UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ALOUNSY KHAMMANIVONG,

Petitioner,

v.

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

JOSEPH B. EDLOW, Director,
Immigration
And Customs Enforcement;

GARRET RIPA, Director, Miami Field
office, Enforcement and Removal
Operations, Immigrations and Customs
Enforcement; and

KRISTI NOEM, Secretary, United States
Department of Homeland Security,

Respondents.

PETITIONER'S RESPONSIVE PLEADING
IN SUPPORT OF WRIT OF HABEAS CORPUS
(Fed. R. Civ. P. 65(b); Local Rule 3.01(f))
(EXPEDITED CONSIDERATION REQUESTED)

Petitioner, Alounsy Khammanivong, files this reply in response to the Government's opposition (Doc. 14). The Government's position is reduced to a single theory: that they may release and re-detain an individual with no change in circumstances regarding his removability, at their discretion. That proposition is contrary to *Zadvydas v. Davis,* 533 U.S. 678 (2001), to longstanding Eleventh Circuit

precedent governing detention challenges, and to every appellate court to consider what happens when "DHS" seeks to undo its own earlier *Zadvydas* determination.

I. This Court Has Jurisdiction.

The Government's reliance on §1252(g) and (b)(9) to argue that the Court lacks jurisdiction is misplaced. The Supreme Court has made clear that § 2241 remains available to challenge the legality of immigration detention, including post-order detention under § 1231(a)(6). *Zadvydas v. Davis*, 533 U.S. 678 (2001), itself proceeded as a § 2241 habeas action. In *Jennings v. Rodriguez*, 583 U.S. 281, 289–90 (2018), the Court reaffirmed that neither § 1252(g) nor § 1252(b)(9) divests district courts of jurisdiction over detention challenges because such claims do not "arise from" the execution of a removal order and are independent of removal proceedings.

The Eleventh Circuit follows this rule without hesitation. In *Madu v. U.S. Attorney General*, 470 F.3d 1362, 1366–67 (11th Cir. 2006), the court held that detention challenges fall squarely within § 2241 jurisdiction. More recently, the Eleventh Circuit has entertained prolonged-detention claims without any suggestion that jurisdiction is lacking. *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1328–30 (11th Cir. 2021). Nothing in the Government's brief alters this settled conclusion.

II. DHS's 2009 Finding that Removal Was Not Reasonably Foreseeable Resolved the *Zadvydas* Question and Cannot Be Reopened Without New Evidence.

The parties agree that in June 2009, DHS formally determined that "travel documents do not exist and are not expected in the reasonably foreseeable future," and released Mr. Khammanivong under an Order of Supervision on that basis. That administrative determination made by DHS, squarely answered the question *Zadvydas* requires. There was not then, and there is not now, any evidence that removal is significantly likely in the reasonably foreseeable future. DHS never appealed that finding, never reversed it, and never suggested at any point in the ensuing sixteen years of supervised release that circumstances had changed.

Every appellate court to consider this scenario has held that once DHS releases an individual because removal is not reasonably foreseeable, it cannot later re-detain that person and restart the *Zadvydas* clock absent a showing of materially changed circumstances. The Ninth Circuit explained that a subsequent detention must be justified by "a material change in the likelihood of removal." *Singh v. Gonzales*, 499 F.3d 969, 978–80 (9th Cir. 2007); *Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 & n.13 (9th Cir. 2011). The Third and Second Circuits have applied the same principle. *Alexander v. U.S. Att'y Gen.*, 495 F. App'x 274, 276–77 (3d Cir. 2012); *Poradisova v. Gonzales*, 420 F.3d 70, 78 (2d Cir. 2005).

That rule accords with Eleventh Circuit law. The Government may not

relitigate factual findings it has already made absent new evidence. *United States v. Valdiviez-Garza*, 669 F.3d 1199, 1203–04 (11th Cir. 2012). Here, DHS offers no declaration, diplomatic communication, travel document information, or evidence of changed conditions in Laos. The Government's silence is dispositive and constitutionally intolerable. The 2009 determination remains binding and precludes the Government from resetting the *Zadvydas* clock.

III. Even if the Clock Could Restart (it Cannot), Petitioner Has Met His Initial Burden and the Government Has Provided No Rebuttal.

