UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Huynh Tung,
Petitioner,

v.

Todd Blanche, *et al.*,
Respondents.

No. 3:26-cv-02167-LS

FEDERAL[1] RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S WRIT OF HABEAS CORPUS

Respondents timely submit this response per this Court's Order. ECF No. 2. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Tung ("Petitioner"), *pro se*, seeks release from civil immigration detention, claiming that his detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Despite his allegation that there is "no basis" for his continued detention, Petitioner is subject to a final order of removal, which mandates his detention. *See* Exh. A (Order of the Immigration Judge); Exh. B (ERO Declaration) at 1; *see also* 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner alleges removal is not reasonably foreseeable because Vietnam will not accept its citizens who have been ordered removed from the United States. ECF No. 1 at 6. These arguments are insufficient reason to believe that removal is unlikely to occur in the foreseeable future.

For these reasons, the Court should deny this habeas petition without further evidentiary

[1] The named warden in this action is not a federal employee. The Department of Justice does not represent the warden in this action.

hearings.

I. Facts and Procedural History

Petitioner, a native and citizen of Vietnam, was admitted in the United States as a legal permanent resident on April 24, 1991. Exh. C at 2 (Form I-213). He was ordered removed by the immigration judge on November 20, 2008, and waived his right to appeal, thus the removal order became final on November 20, 2008. Exh. A. Petitioner has an extensive history of violence.

On June 29, 2000, he was convicted in the Ramsey County District Court in St. Paul, Minnesota for the offenses of driving while intoxicated and disorderly conduct and was sentenced to 90 days incarceration on each charge. Exh. D at 2 (Form I-213 dated November 2008). On May 8, 2002, Petitioner was convicted in the Lancaster County, Nebraska for the offense of assault and was sentenced to 20 days in local confinement. *Id.* Petitioner was convicted in the Hennepin County District Court in Minneapolis, Minnesota for the offense of disorderly conduct on July 16, 2001, and was sentenced to 45 days of incarceration. *Id.* On February 2, 2005, he was convicted in the Ramsey County District Court in St. Paul, Minnesota for the offense of domestic assault and was sentenced to 90 days incarceration. Exh. D at 2-3. On December 11, 2007, Petitioner was convicted in the Ramsey County District Court in St. Paul, Minnesota for the offense of criminal damage to property and was sentenced to one year and one day imprisonment. Exh. D at 3.

At this time, ERO continues to work on removing Petitioner to Vietnam. Exh. B at 1. El Paso ERO requested assistance from Head Quarters ("HQ") Removal International Operations ("RIO") Detention and Deportation Officer to obtain travel documents for Petitioner. *Id.* While the timeline to remove Petitioner is currently unknown, ERO anticipates that removal will be possible in the near future. Exh. B at 2.

II. Detention Is Lawful Under 8 U.S.C. §1231(a)(6).

Petitioner's detention is lawful. The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231(a). That statute affords ICE a 90-day mandatory detention period within which to remove the alien from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of three dates: the date (1) the order becomes "administratively final," (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B).

Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas*, 533 U.S. at 701. Under §1231, the removal period can be extended in a least three circumstances. *See Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien presents a flight risk or other risk to the community. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). An alien may be held in confinement until there is "no significant likelihood of removal in a reasonably foreseeable future." *Zadvydas*, at 533 U.S. at 680.

a. There Is No Good Reason to Believe That Removal is Unlikely in the Reasonably Foreseeable Future.

Petitioner cannot show "good reason" to believe that removal to Vietnam is unlikely in the reasonably foreseeable future. In *Zadvydas*, the U.S. Supreme Court held that § 1231(a)(6) "read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States" but "does not permit indefinite detention." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute." *Id.* at 699. The Court designated six months as a presumptively reasonable period of post-order detention but made clear that the

presumption "does not mean that every alien not removed must be released after six months." *Id.* at 701.

