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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAP NEOU,

Petitioner-Plaintiff,

v.

SERGIO ALBARRAN, Field Office
Director, San Francisco Field Office, U.S.
Immigration and Customs Enforcement;
TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security; and
PAM BONDI, Attorney General of the
United States,

Respondents-
Defendants.

Case No.

**PETITION FOR WRIT OF HABEAS
CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

INTRODUCTION

1
2 1. Petitioner-Plaintiff Lap Neou is a citizen of Cambodia who has resided in Oakland,
3 California for almost his entire life. He is a single father to three children, ages eleven, eight, and
4 six. Mr. Neou brings this petition and complaint to prevent U.S. Immigration and Customs
5 Enforcement (“ICE”) from unlawfully re-detaining him without a meaningful opportunity to be
6 heard on whether his detention is warranted.

7 2. In 2011, an immigration judge ordered Mr. Neou removed based on a criminal
8 conviction that a state court has since vacated as unconstitutional. ICE released Mr. Neou on an
9 order of supervision in 2012 because it could not deport him to Cambodia and he did not pose a
10 danger to the community or risk of flight. Since 2012, Mr. Neou has complied with his order of
11 supervision, attended check-in appointments with ICE, stayed free of any arrests or convictions,
12 and supported his family. Mr. Neou has asked the immigration court to reopen his removal
13 proceedings and restore his lawful permanent resident status based on the vacatur of his criminal
14 conviction.

15 3. At a check-in appointment on September 8, 2025, ICE attempted to re-detain Mr.
16 Neou. ICE relented temporarily only after Mr. Neou’s attorney informed the ICE officer that Mr.
17 Neou’s re-detention would violate a permanent injunction that prohibits ICE from re-detaining
18 Cambodians without advance written notice. The officer directed Mr. Neou to complete an
19 application for a Cambodian visa and return on October 8, 2025 to be re-detained.

20 4. Mr. Neou’s re-detention would violate due process. Mr. Neou has a protected
21 liberty interest in his physical freedom. The Due Process Clause demands that the government
22 afford Mr. Neou adequate process before stripping him of that freedom. The Court should enjoin
23 ICE from re-detaining Mr. Neou pending further order of this Court.

JURISDICTION

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25 5. This action arises under the Constitution and laws of the United States.

26 6. The Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus);
27 Article I, Section 9, clause 2 of the United States Constitution (Suspension Clause); 28 U.S.C.
28

1 § 1331 (federal question); and 28 U.S.C. §1651 (All Writs Act).

2 7. The Court may grant relief pursuant to 28 U.S.C. § 2241 (habeas corpus); 28
3 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2201 (Declaratory Judgment Act); and its inherent
4 equitable powers.

5 **VENUE**

6 8. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(e)
7 because Respondents-Defendants are federal officers or employees sued in their official
8 capacities; one or more Respondents-Defendants reside in this district; Mr. Neou resides in this
9 district; and a substantial part of the events or omissions giving rise to Mr. Neou's claims
10 occurred in this district.

11 **DIVISIONAL ASSIGNMENT**

12 9. Under Civil Local Rule 3-2(d), assignment to the San Francisco or Oakland
13 Divisions is proper because this action arises in San Francisco County. Mr. Neou is subject to
14 supervision by the San Francisco Field Office of ICE Enforcement and Removal Operations, and
15 faces re-detention by that office at his upcoming check-in appointment.

16 **PARTIES**

17 10. Petitioner-Plaintiff Lap Neou is a citizen of Cambodia and resident of the United
18 States. He lives in Oakland, California with his three children and other relatives. Since 2012, he
19 has been subject to supervision by the San Francisco Field Office of ICE Enforcement and
20 Removal Operations.

21 11. Respondent-Defendant Sergio Albarran is the Field Office Director responsible for
22 the San Francisco Field Office of ICE Enforcement and Removal Operations. He is Mr. Neou's
23 immediate custodian and is sued in his official capacity.

24 12. Respondent-Defendant Todd Lyons is the Acting Director of ICE. As the head of
25 ICE, an agency within the U.S. Department of Homeland Security that detains and removes
26 noncitizens, Respondent-Defendant Lyons is a legal custodian of Mr. Neou and is sued in his
27 official capacity.

