UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-04770-JMB-ECW

Ijeoma Miriam Chanthavong,

Petitioner,

v.

Pamela Bondi, U.S. Attorney General; Kristi Noem, US. Department of Homeland Security, Secretary; Todd M. Lyons, U.S. Immigration & Customs Enforcement, Acting Director; Marco Charles, Enforcement and Removal Operations, Acting Executive Associate Director; Eric Klang, Sheriff, Crow Wing County Jail,

Respondents

FEDERAL RESPONDENTS' RESPONSE TO PETITION AND MOTION FOR PRELIMINARY INJUNCTION

Federal Respondents[1] submit this response to Petitioner Ijeoma Miriam Chanthavong's ("Petitioner" or "Chanthavong") verified petition for writ of habeas corpus (ECF No. 1) and the remaining portions of her Motion for Preliminary Injunction (ECF No. 4).[2] Petitioner wants an immigration court to conduct a bond hearing in connection with her detention by the U.S. Immigration and Customs Enforcement ("ICE"). Petitioner was convicted and sentenced by the Honorable Donovan W. Frank for Conspiracy to

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1 The Federal Respondents Pamela Bondi, U.S. Attorney General; Kristi Noem, U.S. Department of Homeland Security, Secretary; Todd M. Lyons, U.S. Immigration & Customs Enforcement, Acting Director; Marco Charles, Enforcement and Removal Operations, Acting Executive Associate Director. This response is not offered on behalf of any state authority.

2 Counsel for the Federal Respondents filed a Motion for Extension to file their response to both the Petition and Motion for Preliminary Injunction by 4:30 p.m. rather than 11:00 p.m. (ECF No. 9).

Commit International Money Laundering in April 2023. Additionally, Petitioner is subject to a Final Administrative Order of Removal as of December 22, 2025. As such, she is not entitled to habeas relief because she is mandatorily detained under 8 U.S.C. § 1231(a)(2), and any challenge to her final order of removal must be brought before the Eighth Circuit under 8 U.S.C. § 1252. Accordingly, her petition should be dismissed and the remaining portion of the Motion for Preliminary Injunction should be denied.

RELEVANT BACKGROUND

On August 30, 2017, Chanthavong, a citizen and national of Nigeria, entered the United States at John F. Kennedy International Airport in Queens, New York. (Declaration of James L. Van Der Vaart ("Van Der Vaart Decl.") ¶ 4, Ex. 1 at 2.) Chanthavong was in possession of a valid B-2 VISA (Temporary Visitor for pleasure). (*Id.*)

On March 23, 2018, Chanthavong filed form I-131 (Application for Travel Documents, Parole Documents, and Arrival/Departure Records, receipt number [redacted]) with United States Citizenship and Immigration Services (USCIS), form I-130 (Petition for Alien Relative, receipt number [redacted]), form I-485 (Application to Register Permanent Residence or Adjust Status, receipt number [redacted]) USCIS issued alien registration number (A#[redacted]). (Van Der Vaart Decl. ¶ 5.) About a month later, on April 30, 2018, Chanthavong filed form I-765 (Application for Employment Authorization). (*Id.* ¶ 6.) On January 2, 2019, USCIS approved the I-765 application for Employment Authorization, authorizing employment from January 2, 2019, to January 01, 2020. (*Id.* ¶ 7.)

On March 6, 2019, Chanthavong failed to appear for the scheduled USCIS interview regarding the pending applications. (Van Der Vaart Decl. ¶ 8.) Two days later, on March 8, 2019, USCIS ordered an abandonment denial notice to be issued. (*Id.* ¶ 9.) On March 11, 2019, USCIS sent a denial notice to the address provided by Chanthavong. (*Id.* ¶ 10.)

On January 28, 2022, Chanthavong filed form I-13, receipt number 1 [redacted], form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant, receipt number [redacted]) with USCIS. (Van Der Vaart Decl. ¶ 11.) On June 9, 2022, USCIS approved application form I-131 [redacted]. The application was valid from June 09, 2022, to June 08, 2022. (*Id.* ¶ 12.) On December 26, 2023, Chanthavong filed application form I-131, receipt number [redacted] and application form I-765, receipt number [redacted] with USCIS. (Van Der Vaart Decl. ¶ 11.)

