *Zadvydas* "was primarily concerned with situations where 'removal seems a remote possibility at best,' is 'no longer practically attainable,' and 'has no obvious termination point' because the 'Government finds itself unable to remove' an alien, not where removal is temporarily impeded by bureaucratic delays, setbacks, and ongoing negotiations with foreign governments." *Chen*, 2015 WL 4919889 at *5 citing *Zadvydas*, 533 U.S. at 690, 695, 697. For the reasons discussed above, Petitioner's removal has an obvious termination point, is practically attainable, and faces only a temporary and routine impediment – namely securing travel document. ICE will continue to perform, if necessary, the required custody reviews to determine whether detention remains warranted.

The record thus shows a significant likelihood that Petitioner will be removed from the United States in the reasonably foreseeable future. The constitutional due process standard set forth in *Zadvydas* is met, and the Petition should be denied.

Petitioner's *Zadvydas* challenge is premature. As noted above, the Supreme Court holds that six months of detention is reasonable and constitutional when ICE is carrying out a removal order. Right away, that rule creates a problem for Petitioner, as he's only been detained for three weeks. The current detention should be constitutional because removal is likely within the foreseeable future. Moreover, *Zadvydas* has been read to permit 180 days of detention under § 1231 and any additional period reasonably necessary to bring about that alien's removal from the United States. 533 U.S. at 682. The Court should deny this habeas petition on this basis.

When the record shows such "diligent and reasonable efforts to obtain travel documents," and "the alien's native country ordinarily accepts repatriation, and that country is acting on an application for travel documents, most courts conclude that there is a significant likelihood of removal in the foreseeable future." *Ahmed v. Brott*, 2015 U.S. Dist. LEXIS 45346, at *15 (D. Minn. Mar. 17, 2015) (citations and internal quotation marks omitted). To the extent ICE encounters delays in obtaining a travel document, such delays would not be "sufficient to trigger an inference that there is no significant likelihood of removal; they simply show that the bureaucratic gears are slowly grinding away." *Id.* (citations, alterations, and internal quotation marks omitted).

Petitioner's current detention serves a clear purpose by "assuring [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. The Supreme Court long ago recognized that detention to facilitate removal is a legitimate governmental objective. *See Wong Wing v. United States*, 163 U.S. 228 at 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their

true character and while arrangements were being made for their deportation."). Likewise, Petitioner's detention has a definitive endpoint.

II. OSUP Properly Revoked Under 8 C.F.R. § 241.13

ICE informed Petitioner in its revocation of his OSUP that travel documents have been obtained. Decl., Ex. F. The regulation pertinent to Petitioner's OSUP revocation is § 241.13(i)(2), due to travel documents being obtained. Decl., Ex. F. The regulation sates in pertinent part:

> The Service may revoke an alien's release under this section and return to custody if, on account of change 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). Respondents are following the cited language. Petitioner is not challenging whether Respondents have a right to follow their own regulations, but instead speculating that Respondents did not follow the process laid out in the regulation. Petitioner is mistaken.

Whether Petitioner's OSUP is revoked for a violation or SLRRFF, he is entitled to be notified "upon revocation" why his OSUP ended. 8 C.F.R. § 241.13(i)(3). Along with that comes with the opportunity for an informal interview "*promptly after* his [] return to Service custody." *Id.* (emphasis added). The implementing regulation does not hide its instruction on when Petitioner was supposed to receive these entitlements. He promptly received them after his return to Respondents' custody. Decl., Ex. F. Petitioner cannot argue that he did not promptly receive notice of his OSUP revocation just as the regulation provides unless he intends to show that its occurrence within the same day was not prompt

enough. Petitioner believes that there must be a violation of an OSUP condition, but that is just one basis for revocation. 8 C.F.R. § 241.13(i)(1)-(2). And as this Court has previously stated, "one basis will do." *Abraham M. v. Mullin*, No. 26-cv-2609, 2026 WL 1864079, at *3 (D. Minn. June 29, 2026). He cannot maintain an *Accardi* doctrine challenge where Respondents' actions follow the law as written.

Neither can Petitioner sustain an *Accardi* doctrine challenging the revocation because the governing regulation is 8 C.F.R. § 241.13. Since Petitioner was placed on OSUP because there was no a significant likelihood of removal, resulting in his release from immigration detention. *Id.* § 241.13(a) and (b)(1). Most salient among those:

> Section 241.4 shall continue to govern the detention of aliens under a final order of removal, including aliens who have requested a review of the likelihood of their removal under this section, *unless the Service makes a determination under this section that there is no significant likelihood of removal in the reasonably foreseeable future.*

Id. § 241.13(b)(1) (emphasis added). The parties do not seem to dispute that Respondents released Petitioner because it could not effect his removal at the end of the initial removal period. Thus, it is 8 C.F.R. § 241.13, not § 241.4, that governs the revocation of Petitioner's OSUP.

This distinction matters. Whereas 8 C.F.R. § 241.4 imposes a more onerous exercise of discretion to revoke release, 8 C.F.R. § 241.13 gives flexibility to Respondents to revoke release under its full statutory authority. *See* 8 U.S.C. § 1231(a)(3). The two regulations do so because the scope of each deals with aliens that pose different concerns for Respondents. In the former, aliens subject to a final order of removal being released from immigration detention when there remains a significant likelihood of removal in the reasonably

foreseeable future ought to require upper-level approval because it goes against Congress's intent to have removals executed efficiently and economically. *See* 8 U.S.C. § 1231(a)(1)(A).

