UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-37 (PJS/EMB)

SOMVANG PHRACHANSIRY,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

OBJECTION TO REPORT AND RECOMMENDATION

Petitioner Somvang Phrachansiry filed this habeas petition to seek release from detention by the U.S. Immigration and Customs Enforcement ("ICE") pending his removal from the country. Through an error of counsel, Federal Respondents[1] failed to submit a response by the deadline, depriving the magistrate judge of critical evidence and information needed to make a recommendation that reflects the underlying realities of the case. The undersigned counsel sincerely apologizes for the mistake, and takes full responsibility for it. Nonetheless, Federal Respondents urge the Court on de novo review to fully revisit this matter based on the evidence provided now, favoring a merits-based approach over one that penalizes the government for the shortcomings of its servant.[2]

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[1] This Objection is not submitted on behalf of any State entity.

[2] The undersigned was not aware a response was due until Petitioner's appointed counsel submitted a letter to the Court on Friday, January 30, 2026. Upon seeing the letter, the undersigned immediately emailed Magistrate Judge Bullard's chambers, explaining what happened and asking *nunc pro tunc* for an extension until Tuesday, February 3 to respond. The R&R was issued the next day, Saturday, January 31.

Contrary to the R&R, the Court should deny Phrachansiry's petition because he is not entitled to habeas relief. Phrachansiry's removal to Laos is likely to occur in the foreseeable future, which disposes of his main claims in this case. To the extent Phrachansiry can also raise a habeas challenge to the procedures ICE used when revoking his release, none of those challenges has merit.

BACKGROUND

Federal Respondents do not dispute the factual recitations in the R&R, except to the extent noted below based on the Declarations of William J. Robinson ("Robinson Decl.") and David Fuller ("Fuller Decl.") (attaching exhibits).

U.S. Immigration and Customs Enforcement (ICE) encountered Phrachansiry, a convicted sex offender[3] with a final order of removal, on December 10, 2025, at which point ICE took him into custody to initiate removal proceedings. Robinson Decl. ¶ 9. An immigration judge had ordered him removed to Laos in 2001. Fuller Decl. Ex. B, p. 8; Robinson Decl. ¶ 6. ICE was not able to remove Phrachansiry in the months following entry of his removal order, so the agency released him in January pursuant to an Order of Supervision. Robinson Decl. ¶ 8; Fuller Decl. Ex. C p. 1.

Phrachansiry is currently in ICE custody pending his removal to Laos. Robinson Decl. ¶¶ 11-13. Although the United States had years of difficulty removing Laotian nationals from the country, the situation changed recently, as recognized by several recent court decisions in this district. Laos has now resumed issuing travel documents for

[3] Records also reflect a 2016 conviction for second-degree assault with a dangerous weapon, leading to a seven-year prison sentence. Fuller Decl. Ex. D p. 2.

removals and accepting individuals for repatriation. Robinson Decl. ¶ 11. Since March 2025, ICE's St. Paul office has been able to remove more than 20 individuals to Laos. *Id.*.

Given these changed circumstances, ICE revoked Phrachansiry's order of supervision on in December 2025 and took him into custody. Robinson Decl. ¶ 9; Fuller Decl. Ex. C (noting Acting Deputy Field Office Director's conclusion that "changed circumstances in your case" warrant revocation in order to "pursue new efforts to remove you to Laos"). His removal should occur soon, given that ICE regularly conducts chartered removals to Laos. Robinson Decl. ¶¶ 11, 13. ICE has requested a travel document for Phrachansiry and anticipates that he will be able to travel to Laos in the reasonably foreseeable future. Robinson Decl. ¶ 13.

After his arrest, ICE officers conducted an informal interview with Phrachansiry to give him an opportunity to respond to the agency's reasons for revoking his release. Robinson Decl. ¶ 10; Fuller Decl. Ex. C. Phrachansiry chose not to say anything during the interview, did not provide a written statement, and offered no documents showing that his removal was unlikely to occur in the foreseeable future. Fuller Decl. Ex. C.

ARGUMENT

The Court should deny Phrachansiry's petition. His pursuit of habeas relief is based on the idea that ICE will not be able to remove him to Laos in the reasonably foreseeable future. Yet the evidence accompanying this objection demonstrates that ICE is diligently working to coordinate Phrachansiry's removal and will likely be successful. As for procedural concerns about Phrachansiry's re-detention, they would not entitle him to habeas relief even if they had merit (which they do not).

