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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THAT TOM NGIAM,

Petitioner,

v.

KRISTI NOEM, Secretary of Homeland Security; *et al.*,

Respondents.

Case No. 25-cv-03405-TWR-BLM

RETURN IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner That Tom Ngiam has filed a habeas petition and a motion for temporary restraining order. ECF Nos. 1, 4. On December 5, 2025, the Court granted Petitioner's motion for temporary restraining order and issued an order to show cause as to why the petition should not be granted. ECF No. 6. For the reasons set forth below, the Court should deny Petitioner's request for interim relief and dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Cambodia. *See* ECF No. 1 at ¶ 1; Declaration of That Tom Ngiam ("Ngiam Decl.") at ¶ 2; Declaration of Marcus Vera ("Vera Decl.") at ¶ 3. Petitioner entered the United States in 1979 as a refugee, and subsequently he became a lawful permanent resident. Vera Decl. at ¶ 3; Vera Decl. at ¶ 3. On July 10, 1998, an immigration judge ordered Petitioner removed to Cambodia following Petitioner's felony conviction for burglary. Ngiam Decl. at ¶¶ 6–8; Vera Decl. at ¶¶ 4–5. On October 17, 2003, Petitioner was released from immigration custody on an order of supervision due to Immigration and Customs Enforcement's (ICE) inability to repatriate him to Cambodia at that time. Vera Decl. at ¶ 6.

On October 24, 2024, ICE re-detained Petitioner to execute his removal. *Id.* at ¶ 7. That same day, ICE provided Petitioner with a Notice of Revocation of Release and an informal interview. *Id.*

ICE's Enforcement and Removal Operations (ERO) has worked diligently to remove Petitioner to Cambodia and on November 28, 2025, the Cambodian government issued a temporary travel document authorizing travel for the purpose of returning Petitioner to Cambodia. *Id.* at ¶ 8. Petitioner's travel document will expire on May 27, 2026. *Id.*

ICE is not seeking to remove Petitioner to a third country. *Id.* ¶ 8.

Active removal actions, including scheduling a removal flight, have been paused based on the Court's December 5, 2025 order temporarily restraining the Department of Homeland Security from removing Petitioner from the United States while the

petition remains pending. *Id.* at ¶ 10.

On November 25, 2025, Petitioner filed a motion to reopen removal proceedings and motion to stay removal. ECF No. 1 at ¶¶ 11–12, 14. On December 1, 2025, an immigration judge rejected Petitioner's motion to reopen for lack of proper filing fee payment. *See* Exhibit A.[1]

III. ARGUMENT

A. Claims and Requests Barred by 8 U.S.C. § 1252.

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000). To the extent Petitioner's claims arise from—or seek to enjoin—the decision to execute his removal order, they are jurisdictionally barred under 8 U.S.C. § 1252(g). *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process.") (quoting 8 U.S.C. § 1252(g)). In other words, section 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Here,

[1] The attached Exhibit A is a true copy, with redaction of Petitioner's A-file number, of an immigration court order obtained from ICE counsel.

1 Petitioner's claims necessarily arise "from the decision or action by the Attorney
2 General to . . . execute removal orders," over which Congress has explicitly foreclosed
3 district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2)
4 ("Notwithstanding any other provision of law, no court shall enjoin the removal of any
5 alien pursuant to a final order under this section unless the alien shows by clear and
6 convincing evidence that the entry or execution of such order is prohibited as a matter
7 of law."). Accordingly, to the extent Petitioner's claims arise from—or seek to enjoin—
8 the decision to execute his removal order, the Court should deny and dismiss those
9 claims for lack of jurisdiction under 8 U.S.C. § 1252.[2]