1 13. Respondent-Defendant Kristi Noem is the Secretary of the U.S. Department of
2 Homeland Security. She is responsible for the administration of the immigration laws. Secretary
3 Noem is a legal custodian of Mr. Neou and is sued in her official capacity.

4 14. Respondent-Defendant Pam Bondi is the Attorney General of the United States.
5 She is responsible for overseeing the adjudication of removal cases. The Attorney General
6 delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which
7 administers the immigration courts and the Board of Immigration Appeals ("BIA"). Attorney
8 General Bondi is sued in her official capacity.

9 **FACTUAL ALLEGATIONS**

10 15. Mr. Neou was born in Cambodia in 1977 at the height of the Khmer Rouge
11 genocide. In 1981, he entered the United States as a refugee with his mother, stepfather, and three
12 of his siblings. He became a lawful permanent resident soon thereafter. Mr. Neou's three younger
13 siblings were born in the United States.

14 16. The Neou family settled in West Oakland, California, where poverty and violence
15 were part of daily life. As a teen, Mr. Neou began succumbing to peer pressure and getting in
16 trouble.

17 17. When he was 20 years old, Mr. Neou suffered a severe injury at work that led to an
18 addiction to painkillers and a downward spiral. In 1998, at the age of 21, Mr. Neou committed a
19 robbery during this dark period in his life. Looking back, Mr. Neou is grateful that he did not
20 injure anyone, and blames only himself for this serious mistake.

21 18. While in jail awaiting trial, Mr. Neou accepted a plea deal of five years for the
22 robbery (California Penal Code § 211), with a ten-year firearm enhancement (California Penal
23 Code § 12022.53(b)), for a total sentence of fifteen years in prison. At the time, Mr. Neou did not
24 understand that his criminal conviction would result in the loss of his green card. His public
25 defender failed to advise him that the plea would make him deportable.

26 19. While in prison, Mr. Neou overcame his addiction, earned his GED, completed a
27 three-year welding program, and eventually became a mentor to young men entering the prison
28 system.

1 20. ICE detained Mr. Neou upon his release from prison in 2011 and placed him in
2 removal proceedings in Eloy, Arizona. Mr. Neou's family could not afford to hire an immigration
3 attorney for him. Mr. Neou understood that it would be virtually impossible for him to prevail in
4 removal proceedings, and accepted an order of removal on November 1, 2011.

5 21. The immigration judge designated Cambodia, and only Cambodia, as the country
6 of removal.

7 22. ICE released Mr. Neou on an order of supervision on January 17, 2012. In
8 recommending his release, an ICE officer wrote: "NEOU has cooperated with the efforts of ICE
9 to obtain a travel document, he has not received any disciplinary reports since he has been in ICE
10 custody, and he has also provided an address in the United States where he would reside, if
11 released from ICE custody. Due to the fact that the government of Cambodia has not scheduled
12 any interviews for the immediate future as indicated by the Headquarters Travel Document Unit
13 (TDU), it is recommended that NEOU be released on an Order of Supervision."

14 23. Mr. Neou's order of supervision requires him to report to ICE periodically, to keep
15 ICE informed of any address changes, and to notify ICE in advance of travel outside California.

16 24. Since his release from ICE custody in 2012, Mr. Neou has complied with his order
17 of supervision, including attending regular check-in appointments with ICE, and he has not been
18 arrested for or convicted of any crime.

19 25. Upon release, Mr. Neou returned to Oakland and reunited with his family. He
20 found work and helped his mother financially. Mr. Neou and his ex-wife had their first child in
21 2014 and Mr. Neou took pride in supporting his growing family.

22 26. Since Mr. Neou separated from his ex-wife around 2021, he has raised their three
23 children as a single father. Mr. Neou's ex-wife is not involved in the children's lives. One of Mr.
24 Neou's children has autism and requires specialized care and constant supervision.

25 27. Mr. Neou's closest relative, his sister, would not be able to assume responsibility
26 for the care of his children if he were detained and deported. Mr. Neou's sister is a single mother
27 and the primary caregiver for a disabled sibling. If Mr. Neou were detained and deported, his
28 children would likely enter the foster care system.

1 28. Mr. Neou manages various health conditions and is on prescription medication for
2 hypothyroidism.

