The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KIMLIS TEK, Petitioner, v. IMMIGRATION AND CUSTOMS ENFORCEMENT FIELD OFFICE DIRECTOR, Respondent.	Case No. 2:26-cv-00126-RAJ FEDERAL RESPONDENT'S RETURN Noted for Consideration: February 4, 2026

I. INTRODUCTION

Petitioner Kimlis Tek, a native of Thailand and citizen of Cambodia, is unlawfully present in the United States and is subject to a final removal order. He is being lawfully detained by U.S. Immigration and Customs Enforcement (ICE) under Section 241 of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1231 while they facilitate his removal to Cambodia and/or Thailand. Petitioner's form habeas petition seeks immediate release from custody or a bond hearing. His petition should be denied for three reasons: (1) Petitioner is subject to mandatory detention because he just began the 90-day removal period under 8 U.S.C. § 1231(a)(1); (2) Petitioner's detention is not indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)

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because he is well-within the 6-month presumptive period and his removal to Cambodia is likely in the reasonably foreseeable future; and (3) Petitioner has failed to exhaust his administrative remedies regarding a bond hearing because he does not allege that he has sought and been denied a hearing.

Petitioner filed this habeas petition just 12 days after a final order of removal was entered on December 31, 2025. He has just begun the 90-day removal period where detention is mandatory, and he is well within the 6-month presumptively reasonably period in *Zadvydas*. This form habeas petition from the Northwest Immigration Processing Center (NWIPC) is extremely premature and should be denied without an evidentiary hearing.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Detention Authorities and Removal Procedures

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for removal and to protect the community from noncitizens who may present a danger, Congress has mandated detention while removal is being effectuated:

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> During the removal period, the [Secretary of Homeland Security][1] shall detain the [noncitizen]. Under no circumstance during the removal period shall the [Secretary] release [a noncitizen] who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

8 U.S.C. § 1231(a)(2).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

> [A noncitizen] ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, *may* be detained *beyond the removal period* and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

During the removal period, ICE[2] is charged with attempting to effect removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. The Supreme Court has identified six months as a presumptively reasonable time to bring about a noncitizen's removal. *Id.* at 701.

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[1] Although 8 U.S.C. § 1231(a)(2) refers to the "Attorney General" as having responsibility for detaining noncitizens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority to the Secretary of the Department of Homeland Security, of which ICE is a component. *See also* 6 U.S.C. § 251.

[2] Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security's authority to execute removal orders.

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B. Petitioner Kimlis Tek

Petitioner is a native of Thailand and citizen of Cambodia who entered the United States as a refugee on or about November August 2, 1984. *See* Declaration of Melendez Yralees (Yralees Decl.) ¶ 4; Declaration of Kristin B. Johnson (Johnson Decl.) Ex. A. Petitioner adjusted to lawful permanent resident on August 2, 1984, pursuant to Section 207 of the Immigration and Naturalization Act (INA). Yralees Decl. ¶ 5; Johnson Decl. Ex. A.

On May 25, 2011, Petitioner was convicted in the Superior Court of Thurston County, Washington, of the offense of aggravated felony Assault in the First Degree While Armed with a Deadly Weapon – Domestic Violence, in violation of RCW 9A.36.011(1)(a), and sentenced to 180 months imprisonment. Yralees Decl. ¶ 6; Johnson Decl. Exs. A-B. On the same date, Petitioner was also convicted of two counts of Tampering with a Witness – Domestic Violence, in violation of RCW 9A.72.120(1)(a), thirty-six counts of Violation of Pretrial No Contact order – Domestic Violence Petitioner, and Assault with a Deadly Weapon – Firearm – Domestic Violence, and was subsequently sentenced to 24 months, 365 days, and 51 months, respectively. Yralees Decl. ¶ 6; Johnson Decl. Exs. A-B.

DHS encountered Petitioner at the Clallam Bay Corrections Center in Clallam Bay, Washington, on September 25, 2014. Yralees Decl. ¶ 7. On May 9, 2025, Petitioner was released from Clallam Bay Correctional Center to the custody of DHS. Yralees Decl. ¶ 8.

DHS served Petitioner with a Notice to Appear pursuant to INA Section 237(a)(2)(A)(iii) – commission of an Aggravated Felony (crime of violence and obstruction of justice, perjury, bribery of a witness) and 237(a)(2)(A)(i) – conviction of one crime involving moral turpitude, and 237(a)(2)(A)(ii) – conviction of two crimes involving moral turpitude. Yralees Decl. ¶ 8; Johnson Decl. Ex. B.

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On December 31, 2025, an Immigration Judge in the Tacoma, Washington, Executive Office for Immigration Review Immigration Court, ordered Petitioner removed from the United States to Cambodia with alternative to Thailand because the Petitioner withdrew his asylum, withholding of removal, and convention against torture applications. Yralees Decl. ¶ 10; Johnson Decl. Ex. C. Petitioner and DHS waived appeal. Yralees Decl. ¶ 10; Johnson Decl. Ex. C.

On January 23, 2026, Petitioner filled out the required documents for a Cambodian travel document. Yralees Decl. ¶ 11; Johnson Decl. Ex. D. ERO submitted a request for a travel document to the Cambodian consulate on January 23, 2026. Johnson Decl. Ex. D. The Cambodian consulate reached out to ERO to schedule an interview for Petitioner after documents are received. Yralees Decl. ¶ 12.