10 Moreover, the Ninth Circuit has explicitly held that section 1252(g) divests
11 district courts of jurisdiction to issue a stay of removal pending the adjudication of
12 pending motions to reopen removal proceedings. *See Rauda v. Jennings*, 55 F.4th 773,
13 777 (9th Cir. 2022); *see also Tazu v. Barr*, 975 F.3d 292, 300 (3d Cir. 2020) (holding
14 that section 1252(g) stripped the court of jurisdiction from staying petitioner's removal
15 while he appealed the denial of his motion to reopen); *Hamama v. Adducci*, 912 F.3d
16 869, 874 (6th Cir. 2018), *cert. denied*, 141 S. Ct. 188 (2020) (holding that section
17 1252(g) divested the district court of jurisdiction to stay the petitioners' removal while
18 they sought to reopen their removal proceedings based on changed country conditions);
19 *Louangmilith v Noem*, No. 25-cv-2502-JES-MSB, 2025 WL 2881578, at *3 (S.D. Cal.
20 Oct. 9, 2025) (finding that *Rauda* "precludes jurisdiction over Petitioner's claim seeking
21 a stay of his removal pending adjudication of his motion to reopen" removal
22 proceedings). Here, Petitioner's motion to reopen removal proceedings was denied on
23 December 1, 2025, for failing to pay the filing fee. *See* Exhibit A. To the extent
24 Petitioner files another motion to reopen removal proceedings and seeks from this Court
25 a stay of removal while that motion to reopen is pending, the Court lacks jurisdiction to
26 grant the requested relief. And in any event, ICE may lawfully detain a noncitizen with
27

28 [2] Pursuant to 8 U.S.C. § 1252(g), Respondents respectfully request that the Court lift its order staying Petitioner's removal so that Respondents can effectuate removal and their statutorily mandated duties.

1 a final order or removal even when the noncitizen has a pending motion to reopen
2 removal proceedings. *See* 8 C.F.R. § 241.4(a)(1) (authorizing detention of a noncitizen
3 "ordered removed who is inadmissible under section 212 of the Act, including an
4 excludable alien convicted of one or more aggravated felony offenses"); 8 C.F.R.
5 § 241.4(b)(1) ("An alien who has filed a motion to reopen immigration proceedings for
6 consideration of relief from removal . . . shall remain subject to the provisions of this
7 section unless the motion to reopen is granted.").

8 **B. Petitioner's Detention is Lawful, and He Has Not Established That There is**
9 **No Significant Likelihood of Removal in the Reasonably Foreseeable Future.**
10

11 ICE's authority to detain, release, and re-detain noncitizens who are subject to a
12 final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found
13 to be unlawfully present in the United States and a final order of removal has been
14 entered, the government ordinarily secures the alien's removal during a subsequent 90-
15 day statutory "removal period." 8 U.S.C. § 1231(a)(1). The statute provides that the
16 Attorney General "shall detain" the alien during this removal period. 8 U.S.C.
17 § 1231(a)(2).

18 The Supreme Court held in *Zadvydas* that when removal is not accomplished
19 during the 90-day removal period, the statute "limits an alien's post-removal-period
20 detention to a period reasonably necessary to bring about the alien's removal from the
21 United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689.
22 The Supreme Court has held that six months constitutes a "presumptively reasonable
23 period of detention." *Id.* at 701. Courts have repeatedly declined to grant habeas relief
24 where the presumptively reasonable six-month period has not yet elapsed. *See*
25 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22,
26 2025) ("The government is entitled to its six-month presumptive period before
27 Petitioner's continued § 1231(a)(6) detention poses a constitutional issue."); *Guerra-*
28 *Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July

17, 2025) ("The Court finds that the Petition is premature because Petitioner has not been detained for more than six months. Petitioner has been in detention since May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*.") (citations omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes the release based on changed circumstances, "the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*").

Even after the period of presumptive reasonableness has run, release is not required under *Zadvydas* unless "there is *no* significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701 (emphasis added). As the Supreme Court instructed, "the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the alien's presence at the moment of removal*." *Id.* at 699 (emphasis added). In so holding, the Supreme Court recognized that detention is presumptively reasonable pending efforts to obtain travel documents, because the noncitizen's assistance is often needed to obtain the travel documents, and because a noncitizen who is subject to an imminent, executable warrant of removal becomes a significant flight risk, especially if he or she is aware that it is imminent.