On April 19, 2023, the District Court of Minnesota convicted Chanthavong of Conspiracy to Commit International Money Laundering, in violation of 18 U.S.C §§1956(h) and 1956(a)(2)(B)(i). (Van Der Vaart Decl. ¶ 14, Ex. 2); *see United States v. Chanthavong*, 22-cr-210 (DWF), ECF No. 39, Judgment (D. Minn. Apr. 20, 2023) Chanthavong was sentenced to 36 months' probation and fined $148,500.00. (*Id.* ¶ 14, Ex. 2 at 1.) Petitioner is currently on federal probation. (*Id.*)

On June 20, 2024, USCIS approved application form I-131 Application for Travel Documents, Parole Documents, receipt number [redacted] and form I-765 Application for Employment Authorization, receipt number [redacted]. (Van Der Vaart Decl. ¶ 15.) Both applications were valid from June 20, 2024, to June 19, 2029. (*Id.*)

On February 14, 2025, USCIS sent a notice of intent to deny application form I-360 VAWA Petition, receipt number [redacted] (Van Der Vaart Decl. ¶ 16.) Two months later, on April 18, 2025, Chanthavong filed application form I-601 application for Waiver of Grounds of Inadmissibility. (*Id.* ¶ 17.) On August 27, 2025, USCIS ordered a denial notice for form I-601 application. (*Id.* ¶ 18.) On August 28, 2025, USICS sent a notice of denial regarding application form I-360 [redacted] and form I-601, receipt number [redacted] (*Id.* ¶ 19.)

On December 4, 2025, Immigration and Customs Enforcement (ICE) officers located and arrested Chanthavong due to a "conviction for Money laundering. (Van Der Vaart Decl. ¶ 20, Ex. 1 at 2).) ICE officers processed Chanthavong as a Final Administrative Order of Removal. (*Id.*) Chanthavong requested asylum during processing and will be submitted to USCIS for an asylum interview. (*Id.*)

On December 22, 2025, after issuing a Notice of Intent to Issue a Final Administrative Removal Order on December 11, 2025 (Ex. 1 at 5), ICE issued a Final Administrative Removal Order for Chanthavong. (*See* Van Der Vaart Decl. ¶ 21, Ex. 1 at 4.)

This case was filed as an immigration habeas Petition on December 23, 2025. (ECF No. 1). On December 30, 2025, the Court sua sponte granted the Petition in part by prohibiting the Respondents from transferring Petitioner outside the District of Minnesota and required them to allow the Petitioner access to counsel during the pendency of the Petition. (ECF No. 8 at 6.) On the same day, Petitioner filed her Motion for Preliminary Injunction (ECF No. 4) seeking not only a bond hearing but other relief related to her Final

Administrative Removal Order on the same date.

ARGUMENT

Petitioner has been in post-final-order-removal detention under 8 U.S.C. § 1231(a) for two weeks, which is within the 90-day removal period Congress expressly allowed for executing a removal order under 8 U.S.C. § 1231(a)(1)(A), and far short of the presumptively reasonable six-month period inferred from that statute in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Because her habeas claims are not ripe and there is no jurisdiction in district court to challenge her final order of removal, the Petition should be dismissed and the Motion for Temporary Restraining Order should be denied.

I. Petitioner's habeas claim is not ripe.

Judicial review of immigration matters, including immigration detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("[T]he power over [non-citizens] is of a political character and therefore subject only to narrow judicial review."). The Supreme Court has "underscore[d] the limited scope of inquiry into immigration legislation" and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the

Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("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."). Petitioner challenges her continued post-final-order detention pending her removal. (ECF No. 1 at 13-14; ECF. No. 4 at 8, 13-18.)

Petitioner's mandatory detention pending her removal is mandated by 8 U.S.C. § 1231(a). Congress addressed the detention and removal of noncitizens who are ordered removed in 8 U.S.C. § 1231. That statute first provides that when a noncitizen "is ordered removed, the Attorney General shall remove the [noncitizen[3]] from the United States within a period of 90 days (in this section referred to as the 'removal period')." 8 U.S.C. § 1231(a)(1)(A). Congress then specified that the "removal period begins" on the latest of three potential dates:

> (i) The date the order of removal becomes administratively final.
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order.
>
> (iii) If the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.

Id. § 1231(a)(1)(B).

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"During the removal period, the Attorney General *shall detain* the [noncitizen]." *Id.* § 1231(a)(2)(A). Detention during the removal period is constitutionally permissible; her habeas petition can and should be denied on these grounds alone.

The Supreme Court's decision in *Zadvydas* does not change the analysis. Under the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), a person subject to a final order of removal cannot, consistent with the Due Process Clause, be detained indefinitely pending removal. 533 U.S. at 699-700. *Zadvydas* set a temporal marker: post-final-order detentions of six months or less are presumptively constitutional. 533 U.S. at 701. While some immigration-habeas claims are "fact intensive and often difficult, . . . [t]he same is not true of claims brought prior to the six-month period established by *Zadvydas* having elapsed." *Brian B. v. Tollefson*, Case No. 24-cv-2884 (NEB/ECW), 2024 WL 4029657, at *1 (D. Minn. July 26, 2024), *R. & R. adopted* 2024 WL 4026259 (Sept. 3, 2024). Petitioner is detained just two weeks from her final order of removal, which is well within the 90-day removal period set out by Congress, and far less than the six-month time period within which the detention remains presumptively constitutional.

