UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ALOUNSY KHAMMANIVONG,

Petitioner, Case No. 2:25-cv-01069-SPC-DNF

v.

JOSEPH B. EDLOW, Director,
Immigration and Customs Enforcement,
et al.

Respondents.
_____/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Alounsky Khammanivong, a native and citizen of Laos, was ordered removed on March 10, 2009, after being convicted of Conspiracy to Possess Cocaine and MDMA with Intent to Distribute. After initially being released on an order of supervision, Khammanivong was placed in immigration detention on October 27, 2025. Khammanivong argues his continued detention violates the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment. Khammanivong's petition should be denied.

As an initial matter, this Court lacks jurisdiction over the petition, as Khammanivong's claims fall within the INA's jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). Furthermore, Khammanivong has been detained for 35 days following his arrest on October 27, 2025. In *Zadvydas v. Davis*, the Supreme Court held that continued detention under § 1231(a)(6) is presumptively reasonable

for six-months following a removal order. *See* 533 U.S. 678, 701 (2001). Khammanivong's detention is therefore lawful.

FACTUAL BACKGROUND

Khammanivong is a native and citizen of Laos. (Ex. A at 1.) On August 21, 2005, U.S. District Judge Susan C. Bucklew sentenced Khammanivong to 41 months imprisonment after he pleaded guilty to one count of Conspiracy to Possess Cocaine and MDMA with Intent to Distribute. *United States v. Khammanivong*, 8:05-cr-00488-SCB-TGW, Doc. 539 (M.D. Fla.). Following his criminal sentence, Khammanivong stipulated to an order of removal on March 5, 2009, and was ordered removed from the United States on March 10, 2009. (Petition, Doc. 1, Ex. B.) Khammanivong was placed in immigration detention on March 13, 2009, and released on an order of supervision on June 12, 2009. (Detention History, Ex. B.)

Khammanivong was again placed in immigration detention on October 27, 2025. *Id.*; Ex. A. He is currently being held at the Glades County Detention Center. (Detention History, Ex. B.) ICE Enforcement and Removal Operations is seeking his removal to Laos.

ARGUMENT

I. This Court lacks jurisdiction over Khammanivong'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) ("[W]e 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) ("By 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.").

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[1] *See also Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) ("Under 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) ("The 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).

Khammanivong was detained to execute the final removal order against him. He 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).

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" 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) ("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) (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, Khammanivong challenges the government's execution of his 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. Khammanivong'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 Khammanivong's petition, his 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 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. 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, "This 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).

Khammanivong filed the present petition well before expiration of six months in detention. He was detained on October 27, 2025, and filed the present petition on November 20, 2025. At that point, Khammanivong had only been detained for 24 days. To date, he has been in detention for 35 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.

Khammanivong's contention that *Zadvydas*'s presumptively reasonable six-month detention period expired in September 2009 is incorrect. "Because *Zadvydas* clearly involved ***detention*** of a petitioner during the presumptively reasonable period, it defies common sense to suggest that *Zadvydas* time can run while a petitioner is not in custody." *Cheng Ke Chen v. Holder*, 783 F. Supp. 2d 1183, 1192 (N.D. Ala. 2011) (emphasis in original). Khammanivong was released on June 12, 2009, following his initial detention after his criminal sentence. (Ex. B, Detention History.) *Zadvydas*'s constitutional concerns regarding an indefinite detention period are therefore inapplicable to Khammanivong's 2009 detention. At present, Khammanivong has been detained for 35 days following October 27, 2025.

III. Khammanivong is detained pursuant to 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). Khammanivong's contention that ICE attempts to revive detention authority under § 1226(c) is therefore incorrect. The distinction is critical because "in order for [a petitioner] to challenge his 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)

CONCLUSION

Khammanivong's Petition for a Writ of Habeas Corpus should be denied.

DATED this 1st day of December, 2025.

Respectfully submitted,

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