The Supreme Court also instructed that detention could exceed six months: "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.* at 701. "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." *Id.* The Ninth Circuit has emphasized, "*Zadvydas* places the burden on the

alien to show, after a detention period of six months, that there is 'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

Here, Petitioner does not appear to argue that his current detention runs afoul of *Zadvydas*. Such a claim would fail. Even if Petitioner's total time in detention since October 2003 does exceed the six months of presumptive reasonableness, the claim still fails at the next step because Petitioner cannot meet his burden to establish "that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. ICE re-detained Petitioner for removal on October 24, 2025, after ICE had been successfully removing Cambodian citizens. *See* ICE Annual Report Fiscal Year 2024, at p. 98, https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf (last visited Dec. 9, 2025) (reporting that removals to Cambodia ranged from 1 to 80 per fiscal year during fiscals years 2019–2024). ERO has worked diligently to remove Petitioner to Cambodia and on November 28, 2025, the Royal Embassy of Cambodia to the United States issued a temporary travel document authorizing travel for the purpose of returning Petitioner to Cambodia. Vera Decl. at ¶ 8. Once the Court lifts its order enjoining removal, Respondents will promptly schedule a flight and timely effectuate Petitioner's removal order. Petitioner's travel document will expire on May 27, 2026. *Id.* Petitioner's continued detention is thus not unconstitutionally prolonged under *Zadvydas*.

Finally, Petitioner claims that an individualized custody review was a prerequisite to his post-final order detention, but he offers no specific authority to support his contention. While a noncitizen may request a custody redetermination by an immigration judge at any time before a final order of removal is issued, *see* 8 U.S.C. § 1226(a), 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d)(1), Petitioner's removal order became final in 1998. *See* Vera Decl. at ¶ 5. Any right to request a custody determination by an immigration judge—whether based on the state court having vacated his

convictions or on his claim that he fears returning to Cambodia—has long since passed. Moreover, for individuals, such as Petitioner, who are subject to a final order of removal and subject to mandatory detention under 8 U.S.C. § 1231(a) for purposes of removal, the constitutional question is whether detention is indefinite based on a finding of there being no significant likelihood of removal in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701. In that proper context, if Petitioner's current detention were to be found to be unlawful—which Respondents firmly contest given the issuance and receipt of a travel document—the proper remedy would not be a bond hearing and would instead be release "subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3).[3]

C. Improper Habeas Claims

The Court should deny Petitioner's petition to the extent he asserts claims regarding review of fear based claims. An individual may seek habeas relief under 28 U.S.C. § 2241 if he is "in custody" under federal authority "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep't of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically "provide[s] a means of contesting the lawfulness of restraint and securing release."). The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas jurisdiction: "[O]ur review of the history and purpose of habeas leads us to conclude the relevant question is whether, based on the allegations in the petition, release is *legally required* irrespective of the relief requested." *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934

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[3] To support his position that he is entitled to a bond hearing, Petitioner primarily relies on *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015). However, *Rodriguez*, and *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), are inapplicable to Petitioner. The courts in those cases were concerned with the mandatory detention provisions of 8 U.S.C. § 1225 and individuals detained under such authority while their removal proceedings progressed. Here, Petitioner is not in removal proceedings, is subject to a final order of removal, and is detained under 8 U.S.C. § 1231(a).

1 (9th Cir. 2016) (The key inquiry is whether success on the petitioner's claim would
2 "necessarily lead to immediate or speedier release."). Here, a review of such claims
3 would not automatically entitle Petitioner to release from detention. *See Guselnikov v.*
4 *Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025)
5 (finding petitioners' claims did not arise under § 2241 because they were not arguing
6 they were unlawfully in custody and receiving the requested relief would not entitle
7 them to release); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781,
8 at *3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court lacks jurisdiction over
9 Petitioner's § 2241 habeas petition since it cannot be fairly read as attacking 'the
10 legality or duration of confinement.'") (quoting *Pinson*, 69 F.4th at 1065).[4]

11 **IV. CONCLUSION**

12 For the foregoing reasons, Respondents respectfully request that the Court
13 dismiss Petitioner's habeas petition.

14

15 Dated: December 10, 2025

16 Respectfully submitted,

17 ADAM GORDON
United States Attorney

18

19 *s/ Matthew Riley*
MATTHEW RILEY
20 Assistant United States Attorney

21 Attorneys for Respondents

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[4] Moreover, during his deportation proceedings, Petitioner had the opportunity to seek relief from removal before an immigration judge by applying for asylum, withholding of removal, and relief under the Convention Against Torture. As Petitioner is now subject to a final order ordering his removal to Cambodia, his country of origin, the proper avenue to seek to re-assert fear-based claims is to file a motion to reopen with the immigration court; an avenue that Petitioner has utilized. Review of that process by a district court is foreclosed by 8 U.S.C. § 1252.