I. Legal and Statutory Authority for Detention Pending Removal

ICE has the authority to detain Phrachansiry pending his removal from the United States. For more than two centuries, immigration officials have had the authority to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 233 (1960). Through the Immigration and Nationality Act ("INA"), Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See* 8 U.S.C. §§ 1225, 1226, and 1231. Once a noncitizen is subject to a final removal order—as Phrachansiry is here—his detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. part 241.

A noncitizen who has been ordered removed lacks a legal right to remain in the United States, and his liberty interest in remaining in the country is reduced. Accordingly, federal law provides that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days" and "shall detain the alien" during the removal period. 8 U.S.C. § 1231(a)(1)(A) and (a)(2)(A).[4] The "removal period" is the period during which the Department of Homeland Security begins to take steps to execute the noncitizen's final removal order. *See id.* § 1231(a)(1)(A)-(B). That period begins on the latest of: (1) the "date the order of removal becomes

[4] The Homeland Security Act of 2002 transferred many immigration enforcement and administrative functions from the Attorney General to the Secretary of Homeland Security. *See* Pub. L. No. 107-296, 116 Stat. 2135 (2002).

administratively final"; (2) "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order"; or (3) "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.* § 1231(a)(1)(B)(i)-(iii).

Detention during the 90-day removal period can be extended in some circumstances. For example, noncitizens like Phrachansiry who are removable after being convicted of an aggravated felony may be detained beyond 90 days. *Id.* § 1231(a)(6); *see also id.* § 1231(a)(1)(C) (suspension of removal period when noncitizen fails to make timely application for travel documents or acts to prevent removal). The Department of Homeland Security also conducts periodic post-order custody reviews to determine whether a noncitizen subject to a final removal order should continue to be detained beyond the removal period. *See* 8 C.F.R. § 241.4 (addressing continued detention for inadmissible, criminal, and other noncitizens).

After the removal period expires, a noncitizen may be released under an order of supervision. *See* 8 C.F.R. § 241.13. Specifically, a noncitizen held beyond the removal period can seek release from custody by showing that "there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." *Id.* § 241.13(a). However, the Department of Homeland Security can revoke release "if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." *Id.* § 241.13(i)(2). The procedures for revocation are set out in a federal regulation, which requires that the noncitizen:

> be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future . . . . The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Id. § 241.13(i)(3). After a noncitizen is re-detained using these procedures, § 241.4 governs his continued detention pending removal. *Id.* § 241.13(i)(2).

II. Phrachansiry's Challenge to his Detention

Phrachansiry's detention comports with Due Process because there is a substantial likelihood that he will be removed to Laos in the reasonably foreseeable future. That is all the Supreme Court requires. *See Zadvydas*, 533 U.S. at 689 ("[P]ost-removal-period detention [is limited] to a period reasonably necessary to bring about that alien's removal from the United States."). Furthermore, ICE properly revoked Phrachansiry's release and documented its re-detention decision in accordance with the applicable statutory and regulatory requirements. The Court should therefore deny this petition in its entirety.

A. Phrachansiry's *Zadvydas* Challenge

Phrachansiry contends that his continued detention violates the Due Process Clause. This is better known as a *Zadvydas* challenge. Although the plain language of § 1231(a)(6) does not impose any limit on how long a noncitizen can be detained pending removal, the Supreme Court in *Zadvydas* "read an implicit limitation into" the statute. 533 U.S. at 689. Thus, a person subject to a final order of removal cannot be detained indefinitely. *Id.* at 699-700. *Zadvydas* established a temporal marker: detention for six months or less is

presumptively constitutional. *Id.* at 701. But continued detention does not automatically become unconstitutional after six months; longer detention still comports with due process if there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* As the Supreme Court explained:

> [a]fter 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. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. *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. (emphasis added). The end result is that a habeas petitioner must meet the initial burden of demonstrating no significant likelihood of his removal in the reasonably foreseeable future. *Id.* If he makes this showing, then the government must rebut it. *Id.*

1. Premature Challenge

Phrachansiry's *Zadvydas* challenge is premature. As noted above, the Supreme Court holds that six months of detention is reasonable and constitutional when ICE is carrying out a removal order. Right away, that rule creates a problem for Phrachansiry because he was initially detained for only four months after his removal order became final. Robinson Decl. ¶¶ 7-8. And he has been re-detained for less than two months now. Robinson Decl. ¶ 10. Thus, Phrachansiry's current detention is presumptively constitutional because it has not lasted more than six months—and well under that marker if the detention periods are not added together.