III. ARGUMENT

A. Petitioner has just begun the 90-day removal period and is subject to mandatory detention.

Petitioner is the subject of an administrative order of removal that became final on December 31, 2025. *See* Yralees Decl. ¶ 10; 8 C.F.R. § 1241.1 (removal order becomes final upon waiver of appeal by the respondent). He filed this habeas petition just 12 days after entry of the final order of removal and at the time of this return has been detained for one month while ICE works to effectuate his removal to Cambodia. Petitioner has just begun the 90-day removal period where detention is mandatory under 8 U.S.C. § 1231(a)(2). His habeas petition is extremely premature.

B. Petitioner's detention is not indefinite.

Petitioner has not demonstrated that his detention has become "indefinite" because he is well within the "presumptively reasonable" 6-month custody period of *Zadvydas*, 533 U.S. at 701. In *Zadvydas*, the Supreme Court determined that it is "presumptively reasonable" for the

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Government to detain a noncitizen for six months following entry of a final removal order, while it worked to remove the noncitizen from the United States. *Id.* Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen's detention could raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption "does not mean that every [noncitizen] not removed must be released after six months. To the contrary, [a noncitizen] may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

Here, ICE has detained Petitioner for one month since his removal order became final on December 31, 2025. Thus, he is well within the six-month presumptively reasonable period under *Zadvydas*, 533 U.S. at 701. The fact that Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008). Detention becomes indefinite in situations where the country of removal refuses to accept the noncitizen or if removal is legally barred. *Id.*

Here, there is no reason to believe that Cambodia has refused to accept Petitioner or that his removal is legally barred. On January 23, 2026, Petitioner filled out the required documents for a Cambodian travel document. Yralees Decl. ¶ 11; Johnson Decl. Ex. D. ERO submitted a request for a travel document to the Cambodian consulate on January 23, 2026. Johnson Decl. Ex. D. The Cambodian consulate reached out to ERO to schedule an interview for Petitioner after documents are received. Yralees Decl. ¶ 12.

Thus, Petitioner has failed to demonstrate a good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

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C. Petitioner failed to exhaust his administrative remedies.

Petitioner failed to exhaust his administrative remedies with respect to his request for a bond hearing. He has not alleged that he has sought and was denied a bond hearing, or that any bond hearing he was given was procedurally improper or deficient. Dkt. 1. This Court should require Petitioner to seek a bond hearing administratively, and if dissatisfied with the result, appeal that ruling to the Board of Immigration Appeals (BIA) before seeking habeas relief in a federal district court.

Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not a "'jurisdictional' prerequisite.'" *Id.*

Courts may require prudential exhaustion where: "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

The Court should not allow Petitioner to move forward with this habeas petition seeking a bond hearing without first exhausting his administrative remedies at the Immigration Court and the BIA level. Similarly, a court in this district dismissed a noncitizen's habeas petition because the petitioner had failed to seek a bond redetermination hearing at the administrative level. *Cristobal v. Asher*, 20-cv-1493-RSM-BAT, 2020 WL 8678097, at * 3 (W.D. Wash. Dec. 14, 2020), *Rep. & Rec. adopted by* 2021 WL 796597 (W.D. Wash. Mar. 2, 2021). In *Cristobal*, the

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petitioner had been detained for 15 months and was denied bond at an initial bond redetermination hearing, but he never sought a second bond redetermination hearing based on changed circumstances before filing a habeas petition. In comparison, Petitioner here does not allege that he has sought a bond hearing, or been denied bond, or that any bond hearing he had was deficient before filing a habeas petition in this Court asking this Court to order a bond hearing. Therefore, this Court should also dismiss this Petition.

Furthermore, this case meets the elements requiring prudential exhaustion because the BIA "has a special expertise in reviewing the question of whether the bond record as a whole makes it substantially unlikely that the Department w[ill] prevail on [the petitioner's] challenge to removability." *Francisco Cortez v. Nielsen*, No. 19-CV-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019) (internal quotation marks omitted). Also, allowing a "relaxation of the exhaustion requirement" would promote the avoidance of seeking a bond redetermination by the Immigration Judge or an appeal of similar Immigration Judge orders to the BIA. Finally, the outcome of Petitioner's exhaustion of administrative remedies may provide him with the relief sought here – a bond hearing or release on bond.

Accordingly, the habeas petition should be dismissed because Petitioner has failed to exhaust his administrative remedies.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court deny the habeas petition and dismiss this matter.

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DATED this 30th day of January, 2026.

Respectfully submitted,

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Attorney for Federal Respondent

I certify that this memorandum contains 2,165 words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers;

I further certify that on this date, I electronically filed the foregoing and the supporting declarations of Melendez Yralees and Kristin B. Johnson (with Exhibits A-D), with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

- 0 -

I further certify that on this date, I arranged for service of the foregoing on the following non-CM/ECF participant via Certified Mail, Return Receipt Requested, postage prepaid, marked "*Legal Mail, Open in Presence of Detainee,*" and addressed as follows:

Kimlis Tek, *Pro Se Petitioner*
A# [redacted]
NW ICE Processing Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

DATED this 30th day of January, 2026.

s/ Caitlin Froelich
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