EXHIBIT A

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ADELANTO IMMIGRATION COURT

Respondent Name:

To: FRANCISCO ALDANA
3033 FIFTH AVENUE
SUITE 201
SAN DIEGO, CA 92103

A-Number:
[redacted]
Riders:
In Removal Proceedings
Initiated by the Department of Homeland Security
Date:
12/01/2025

ORDER OF THE IMMIGRATION JUDGE

Respondent has submitted a Form EOIR-26A, Fee Waiver Request, requesting a fee waiver for a motion or application for relief. Respondent's request for a fee waiver is hereby:

- ☐ Granted.
- ☑ Denied for the following reason(s):

Filing fees are often required in Federal and State court systems to defray the cost of litigation and to deter frivolous petitions. See, e.g., In re Anderson, 511 U.S. 364, 365-66 (1994) (noting that filing fees and attorneys fees. . . deter. . . litigants from filing frivolous petitions (citation omitted)).

Section 286(m) of the INA, 8 U.S.C. § 1356(m) (2018), authorizes the Attorney General to set fees by regulation in immigration proceedings for adjudication services at a level that will ensure recovery of the full costs of providing all such services. The regulations provide that the Court may grant a waiver of the filing fee in cases where the respondent has shown that he or she does not have the means to pay the requisite filing fee. See 8 C.F.R. § 1003.8(a)(1), (3). Fee waivers must be requested through the filing of a Form EOIR-26A, which includes a declaration to be signed under penalty of perjury substantiating the respondent's inability to pay the fee.

Fee waivers are the exception and should not be granted as a matter of routine. An alien has a duty to complete official government forms, including fee waiver requests, accurately. See Matter of A.J Valdez and Z Valdez, 27 I&N Dec. 496, 500 (BIA 2018) ([I]t is reasonable to expect that aliens will take steps to ascertain the accuracy of documents they sign . . . .); see also Matter of Gomez-Beltran, 26 I&N Dec. 765, 768 (BIA 2016) (Truthful testimony and disclosures are critical to the effective operation of the immigration court system.). The submission of fraudulent forms can have negative discretionary implications. See Matter of Gonzalez Jimenez, 29 I&N Dec. 129, 13 1-32 (BIA 2025).

After declaring under penalty of perjury that the information contained in his Form EOIR 26A was true and correct to the best of his knowledge, the respondent stated that he had zero income from any sources and zero

expenses. No additional information or documentation was provided explaining how the respondent could provide basic necessities for himself, including food and clothing, and pay for the services of an attorney, despite claiming to have no income. A respondent's ability to pay the legal fees of an attorney to represent him or her in removal proceedings is evidence that the respondent can afford to pay the fees associated with litigation. In Medrano-Dominguez v. INS, 73 F.3d 369 (9th Cir. 1995) (table), the United States Court of Appeals for the Ninth Circuit upheld, in an unpublished decision, the Boards determination that the respondent failed to demonstrate an inability to pay the filing fee for his appeal based in part on his payment of legal fees to his attorney and his prior testimony of employment. An alien who is represented by private counsel is presumed to have the ability to pay any requisite filing fee before the Immigration Judge and the Board. To warrant a fee waiver, an alien will need to explain how he or she is able to pay legal fees but cannot pay a filing fee. The Court further concludes that a fee waiver request that contains zeros in all income blocks is presumptively invalid. A Form EOIR-26A with all zeros from an adult respondent, particularly if the respondent is not pro se, should be rejected when it is not accompanied by evidence to explain why the respondent has no income or otherwise cannot pay the applicable fees. The respondent has not met his burden to show that he is unable to pay the filing fee for his motion. The respondent has been in the United States since 1979, and has retained private counsel to represent him. Despite this, he averred under oath that he has no income and no expenses without providing any supporting documentation or otherwise explaining how he supports himself and his family and how he has been paying his attorney.

Motion for Fee Waiver is DENIED

Immigration Judge: HALPERIN, RAVIT 12/01/2025

Certificate of Service

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To: [ ] Alien | [ ] Alien c/o custodial officer | [M] Alien atty/rep. | [P] DHS

Respondent Name : NGIAM, THAT TOM | A-Number :

Riders:

Date: 12/01/2025 By: CHAMBERS, KARINA, Court Staff