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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KONG MENG VUE,

Petitioner,

v.

WARDEN OF THE GOLDEN STATE
ANNEX, *et al.*,¹

Respondents.

CASE NO. 1:25-CV-1713-JDP

**MOTION TO DISMISS; RETURN TO
PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner Kong Meng Vue, who is subject to a final order of removal and detained pursuant to the Attorney General's discretionary detention authority under 8 U.S.C. §1231(a)(6), seeks release from the United States Department of Homeland Security ("DHS") Immigration and Customs Enforcement ("ICE") custody pending efforts to effectuate his removal. As demonstrated in the accompanying Declaration of Deportation Officer Mayra Gallenkamp dated January 21, 2026 ("Gallenkamp Decl."), ICE has been actively pursuing Petitioner's removal to Laos, his country of origin since early November

¹ Respondents move to strike and to dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief must name the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004). The proper respondent in habeas cases "is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Padilla*, 542 U.S. at 435; *see also Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (holding that the warden of the private detention facility at which a non-citizen alien was held was the proper § 2241 respondent). At the time of filing, Petitioner's custodian was the facility administrator at the Golden State Annex located in McFarland, California.

2025, when he was returned to custody to effectuate his removal. Petitioner argues he is entitled to release because his detention has exceeded the 90-day statutory removal period under §1231(a). However, the Supreme Court has held that §1231, “read in light of the Constitution’s demands,” provides for a presumptively reasonable *six-month* time period for detention, and even this six-month period may be prolonged absent a showing by the petitioner that there is “no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 690 and 701 (2001). Since he was returned to custody on November 4, 2025, Petitioner has been in custody for less than three months—well within the six-month period the Court presumptively approved in *Zadvydas*. Petitioner has failed to demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future, and his request for immediate release should be denied.

II. II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, a native and citizen of Laos, was admitted to the United States on or about September 16, 1988, as a lawful refugee. Gallenkamp Decl., ¶ 1.

On or about December 4, 2003, Petitioner was convicted in the Superior Court of California, County of Fresno, of violating Cal. Vehicle Code § 10851(A), taking a vehicle without owner’s consent/vehicle theft. Gallenkamp Decl., ¶ 3. Petitioner was sentenced to 16 months in prison. Gallenkamp Decl., ¶ 3, Exh. 2.

On May 20, 2004, Petitioner was taken into DHS custody and placed into removal proceedings. Gallenkamp Decl., ¶ 4, Exh. 1. On June 7, 2004, Petitioner was ordered removed to Laos, or in the alternative, Thailand, based on his aggravated felony conviction. Gallenkamp Decl., ¶ 5, Exh. 3. Petitioner waived his appellate rights. *Id.*

On September 16, 2004, Petitioner was released from immigration custody and placed on supervision. Gallenkamp Decl., ¶ 7.

On November 4, 2025, Petitioner was taken into ICE custody pending removal. Gallenkamp Decl., ¶ 8, Exhs. 6, 7. An ICE official determined that there were changed circumstances such that Petitioner can now be expeditiously removed from the United States. Gallenkamp Decl., Exhs. 6-7. ICE provided written notice of this determination to Petitioner and interviewed Petitioner to determine if

1 he had any response regarding the reasons for his revocation of release on supervision. *Id.* Petitioner
2 did not provide any such information in response. *Id.*

3 Since then, ICE has pursued, and continues to actively pursue, Petitioner's removal to Laos, and
4 is in the process of seeking to obtain travel documents from Laos. Gallenkamp Decl., ¶ 9.

5 On or about December 2, 2025, Petitioner filed the pending petition for habeas corpus. ECF 1.

6 **III. LEGAL FRAMEWORK**

7 Congress enacted a multi-layered statute that provides for the continued civil detention of aliens
8 pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). The detention and
9 removal of aliens, like Petitioner, who are subject to a final order of removal issued after removal
10 proceedings, is governed by 8 U.S.C. § 1231. Under this statute, there is a 90-day "removal period,"
11 during which detention is mandatory. 8 U.S.C. § 1231(a)(1), (2); *Zadvydas*, 533 U.S. at 683. Once the
12 mandatory removal period ends, ICE has discretion to continue detaining aliens pending their removal.
13 8 U.S.C. § 1231(a)(6).

14 In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) did not authorize the
15 government to detain a removable alien indefinitely beyond the 90-day statutory removal period; rather,
16 the Court construed the statute to contain an implicit "reasonable time" limitation. 533 U.S. at 682. The
17 Court concluded that six months was a presumptively reasonable period of detention which should be
18 read into the statute. *Id.* at 701. After detention exceeds six months, an alien is entitled to habeas relief
19 only if he can show "there is no significant likelihood of removal in the reasonably foreseeable future."
20 *Id.* The Ninth Circuit has explained that *Zadvydas* requires an alien to show he is "stuck in a
21 'removable-but-unremovable limbo,' as the petitioners in *Zadvydas* were." *Prieto-Romero v. Clark*, 534
22 F.3d at 1063 (internal citation omitted). That is, the alien must show he "is unremovable because the
23 destination country will not accept him or his removal is barred by our own laws." *Id.* (citing *Zadvydas*,
24 533 U.S. at 697).

25 While an alien's detention is no longer presumed to be reasonable after six months, "there is
26 nothing in *Zadvydas* which suggests that the Court must or even should assume that any detention
27 exceeding that length of time is unreasonable." *Lema v. U.S. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D.
28 Wash. 2002), *aff'd sub nom. Lema v. I.N.S.*, 341 F.3d 853 (9th Cir. 2003).