Additionally, Petitioner's contention that she was "misclassified" (ECF No. 4 at 18-19) as being detained under 1225 rather than 1226 rings hollow because she is a convicted felon. The Eighth Circuit Court of Appeals' decision in *Banyee v. Garland,* 115 F.4th 928, 933-934 (8th Cir. 2024) controls regarding the constitutionality of Petitioner's initial detention under § 1226(c) before she received her final order of removal. In that case, the circuit court rejected the multi-factor test previously used in this District to assess the constitutionality of detention under § 1226(c) and held that detention required during removal proceedings is "constitutionally valid." *Id.* at 931 (citing *Demore v. Kim*, 538 U.S. 510 (2003)); *see also Gach,* 2024 WL 4774175 at *3 (following *Banyee*).

Petitioner's situation does not differ -- §1226(c)(1)(B) requires her detention during her removal proceedings due to the nature of her conviction for conspiracy to commit money laundering. (Van Der Vaart Decl. ¶ 4, Ex. 1 at 7); *see United States v. Chanthavong*, 22-cr-210 (DWF), ECF No. 39, Judgment (D. Minn. Apr. 20, 2023). (*See* Van Der Vaart Decl. ¶ 14, Exs. 1, 2.) Petitioner entered a guilty plea, was sentenced, and is currently on probation. (*Id.* ¶ 14.) Under INA § 101(a)(48)(A), "conviction" is defined as "a formal judgment of guilt of the alien entered by a court, or if adjudication of guilt is withheld where (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty. . . or (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed." Therefore, Petitioner's conviction for conspiracy to commit money laundering it is a crime of moral turpitude under 8 U.S.C. § 1226(c)(1)(B). Additionally, no petty crime exception applies because the maximum penalty is 5 years of incarceration. Because Petitioner is not likely to succeed on her habeas claim due to her federal conviction, her motion for injunctive relief should be denied, and her petition should be dismissed.

II. The district court lacks jurisdiction to hear Petitioner's challenges to her removal order.

In her Petition and in her Motion for Preliminary Injunction, Petitioner attempts to challenge her final order of removal. (ECF No. 1 at 13-14, ECF. No. 4 at 8, 13-18.) However, jurisdiction over a challenge to a final order of removal lies exclusively with the appropriate circuit court of appeals. *See* 8 U.S.C. § 1252; *see also Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007) (exclusive jurisdiction to review final orders of removal is with the circuit, not district, court). 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims. Accordingly, Petitioner is unable to show a likelihood of success on the merits and her Petition should be dismissed.

First, Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."[4] Except as provided in § 1252, courts

[4] Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

"cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

Section 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

Petitioner's claim stems from her detention during removal proceedings. That detention arises from the decision to commence such proceedings against her. *See, e.g.*, *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]"); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

As other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As such, judicial review of the claim that she is entitled to bond is barred by § 1252(g). The Court should dismiss for lack of jurisdiction.

Second, under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the government's decision and action to detain him, which arises from DHS's decision to commence removal proceedings against him as an arriving alien and is thus an "action taken . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action.

The reasoning in *Jennings* outlines why Petitioner's claims are unreviewable here. While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–

94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, Petitioner *does* challenge the government's decision to detain him in the first place. (ECF No. 5 at 23-28.) Though Petitioner may attempt to frame her challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain her pending her removal, such creative framing does not evade the preclusive effect of § 1252(b)(9).

Indeed, the fact that Petitioner is challenging the basis upon which she is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss Petition for lack of jurisdiction under § 1252(b)(9). Petitioner must present her claims before the appropriate federal court of appeals because they challenge the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

The grounds for Petitioner's I-851 administrative removal was her conviction for conspiracy to commit money laundering. (Van Der Vaart Decl. ¶ 14, Ex. 1 at 7); *see United States v. Chanthavong*, 22-cr-210 (DWF), ECF No. 39, Judgment (D. Minn. Apr. 20, 2023). Though it is not clear that Petitioner submitted a response to the Notice of Intent to Issue a Final Administrative Order of Removal (*see* Van Der Vaart Decl. ¶ 4, Ex. 1 at 5-6; ECF No. 4 at 7) and she challenges the sufficiency of the notice she was provided while in custody (ECF No. 4 at 7-8), this is not the proper venue to challenge her final order of removal. *See* 8 U.S.C. § 1252(b)(9); 8 U.S.C. § 1252(g). As such, her claims related to the basis of her removal are not ripe until she has followed the process prescribed process. Federal statutes prevent her attempt to circumvent having to file a petition to the Eighth Circuit should be rejected, her Motion for Injunction should be denied because it fails on the merits, and the Petition should be dismissed.

CONCLUSION

For the foregoing reasons, the Federal Respondents respectfully request that the Court deny Petitioner's Motion for Injunction and dismiss the Petition.

Dated: January 5, 2026

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