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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11
12 Thoth SUN;

13
14 Petitioners,

15 v.

16 Kristi NOEM, Secretary, Department of
17 Homeland Security; Pam BONDI, Attorney
18 General; Todd LYONS, Executive
19 Associate Director of ICE Enforcement and
20 Removal Operations (ERO); Gregory J.
21 ARCHAMBEAULT, Director, San Diego
22 Filed Office, Immigration and Customs
23 Enforcement; Christopher J. LAROSE,
24 Warden, Otay Mesa Detention Center.

25
26 Respondents.

No.: 3:25-cv-02433-CAB-MMP

**FIRST AMENDED PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Thoth Sun is a citizen of Cambodia who was ordered removed by an immigration judge on May 3, 2004. He was originally detained and ordered removed on May 3, 2004, and was released because he could not be removed. He was again detained in 2007 and was released because he could not be removed.

2. Petitioner did not otherwise violate the law or the terms of his release.

3. On September 12, 2025, Petitioner was detained by immigration authorities and was released on September 17, 2025 due to a violation of *Chhoeun v. Marin*, 8:17-cv-01898-CJC (GJSx) (C.D. Cal. Apr. 27, 2020). The permanent injunction in that case requires 14 days notice before a Cambodian national with a removal order who was released on an order of supervision is to be re-detained.

4. Petitioner was released from immigration custody on September 17, 2025, and was provided notice that he will be re-detained on October 1, 2025.

5. Petitioner seeks an order from this Court that he not be re-detained, absent evidence that there are changed circumstances evidencing that Respondents are reasonably likely to remove Petitioner from the United States.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment); United States Constitution Article I, Section 9 (Suspension Clause).

7. Venue properly lies within the Southern District of California under 28 U.S.C. § 1391, because this is a civil action in which Respondents are agencies of the United States, Petitioner was detained in this District and will be re-detained in this District, and a substantial part of the events or omissions giving rise to this action occurred in the District.

PARTIES

8. Petitioner Thoth Sun is a citizen of Cambodia is subject to re-detention by immigration authorities in San Diego.

9. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"), and is sued in her official capacity. The Secretary of Homeland Security is charged with the administration and enforcement of immigration laws. 8 U.S.C. § 1103(a).

10. Respondent Pam Bondi is the Attorney General of the United States and is sued in her official capacity as the head of the Department of Justice. The Attorney General is responsible for the fair administration of the laws of the United States.

11. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity. ICE is responsible for the detention of Petitioner.

12. Respondent Gregory J. Archambeault is the Immigration and Customs Enforcement Field Office Director at the ICE Otay Mesa immigration detention facility and is sued in his official capacity. Respondent Archambeault is responsible for the detention of Petitioners.

13. Respondent Christopher J. Larose is the Warden of the ICE Otay Mesa Detention Center and is sued in his official capacity. Respondent Larose is responsible for the detention of Petitioners.

FACTS

14. Petitioner is a native of citizen of Cambodia who came to the United States as a refugee on May 29, 1979 at the age of two.

15. He adjusted status to a permanent resident and his residency was backdated to his 1979 refugee admission.

1 16. On November 19, 1996, when Petitioner was around 20 years old, he was
2 convicted of voluntary manslaughter under California Penal Code § 192(a), and was
3 sentenced to six years in prison with a three year enhancement for a firearm.

4 17. As a result of the conviction, he detained and was placed into removal
5 proceedings on April 5, 2004 and was charged with removal for an aggravated felony under
6 the crime of violence ground. 8 U.S.C. § 1101(a)(43)(F).

7 18. On May 3, 2004, he was ordered removed by the immigration judge on the
8 aggravated felony ground. Petitioner was released from custody in late 2004

9 19. On June 22, 2007, he was released from immigration custody and has
10 regularly been reporting under an order of supervision.

11 20. Petitioner has otherwise been in compliance with the conditions of his release
12 and has not been in violation of criminal laws.

13 21. On September 12, 2025, Petitioner was detained and placed into the custody
14 of immigration officials in San Diego, California.

15 22. Respondents were notified that Petitioner is a class member in *Chhoeun v.*
16 *Marin*, 8:17-cv-01898-CJC (GJSx) (C.D. Ca. Apr. 27. 2020).

17 23. On September 17, 2025, Petitioner was released from immigration custody.