IV. ARGUMENT

A. Petitioner's detention is lawful because he has been detained for less than the six-month detention period approved by the Supreme Court as presumptively reasonable.

Petitioner's detention is lawful. Petitioner has been detained for less than three months. Petitioner's detention therefore falls well within the presumptively reasonable six-month period that the Supreme Court has allowed for post-removal detention. *Zadvydas*, 533 U.S. at 701. Unless and until his detention exceeds six months, there is no need or basis for conducting any case-specific analysis of the likelihood of Petitioner's removal in the near future. The reasonableness of his detention is presumed, and thus his petition should be dismissed.

Moreover, even assuming that Petitioner's detention had exceeded the presumptively reasonable six-month period, he has failed to sustain his burden of showing there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. He has not shown he is stuck in "removable-but-unremovable limbo." *Prieto-Romero v. Clark*, 534 F.3d at 1063. Petitioner has not alleged that the destination country, Laos, will not accept him. Nor has he cited to any United States law that bars his removal. Thus, he is not in a "removable-but-unremovable limbo." *Id.* ICE is actively pursuing Petitioner's removal to Laos. *See* Gallenkamp Decl., ¶ 9. Specifically, ICE is in the process of providing all of the necessary information and documentation to the Laotian Consulate so that Laos can issue travel documents and Petitioner's removal can be scheduled. *See id.* Although Petitioner's removal has not yet been scheduled, the removal process takes time. Moreover, the fact that there is no scheduled removal date, and thus that Petitioner's detention "does not have a certain end date[,] does not change the analysis." *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (citing *Prieto-Romero*, 534 F.3d at 1063).

Accordingly, Petitioner has failed to establish that there is no significant likelihood of removal in the reasonably foreseeable future.

B. This Court lacks jurisdiction over Petitioner's third country removal claims.

Petitioner also seeks an order prohibiting Respondents from removing him to a third country. *See* ECF 1, at 14-16, 19. This Court lacks jurisdiction to address these claims. The Constitution limits federal judicial power to designated "cases" and "controversies." U.S. Const., Art. III, § 2; *SEC v.*

1 *Medical Committee for Human Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain
2 matters that present a “case” or “controversy” within the meaning of Article III). At the “irreducible
3 constitutional minimum,” Article III standing requires that a plaintiff demonstrate the following: (1) an
4 injury in fact (2) that is fairly traceable to the challenged action of the United States and (3) likely to be
5 redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).
6 Where a plaintiff alleges a future injury, he must show an injury that is “imminent, not conjectural or
7 hypothetical.” *Id.* at 560. Petitioner cannot make that showing.

8 Here, Respondents have not indicated that they seek to remove Petitioner to a third country. To
9 the contrary, Respondents are actively pursuing Petitioner’s removal to Laos, his country of origin. *See*
10 Gallenkamp Decl., ¶ 9. Accordingly, there is no controversy concerning third country resettlement for
11 the Court to resolve, and Petitioner lacks standing to raise these claims.

12 Moreover, to the extent Petitioner’s requested relief arises from—or seeks to enjoin—the
13 decision to execute his removal order, it is jurisdictionally barred under 8 U.S.C. § 1252(g). Courts lack
14 jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate
15 removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“Except as provided in this
16 section and notwithstanding any other provision of law (statutory or nonstatutory), including section
17 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no
18 court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
19 decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute*
20 *removal orders* against any alien under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-*
21 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special
22 attention upon, and make special provision for, judicial review of the Attorney General’s discrete acts of
23 “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent
24 the initiation or prosecution of various stages in the deportation process.”). In other words, § 1252(g)
25 removes district court jurisdiction over “three discrete actions that the Attorney General may take: her
26 ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*,
27 525 U.S. at 482 (emphasis removed).

Here, Petitioner has a final order of removal, and if Respondents intended to remove Petitioner to a third country, they would be executing the final order of removal. Petitioner's claims therefore necessarily arise "from the decision or action by the Attorney General to . . . execute removal orders," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g); *see* 8 U.S.C. § 1252(f)(2) ("Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law."). Accordingly, to the extent Petitioner's claims arise from, or seek to enjoin, the decision to execute his removal order, the Court should deny and dismiss those claims for lack of jurisdiction under 8 U.S.C. § 1252(g).

C. Petitioner's fourth claim for relief fails because ICE followed all of its regulations in re-detaining Petitioner pending removal.

Petitioner argues that ICE failed to comply with its regulations in taking him into custody to facilitate his removal that ICE is actively pursuing. *See* ECF 1, at 17-18. But ICE followed its regulations.

Under its regulations, ICE "may revoke an alien's release under this section and return the alien to custody 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." 8 C.F.R. § 241.13(i)(2). An ICE official made this determination and provided notice to Petitioner of its determination at the time of revocation of release. Gallenkamp Decl., Exhs. 6-7. ICE also interviewed Petitioner to determine if he had any response regarding the reasons for his revocation of release on supervision, *id.*, in accordance with 8 C.F.R. § 241.13(i)(3). Petitioner did not provide any such information in response during this interview. Gallenkamp Decl., Exhs. 6-7. Because ICE followed its regulations, Petitioner's fourth claim for relief should be denied.

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V. CONCLUSION

Based on the foregoing, the Court should find that Petitioner's detention continues to be lawful under 8 U.S.C. § 1231(a)(6), and dismiss or deny the Petition for Writ of Habeas Corpus.

Dated: January 21, 2026

ERIC GRANT
United States Attorney

By: /s/ David Spencer
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