Phrachansiry's failure to confront this issue and properly support his petition is reason enough to reject his request for habeas relief as premature. "[D]etainees awaiting removal from the United States may not file anticipatory habeas petitions prior to the six-month period having elapsed just in case their detention goes on for too long; instead, they must wait until the presumptively reasonable six-month period has passed to seek habeas relief." *Brian B. v. Tollefson*, 2024 U.S. Dist. LEXIS 158854, at *4 (D. Minn. July 26, 2024), *adopted by* 2024 U.S. Dist. LEXIS 157487 (D. Minn. Sep. 3, 2024); *see also Mehighlovesky v. U.S. Dep't of Homeland Sec.*, 2012 U.S. Dist. LEXIS 185286, at *6 (D. Minn. Dec. 7, 2012) ("A petition filed before the expiration date of the presumptively reasonable six months of detention prescribed by *Zadvydas* is properly dismissed as premature." (citations, alterations, and internal quotation marks omitted)). Indeed, this Court denied a nearly identical *Zadvydas* petition as premature where the petitioner had been held for three months in 2009 and then a few weeks in December 2025. *See Saengnakhone S. v. Noem*, No. 25-cv-4775-ECT-LIB, ECF No. 10, at 8 (filed Jan. 6, 2026) ("To the extent he raises a *Zadvydas* challenge, it is premature, as Saengnakhone was detained only a few days past the 90-day removal period in 2009 and has been detained for only a few weeks since his December 2025 arrest."). The Court should likewise deny Phrachansiry's habeas petition on this basis.

2. No Due Process Violation

Phrachansiry's *Zadvydas* challenge fails on the merits because there is no due process violation in this case. Phrachansiry cannot make the initial showing required at step one of the *Zadvydas* analysis. And the Federal Respondents have presented evidence

confirming that Phrachansiry's removal is likely to occur in the reasonably foreseeable future.

At step one, Phrachansiry fails to satisfy the threshold requirement that he "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. The petition is noticeably thin on this point, relying entirely on the fact that ICE did not secure a travel document before redetaining him. Pet. ¶¶ 26-27. The implication seems to be that until ICE has a travel document in-hand, the agency cannot detain Phrachansiry and he automatically demonstrates there is no significant likelihood of removal in the reasonably foreseeable future. Yet Phrachansiry cites no authority for extending *Zadvydas* to create such a rule, and his argument is one this Court has long rejected. "The mere passage of time, including concomitant delays in obtaining travel documents, is not alone sufficient to show that no such likelihood exists unless the delays are so extraordinarily long as to trigger an inference that travel documents will likely never issue at all." *Joseph K. v. Berg*, 2019 U.S. Dist. LEXIS 248455, at *6 (D. Minn. Mar. 15, 2019) (citations and internal quotation marks omitted), *adopted by* 2019 U.S. Dist. LEXIS 248456 (D. Minn. May 3, 2019).

Furthermore, it is hardly fair to look at ICE's past pursuit of a travel document when analyzing whether the agency will be able to secure one for Phrachansiry now. Laos did not issue travel documents or accept individuals for repatriation in the decade following Phrachansiry's removal order. Robinson Decl. ¶ 14. That situation has fundamentally changed because the country is once again accepting individuals for repatriation. Robinson Decl. ¶ 11 (noting this has only begun "[w]ithin the past year"). Indeed, the local ICE

office has a documented trend of successful removals to Laos in the last six months. Robinson Decl. ¶¶ 11, 13. Because Phrachansiry cannot make the threshold showing under *Zadvydas*, the Court should deny his habeas petition.