18 24. Respondents did not release Petitioner for five days, even though they were
19 aware that his detention was in violation of *Chhoeun v. Marin*.

20 25. Respondents only released Petitioner because he sought intervention in this
21 Court on September 17, 2025 through a petition for writ of habeas corpus.

22 26. Upon his release, Petitioner was further served with paperwork consistent
23 with *Chhoeun v. Marin*, notifying him that he would be taken into custody on October 1,
24 2025 for purposes of removal.

25 27. Respondents have not provided any indication that Cambodia, or any other
26 country, is likely to accept him for removal.

CAUSES OF ACTION

COUNT ONE

(VIOLATION OF 8 U.S.C. § 1231(a)(6) AND DUE PROCESS)

(RE-DETENTION AFTER MORE THAN 180 DAYS IN CUSTODY)

28. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

29. The Administrative Procedure Act (APA) provides that a court shall hold unlawful and set aside an agency action that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

30. The Immigration and Nationality Act authorizes a post-removal-period detention of six months to allow the United States to effectuate removal. 8 U.S.C. § 1231(a)(6). *Zadvydas v. Davis*, 533 U.S. 678 (2001).

31. Once removal is no longer foreseeable, it is a violation of 8 U.S.C. § 1231(a)(6) and Due Process to hold a noncitizen in immigration detention.

32. *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. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003).

33. Petitioner was already detained and released in 2004 and 2007 because he could not be removed. He was held in excess of six months when the periods in 2004, 2007, and 2025 are added together. He has established that there was not a significant likelihood of removal.

34. The burden is now on the government to prove that Petitioner has a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(i). The government has not met that burden.

35. Petitioner’s scheduled detention on October 1, 2025 is a violation of 8 U.S.C.

§ 1231(a)(6) and Due Process.

COUNT TWO

**(Violation of Revocation of Release Regulation, 8 C.F.R. § 241.13(i)(2)
and Due Process)**

36. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

37. The APA provides that a court shall hold unlawful and set aside an agency action that is “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

38. An agency’s failure to follow its regulations that are meant to protect fundamental rights is a violation of due process. *Accardi v. Shaughnessy*, 347 U.S. 260, 267, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998).

39. DHS regulations authorize the revocation of an order of release only when “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).

40. The regulation at 8 C.F.R. § 241.13(i)(2) is designed to protect the fundamental interest of liberty, and the failure to follow the regulation is a violation of due process.

41. This regulation places the burden on the government to demonstrate that there are new circumstances which now establish that removal is reasonably foreseeable, consistent with the requirements of *Zadvydas*.

42. The detention of Petitioner is a violation of 8 C.F.R. § 241.13(i)(2) and Petitioner’s due process rights without evidence of changed circumstances that Petitioner’s removal is reasonably foreseeable.

COUNT THREE

**(Violation of Revocation Regulation, 8 C.F.R. § 241.4(l)
and Due Process)**

43. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

44. The APA provides that a court shall hold unlawful and set aside an agency action that is “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

45. An agency’s failure to follow its regulations that are meant to protect fundamental rights is a violation of due process. *Accardi v. Shaughnessy*, 347 U.S. 260, 267, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998).

46. The regulation at 8 C.F.R. § 241.4(l) authorizes the revocation of release only where there has been a violation of the conditions of release or there has been a determination by the Executive Associate Commissioner that “i) The purposes of release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.”

47. The regulation at 8 C.F.R. § 241.4(l) is designed to protect the fundamental interest of liberty, and the failure to follow the regulation is a violation of due process.

48. None of the circumstances under 8 C.F.R. § 241.4(l) have been met, in violation of the regulation at 8 C.F.R. § 241.13(i)(3) and in violation of Due Process.

49. If such determinations have been met, Petitioner has not been notified of such determinations in violation of due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Issue a writ of habeas corpus requiring that Respondents provide the basis for any determination that Petitioner's removal from the United States is reasonably foreseeable;
- (3) Order that Petitioner not be re-detained until such evidence is provided;
- (4) Continue jurisdiction in order to determine if any new evidence meets the requirements of the regulations, due process, and *Zadvydas v. Davis*, 533 U.S. 678 (2001).
- (5) Award reasonable costs and attorneys' fees; and
- (6) Grant such further relief as the Court deems just and proper.

Dated: September 23, 2025

Respectfully Submitted,

S/Stacy Tolchin

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