Once the alien establishes that he has been in post-order custody for more than six months at the time the habeas petition is filed, the alien must provide a "good reason" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006); *Gonzalez v. Gills,* No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien establishes the requisite "good reason," the burden will not shift to the government to prove otherwise. *Id.*

The "reasonably foreseeable future" is not a static concept; it is fluid and country-specific, depending in large part on country conditions and diplomatic relations. *Ali v. Johnson*, No. 3:21–CV–00050-M, 2021 WL 4897659 at *3 (N.D. Tex. Sept. 24, 2021). Additionally, a lack of visible progress in the removal process does not satisfy the petitioner's burden of showing that there is no significant likelihood of removal. *Id.* at *2 (collecting cases); *see also Idowu v. Ridge*, No. 3:03-CV-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003). Conclusory allegations are also insufficient to meet the alien's burden of proof. *Nagib v. Gonzales*, No. 3:06-CV-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-CV-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004)). One court explained:

> To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that "the circumstances of his status" or the existence of "particular individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4 (citation omitted).

Petitioner urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth and the Fourteenth Amendment, because to his knowledge Vietnam will not accept its citizens who have been ordered removed from the United States. ECF No. 1 at 6. Petitioner fails to allege a "good reason" to believe that there is no significant likelihood of removal in the foreseeable future. These claims are insufficient under *Zadvydas*. *See Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); *see also Andrade*, 459 F.3d at 543–44; *Boroky v. Holder*, No. 3:14-CV-2040-L-BK, 2014 WL 6809180, at *3 (N.D. Tex. Dec. 3, 2014).

As such, Petitioner cannot meet his burden to establish no significant likelihood of removal in the reasonably foreseeable future. *See Thanh v. Johnson*, No. EP-15-CV-403-PRM, 2016 WL 5171779, at *4 (W.D. Tex. Mar. 11, 2016) (denying habeas relief where government was taking affirmative steps to obtain Vietnamese travel documents). The burden of proof, therefore, does not shift to Respondents to prove that removal is likely.

Even if the burden did shift to ICE in this analysis, ICE could show that removal is likely in the foreseeable future. ERO continues to work on removing Petitioner to Vietnam and has requested assistance from HQ-RIO to obtain travel documents for Petitioner. Exh. B at 1. As such, removal is likely in the reasonably foreseeable future, and his continued detention is lawful. Petitioner's substantive due process claim fails and should be denied.

b. ICE Has Afforded Petitioner Procedural Due Process.

To establish a procedural due process violation, Petitioner must show that he was deprived of liberty without adequate safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The Fifth Circuit has not provided guidance to

lower courts, post-*Arteaga-Martinez*, on the appropriate standard for reviewing a procedural due process claim alleged by an alien detained under § 1231, but the Fourth Circuit, post-*Arteaga-Martinez*, used the *Zadvydas* framework to analyze a post-order-custody alien's due process claims. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 10–14 (W.D. Tex. Aug. 12, 2025) (discussing *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) and *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). To the extent this Court finds that any additional analysis is required beyond the constitutional analysis outlined in *Jennings* and *Thuraiissigiam*, *supra*, this Court may look to *Zadvydas* to review the procedural claim at issue here. *Id.*

Additionally, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Even if the Court were to find a procedural due process violation here, the remedy is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

Petitioner admits he has received post order custody reviews. ECF No. 1 at 4–5. Respondents argue the post order custody process addresses constitutional concerns identified in *Zadvydas*, allowing the alien notice and opportunity to be heard regarding continued detention pending removal. *See, e.g.*, 8 C.F.R. § 241.13. This process comports with Petitioner's limited due process rights as an alien subject to a final order of removal. Petitioner's procedural due process claim, like his substantive one, should be denied.

III. Conclusion

The Court should deny the habeas petition without the need for further evidentiary hearings.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: */s/ Barbara Falcon*

Barbara Falcon
Assistant United States Attorney
Texas Bar No. 24121619
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7325 (phone)
(210) 384-7312 (fax)
barbara.falcon@usdoj.gov

Attorneys for Federal Respondents

CERTIFICATE OF SERVICE

On August 28, 2026, I directed a copy of this filing to be served by mail on Petitioner, *pro se*, at the following address:

Huynh Tung
A# [redacted]
El Paso Processing Center
8915 Montana Ave.
El Paso, TX 79925
PRO SE

/s/ Barbara Falcon
Barbara Falcon
Assistant United States Attorney