Phrachansiry fares no better at the second step of the *Zadvydas* analysis. The record evidence rebuts any notion that there is no significant likelihood of his removal to Laos in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701. In general, courts have found no significant likelihood of removal under *Zadvydas* in five circumstances:

1. where the detainee is stateless, and no country will accept him;
2. where the detainee's country of origin refuses to issue a travel document;
3. where there is no repatriation agreement between the detainee's native country and the United States;
4. where political conditions in the country of origin render removal virtually impossible; and
5. where a foreign country's delay in issuing travel documents is so extraordinarily long that the delay itself warrants an inference that the documents will likely never issue.

Joseph K., 2019 U.S. Dist. LEXIS 248455, at *8-9 (citations omitted). Phrachansiry's petition does not even try to allege that any of these circumstances are present today.

Again, the problem for Phrachansiry is that there has been a significant change in the circumstances that historically prevented ICE from removing him to Laos. The petition does not acknowledge this change, let alone explain how ICE will continue to have difficulty removing Phrachansiry now that Laos is accepting individuals for repatriation. And the Federal Respondents have provided sworn testimony showing that ICE requested a travel document and anticipates receiving one soon. Robinson Decl. ¶ 13. When the

record shows such "diligent and reasonable efforts to obtain travel documents," and "the alien's native country ordinarily accepts repatriation, and that country is acting on an application for travel documents, most courts conclude that there is a significant likelihood of removal in the foreseeable future." *Ahmed v. Brott*, 2015 U.S. Dist. LEXIS 45346, at *15 (D. Minn. Mar. 17, 2015) (citations and internal quotation marks omitted). To the extent ICE encounters delays in obtaining a travel document, such delays would not be "sufficient to trigger an inference that there is no significant likelihood of removal; they simply show that the bureaucratic gears are slowly grinding away." *Id.* (citations, alterations, and internal quotation marks omitted). Once again, this Court confronted these exact arguments earlier today in *Saengnakhone S.* and concluded that the Federal Respondents had adequately shown changed circumstances that made redetention appropriate. No. 25-cv-4775-ECT-LIB, ECF No. 10, at 12.

Phrachansiry's current detention serves a clear purpose by "assuring [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. The Supreme Court long ago recognized that detention to facilitate removal is a legitimate governmental objective. *See Wong Wing*, 163 U.S. at 235 ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character and while arrangements were being made for their deportation."). Likewise, Phrachansiry's detention has a definitive endpoint: his removal to Laos. He has currently been detained for less than a month while ICE works to facilitate that removal, and "[t]he mere passage of time, including concomitant delays in obtaining travel documents, is not alone sufficient to show that no such likelihood exists unless the delays are so extraordinarily long as to trigger an

inference that travel documents will likely never issue at all." *Yongdi Chen v. Banieke*, 2015 U.S. Dist. LEXIS 105145, at *11 (D. Minn. July 14, 2015), *adopted by* 2015 U.S. Dist. LEXIS 104914 (D. Minn. Aug. 11, 2015). For these reasons, the Federal Respondents have rebutted any presumption Phrachansiry raised (or tried to raise) regarding the likelihood of his removal in the reasonably foreseeable future.

In addition to *Saengnakhone S*, this case is nearly identical to the habeas petition filed in *Vue v. Mchenry et. al.*, which the Court dismissed. No. 25-2827 (PAM/DLM) (D. Minn. filed July 11, 2025). Like Phrachansiry, the petitioner in *Vue* was a citizen of Laos who was ordered removed from the United States more than twenty years ago. *Id.* ECF No. 7, at 2 (memorandum and order filed July 21, 2025). And like Phrachansiry, the petitioner was arrested and re-detained in 2025, when ICE revoked his Order of Supervision and started the process of obtaining travel documents from Laos. *Id.* Mr. Vue filed a habeas petition to challenge his detention, invoking *Zadvydas*. *Id.* at 4. This Court denied that petition on July 21, 2025, concluding that: (1) the petitioner had received a Notice of Revocation that explained the basis for the revocation of his supervision; and (2) ICE was securing a travel document for him so his removal to Laos was reasonably likely to occur in the foreseeable future. *Id.* at 4-5. *Vue* is on-point and supports denying Phrachansiry's petition.

Because the constitutional due process standards set forth in *Zadvydas* are satisfied in this case, Phrachansiry is not entitled to habeas relief.

CONCLUSION

The Federal Respondents respectfully request that the Court overrule the R&R and deny Phrachansiry's habeas petition in its entirety.

Dated: February 2, 2026

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