Even assuming for argument's sake that a new six-month period could begin in 2025, Petitioner has easily carried his initial burden under *Zadvydas*. The Government misreads *Zadvydas*. The Supreme Court never imposed a mandatory 180-day waiting period before a detainee may file a habeas petition. It held only that detention is "presumptively reasonable" for approximately six months. *Zadvydas*, 533 U.S. at 701. Once a petitioner offers good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, which DHS already did in 2009, the burden shifts immediately to the Government to justify detention. *Id.; Farah*, 12 F.4th at 1330. No case requires a petitioner to endure the full six months before seeking relief. Rather, an individual may only be held as long as is "reasonably necessary" to bring about his removal. *Johnson v. Guzman*, 594 U.S. 523, 141 S.Ct. 2271 (2021).

The record in this matter contains (1) a prior formal DHS finding that

removal was not foreseeable; (2) sixteen years of compliance and stable residence under supervision; (4) the governments filed I-213 that shows that Petitioner has no travel documents to Laos, or anywhere else for that matter, and (3) no evidence of any repatriation pathway for individuals in Petitioner's circumstances. This showing satisfies the "good reason" standard required to shift the burden. *Zadvydas*, 533 U.S. at 701; *Farah*, 12 F.4th at 1330.

The burden thus shifts to DHS to present evidence that removal is significantly likely in the reasonably foreseeable future. DHS provides none. Under Supreme Court and Eleventh Circuit law, the Government's failure to rebut Petitioner's showing compels release. *Farah*, 12 F.4th at 1329–30.

The Government's reliance on *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), is misplaced. Here, DHS' 2009 release of Petitioner distinguishes this matter. Courts within this Circuit have correctly distinguished *Akinwale* on this ground, including *Cheng Ke Chen v. Holder*, 783 F. Supp. 2d 1183 (N.D. Ala. 2011), which the Government cites but which actually supports Petitioner.

IV. Continued Detention Serves No Legitimate Immigration Purpose and Is Punitive in Violation of Substantive Due Process.

The Fifth Amendment forbids civil detention that is excessive, arbitrary, or untethered from a legitimate governmental purpose. *United States v. Salerno*, 481 U.S. 739, 747 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Section 1231(a)(6) authorizes only civil detention reasonably related to achieving removal. Detaining

a man for sixteen years after DHS conceded removal was not foreseeable without identifying any subsequent change in circumstances cannot be squared with the constitutional limits recognized in *Zadvydas*, which warned against exactly the kind of "indefinite or potentially permanent detention" presented here. 533 U.S. at 690–91.

Reincarcerating a fully compliant supervisee after sixteen years does not further removal of Petitioner it only serves to punish an individual without purpose, create a false media narrative for ideological purposes, and possibly meet monthly, but arbitrary, detention goals. Substantive due process does not permit such confinement. This is simply put, punitive detention, which violates substantive due process. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)

V. Conclusion and Requested Relief.

This case falls squarely within the core of what *Zadvydas* prohibits. DHS resolved the foreseeability question in 2009 and has offered no evidence that circumstances have changed. Petitioner has already been held beyond the period permitted by statute and the Constitution.

WHEREFORE, Petitioner respectfully requests that the Court:

1. Grant the writ of habeas corpus and order Petitioner's **immediate release** under the same or materially equivalent conditions as his June 12, 2009 Order of Supervision;

2. In the alternative, set an **expedited evidentiary hearing** and require Respondents to produce any evidence demonstrating that removal to Laos is now significantly likely in the reasonably foreseeable future; and
3. Grant any other relief the Court finds just and proper.

Respectfully submitted,

This 3rd day of December, 2025.

BRENNAN, MANNA AND DIAMOND, PL

/s/ Jessica K. Hew

Jessica K. Hew
Florida Bar No.: 958018
D. Kim Radcliffe
Florida Bar No.: 83135
255 S. Orange Ave., Suite 700
Orlando, FL 32801-5007
Phone: (407) 392-0318
Primary Email: jkhew@bmdpl.com
Primary Email: dkradcliffe@bmdpl.com
Secondary: mbfernandes@bmdpl.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 3rd day of December, 2025, a true and correct copy of the foregoing was filed using the CM-ECF system, which will send an electronic notification of such filing to all counsel of record, with a copy emailed to Chad Spraker at Chad.Spraker@usdoj.gov.

/s/ Jessica K. Hew

Jessica K. Hew