UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

KIEU OANH THI LUONG,

Petitioner,

v.

Case No.: 3:25-cv-1203-JEP-PDB

SCOTTY RHODEN, in his official capacity as Sheriff of Baker County; TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.
_____/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents—Todd Lyons, in his official capacity as Acting Director of Immigration and Customs Enforcement (ICE), Kristi Noem, in her official capacity as Secretary of Department of Homeland Security (DHS), and Pamela Bondi, in her official capacity as Attorney General of the United States (Federal Respondents)—respond to Petitioner Kieu Oanh Thi Luong's Petition for Writ of Habeas Corpus. The Court lacks jurisdiction. Apart from that, Luong's detention is lawful. So, the Court should deny the writ and dismiss this action.

Introduction

Luong argues her detention violates § 241(a)(6) of the Immigration and Nationality Act (INA), as amended 8 U.S.C. § 1231(a)(6), and the Fifth Amendment. Doc 3-1, p. 3. Thus, Luong contends that she is entitled an order of immediate release and enjoining Respondents from re-detaining her unless her removal is reasonably foreseeable. *Id.*

As an initial matter, this Court lacks jurisdiction over the petition as Luong's claims fall within the INA's jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). Furthermore, at the time of filing her petition on October 6, 2025, Luong, who was detained on September 19, 2025, had been in detention for 18 days. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that continued detention under § 1231(a)(6) is presumptively reasonable for six-months following an order of removal. *See* 533 U.S. at 701. Luong's detention is therefore lawful and, thus, her petition should be denied.

Factual Background

Kieu Oanh Thi Luong is a 38-year-old native and citizen of Vietnam, who entered the United States as a lawful permanent resident on September 10, 1992. *See* Doc 3-1, ¶¶ 60-62 at p 17. On January 26, 2006, Luong entered a guilty plea in the U.S. District Court for the Western District of North Carolina for conspiracy to possess with intent to distribute and distribute MDMA for which she was sentenced to 51 months, which was later reduced to 366 days. *See United States v. Kieu Oanh*

Luong, Case No. 3:05-CR-252-RJC at Docs. 87 (Plea Agreement), 132 (Judgment in a Criminal Case) & 178 (amended Judgment in a Criminal Case).

On March 8, 2010, an immigration judge ordered Luong removed. Doc. 3-1, ¶ 63 at p 17. On June 1, 2010, ICE released her from custody on an order of supervised release. Doc 3-1, ¶¶ 64-65 at p 17. After violating her supervised release, Luong was again placed on a new order of supervised release. Doc 3-1. ¶ 66 at p 18. On September 19, 2025, ICE detained Petitioner, and she was transferred her to Baker County Detention Center, where she remains pending removal to Vietnam. Doc. 3-1, ¶¶ 72, 76 at pp 18-19. On that same day she was detained, ICE revoked Luong's order of supervision. Exhibit 1 (Notice of Revocation of Release) As of today, Luong has been in detention pending removal for 82 days.

Legal Standard

Federal courts may grant writs of habeas corpus for a petitioner "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner bears the burden to prove her custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021); *Martin v. Beto*, 397 F.2d 741, 749 (5th Cir. 1968).

Discussion

As explained below, the Court lacks jurisdiction. Even if it disagrees, however, Luong's claims fail on the merits. Before getting to those matters, ICE must clarify its basis of detention. 28 U.S.C. § 2243.

I. Habeas Return on Detention

In a habeas case, the respondent "shall make a return certifying the true cause of the detention." *Id.* Here, ICE is detaining Luong under the mandatory detention provisions of 8 U.S.C. § 1231. Following a final removal order, the government's immigration detention authority shifts from 8 U.S.C. § 1226 to § 1231. *De La Teja v. United States*, 321 F.3d 1357, 1363 (11th Cir. 2003). "[I]n order for [a petitioner] to challenge her detention under § 1231, a six-month period of custodial detention must have elapsed." *Lukaj v. McAleenan*, No. 3:19-CV-241-J-34MCR, 2020 WL 248724, at *3 (M.D. Fla. Jan. 16, 2020). The six-month period of detention has not elapsed in this case.

II. Jurisdiction

I. This Court lacks jurisdiction over Luong's petition.

A. Title 8 U.S.C. § 1252(g).

There is no jurisdiction to review "any" claim "arising from the decision or action" to "execute removal orders." 8 U.S.C. § 1252(g). This provision bars habeas review in federal courts when the claim arises from a decision or action to "execute" a final order of removal. *Reno v. American-Arab Anti-Discrimination Committee (AADC)*, 525 U.S. 471, 482 (1999).