That is reasonable given that Respondents should have more stringent approval for releasing someone in the United States that they can remove as opposed to carrying out the removal. Meanwhile, those concerns do not exist for someone released from immigration detention because the government could not remove them at that time. Their release is justified to avoid the risk of prolonged, potentially permanent detention. *Zadvydas v. Davis*, 533 U.S. 678, 696 (2001). This is regulatory distinction that had benefitted Petitioner by releasing him from previous immigration detention. It should stand.

Respondents could not remove Petitioner back in 2005. Respondents can remove him now. Decl. ¶ 20. Respondents note that 8 C.F.R. § 241.13(i)(2) specifically does not limit Respondents' discretion to return Petitioner to their custody. The text itself cannot support that position. The Court should reject any invitation to add that limitation onto the regulation. Because the parent statute does not support that reading either, the Court should not find such a limitation. 8 U.S.C. § 1231(3)(a). As such there are no due process violations, no violations of the APA, and the *Accardi* doctrine argument can take hold here.

III. Petitioner was arrested with a valid issued warrant of removal

The only warrant mentioned in § 1231 statutory scheme is the warrant of removal, Form I-205. 8 C.F.R. §241.2. The warrant of removal is issued by one of the immigration officials listed in 8 C.F.R. § 241.2(a)(1), whereas the execution of the warrant of removal

can be completed by any of the immigration officers listed in 8 C.F.R. 287.5(e)(3). 8 C.F.R. § 241.2(b). The warrant of removal was issued in this matter. Dkt. 6, Ex. F.

Petitioner claims that a Form I-205 did not exist at the time of his OSUP revocation. Pet., ¶ 78. This is not true. The issuance and execution of Form I-205 are not synonymous, as the regulations definition of "executed" or "execute" is defined "fully completed". 8 C.F.R. § 1.2. Whereas the word "issue" is not defined by the regulation so the Court should apply the fundamental canon of statutory construction "that unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37 at 42 (1979). The ordinary, contemporary, common meaning of the word "issue" is defined, in the context of 8 C.F.R. § 241.2(a), as "the act of publishing or officially giving out or making available"[1]. Applying the common meaning of "issue" and the regulation definition of "execute" show that the two words are not synonymous. Thus, the execution of a warrant of removal can only take place once the noncitizen is removed from the United States and the mere issuance just needs to take place after final administrative removal order. The Ninth Circuit agrees that a deportation warrant remains enforceable, no matter the lapse of time. *Spector v. Landon*, 209 F.2d 481 (9th Cir. 1954). Nor is there any requirement that a deportation warrant be served upon an alien before he is deported. *Sulit v. Schiltgen*, 213 F.3d 449, 453 (9th Cir. 2000). The second page of the I-205 agrees with such language, as it requires the executing officer to list the "port, date, and manner of removal"; the executing officer must witness the actual removal;

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[1] Issue, Merriam-Webster, https://www.merriam-webster.com/dictionary/issue (last visited July 12, 2026).

and if its not witnessed the executing officer must give details to confirm such departure occurred. Dkt. 6, Ex. F. Here Form I-205 was properly issued in 2005 and was never has executed, because the Petitioner travel documents could not be obtained.

Furthermore, Petitioner received due process as he was promptly notified of the revocation of his order of supervision (OSUP) and was given an opportunity to respond. Decl, Ex. F. Petitioner argues that a warrant was needed for ICE to take him into custody, however that is not true when dealing with the revocation of an order of supervision. 8 C.F.R. §241.13.

When the Agency is unable to remove a non-citizen that is subject to a final order of removal, the regulations allow for the non-citizen to be released on supervision. 8 C.F.R. 241.13(h). A change in circumstance may result in revocation, "Any alien . . . who has been released on an order of supervision . . . on account of changed circumstances, the Service determines that there is significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(h)(i)(2). The procedures for revocation of an order of supervision are detailed and make no mention of securing a warrant to revoke OSUP[2]. *Id.*

Here the Petitioner was ordered removed from the United States on May 17, 2005. Decl., Ex. C. The required warrant of removal was issued on May 17, 2005. Decl, Ex. D. Petitioner, was released on OSUP on August 18, 2005. Dkt. 6, Ex. E. Since the Petitioner

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[2] Whereas if there is no 'Order of Supervision' in place then a warrant could necessitate the detention of a non-citizen, absent a showing that the requirement for a warrantless arrest is allowed. *See generally Inti C.-L., v. Blanche*, No. 26-CV-2777 (PJS/SGE) (D. Minn. June 9, 2026).

was released on an OSUP because travel documents could not be obtained the revocation of the OSUP is governed by either 8 C.F.R. § 241.13. The regulations allow for the revocation of Petitioner's OSUP for a change in circumstances, which is the case here. In compliance with the regulations ICE served Petitioner with the revocation of release and promptly afforded the Petitioner with an informal interview. 8 C.F.R. § 241.4(l)(1); Decl., Ex. F. These procedures afforded to Petitioner put his allegations immediately out of place, and this Court should deny this habeas petition.

EVIDENTIARY HEARING

An evidentiary hearing is **not** necessary because the petition turns on undisputed custody facts and legal questions. Because further factual development would not affect the legality of current custody, the Court should deny the petition without an evidentiary hearing.

CONCLUSION

Because Petitioner is detained pursuant to valid statutory and regulatory authority, and because he has received all process required by law, he cannot demonstrate that his custody is unlawful. For the foregoing reasons, the Court should deny Petitioner's Petition.

[SIGNATURE ON NEX PAGE]

Dated: August 26, 2026

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