Courts consistently hold that § 1252(g) eliminates subject-matter jurisdiction over challenges—including constitutional claims—to an arrest or detention for the purpose of executing a final removal order. *E.g.*, *Camarena v. ICE*,

988 F.3d 1268, 1273-74 (11th Cir. 2021) (stating "we do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order."); *Johnson v. U.S. Attorney General*, 847 F. App'x 801, 802 (11th Cir. 2021); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013).[1] Likewise, § 1252(g) precludes review of the method by which ICE chooses to commence removal proceedings. *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (stating "[b]y its plain terms, the provision bars us from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.").

Luong was detained to execute the final removal order against her. She is well within the presumptively reasonable period of detention. This action is an effort to interfere with or halt that legal process. The INA strips the Court's jurisdiction in these instances. 8 U.S.C. § 1252(g).

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[1] *See also Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) (stating "[u]nder a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review."); *Tazu v. U.S. Attorney General*, 975 F.3d 292, 297 (3d Cir. 2020) (stating "[t]he plain text of § 1252(g) covers decisions about whether and when to execute a removal order."); *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

B. Title 8 U.S.C. § 1252(b)(9)

There is no jurisdiction to review "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" outside a case reviewing the final removal order. 8 U.S.C. § 1252(b)(9). This is known as the "zipper clause." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020). The zipper clause is "a jurisdictional bar where" a petitioner seeks "review of an order of removal [or] the decision to seek removal." *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up).

There is a single path for judicial review of removal orders—"a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). Reading § 1252(a)(5) and (b)(9) together, courts conclude petitioners must funnel all aspects of challenges to removal proceedings through that avenue. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (stating "The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals."); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (stating there is "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).").

The zipper clause encompasses more than § 1252(g). *AADC*, 525 U.S. at 483. Under these provisions, "most claims that even relate to removal" are improper in a district court. *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020). There are limitations on how broadly courts interpret the zipper clause. *E.g. Canal*

A, 964 F.3d at 1257. But a claim "arises from a removal proceeding when the parties are challenging removal proceedings." *Id.* (cleaned up); *see also Regents of Cal.*, 591 U.S. at 19. Here, Luong challenges the government's execution of her final removal order to stop the removal process. These are the claims barred by the zipper clause. 8 U.S.C. § 1252(b)(9).

II. Luong's detention does not violate the Immigration and Nationality Act or the Fifth Amendment's Due Process Clause.

Even if the Court were to conclude it has jurisdiction over Luong's petition, her claims lack merit. 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*, 533 U.S. at 683. 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 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. 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, "[t]his presumptively reasonable six month period must have expired at the time of the filing of a petition." *E.g.*, *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).

Luong filed the present petition well before expiration of six months in detention. She was detained on September 19, 2025, and filed the present petition on October 6, 2025. At that point, Luong had only been detained for 18 days. To date, she has been in detention for 82 days.

While some nonbinding cases disagree, the presumptively reasonable period is not rebuttable before it expires. It is only afterward that the parties can engage in *Zadvydas* burden-shifting related to the "significant likelihood of removal in the reasonably foreseeable future." *See Jennings v. Rodriguez*, 583 U.S.

281, 299 (2018) (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is "[a]fter this 6-month period"). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal. *See Akinwale*, 287 F.3d at 1051-52. Requiring ICE to respond during the presumptively reasonable timeframe would violate jurisdiction stripping and impose unnecessary burdens on ICE during a lawful detention.

Luong's contention that under *Zadvydas*, her current "time in detention does not reinitiate with her last re-detention." Doc 3-1, ¶ 101. Luong appears to argue that her current and prior detention has acceded the removal period. However, Luong does not suggest that her detention at the time of filing the petition has exceeded the presumptively reasonable post-removal period, which it has not. Luong was released on June 1, 2010, following her initial detention. *Zadvydas*'s constitutional concerns regarding an indefinite detention period are therefore inapplicable to Luong's detention. At present, Luong has been detained for 82 days following September 19, 2025.

Conclusion

Here, ICE's continued detention of the Petitioner is lawful. Petitioner has not met her burden in establishing detention in excess of six months prior to filing her

Writ of Habeas Corpus. Consequently, as the Petitioner's detention is legal, the Court should deny the instant Petition and dismiss this action.

Dated: December 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 10, 2025, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send a copy to the following CM/ECF participant listed below:

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