3 29. In 2025, after many efforts over the years to seek out legal help, Mr. Neou retained
4 pro bono counsel to file a motion to vacate his criminal conviction and a motion to reopen and
5 terminate his removal proceedings.

6 30. On August 21, 2025, the Alameda County Superior Court vacated Mr. Neou's
7 conviction pursuant to California Penal Code § 1473.7(a)(1), finding the conviction was "legally
8 invalid" and had been secured in violation of "the Fifth and Fourteenth Amendments of the U.S.
9 Constitution."

10 31. On September 2, 2025, Mr. Neou filed a motion to reopen with the Eloy
11 Immigration Court, asking the immigration judge to reopen and terminate his removal
12 proceedings based on the vacatur.

13 32. On September 8, 2025, Mr. Neou attended his annual check-in appointment at
14 ICE's San Francisco Field Office. An ICE officer led Mr. Neou and his attorney to a room where
15 the officer informed Mr. Neou that ICE would take him into custody.

16 33. Mr. Neou's counsel gave the ICE officer a copy of the permanent injunction issued
17 by the district court in *Chhoeun v. Marin*, 442 F. Supp. 3d 1233 (C.D. Cal. 2020), requiring ICE
18 to provide written notice prior to re-detaining Cambodian citizens subject to removal orders. Mr.
19 Neou is a *Chhoeun* class member and entitled to the protections of the *Chhoeun* injunction.¹

20 34. The ICE officer directed Mr. Neou and his counsel to wait while he sought
21 guidance from ICE's legal department.

22 35. Mr. Neou's counsel informed the ICE officer that Mr. Neou had a pending motion
23 to reopen. The ICE officer responded that the fact of the pending motion to reopen would not
24 impact ICE's decision to re-detain Mr. Neou.

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27 ¹ The *Chhoeun* injunction requires written notice at least 14 days before re-detention, but does not require the pre-
28 deprivation hearing Mr. Neou seeks through this action. If it becomes necessary, Mr. Neou will seek enforcement of
 the *Chhoeun* injunction before the *Chhoeun* court.

1 36. Mr. Neou's counsel requested a copy of the administrative warrant that ICE had
2 prepared in connection with the intended arrest. The ICE officer provided a copy of the
3 administrative warrant.

4 37. Mr. Neou, his counsel, and the ICE officer waited in the room for a response from
5 ICE's legal department. The ICE officer then received a phone call and had a brief phone
6 conversation. After ending the call, the ICE officer informed Mr. Neou that ICE would not re-
7 detain him that day. The officer instructed Mr. Neou to return on October 8, 2025, with a
8 completed Cambodian visa application, to be re-detained. The officer stated that he was thereby
9 providing notice to Mr. Neou pursuant to the *Chhoeun* injunction that ICE intended to re-detain
10 him, and that ICE would not cease its efforts to re-detain and remove him.

11 38. On September 11, 2025, Mr. Neou filed a motion to stay removal with the Eloy
12 Immigration Court, requesting a stay of removal while the Immigration Court adjudicates his
13 motion to reopen and terminate removal proceedings.

14 39. Mr. Neou's motion to stay removal and motion to reopen and terminate removal
15 proceedings are currently pending.

16 LEGAL FRAMEWORK

17 40. The Immigration and Nationality Act directs ICE to remove a noncitizen "within a
18 period of 90 days" following a final order of removal, which is known as the "removal period." 8
19 U.S.C. § 1231(a)(1)(A).

20 41. The statute provides that ICE "shall detain" the noncitizen during the 90-day
21 removal period. 8 U.S.C. § 1231(a)(2)(A).

22 42. If ICE does not carry out removal during the removal period, it must release the
23 noncitizen "subject to supervision," 8 U.S.C. § 1231(a)(3), except that certain categories of
24 noncitizens "may be detained" beyond the removal period, 8 U.S.C. § 1231(a)(6). In light of the
25 due process concerns that indefinite detention would raise, the Supreme Court has construed
26 section 1231(a)(6) to limit a noncitizen's "post-removal-period detention to a period reasonably
27 necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*,
28 533 U.S. 678, 689 (2001).

1 43. Two regulations, 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13, govern release and re-
2 detention following a final order of removal.

3 44. 8 C.F.R. § 241.4 creates a system of custody reviews for noncitizens whom ICE
4 detains beyond the 90-day removal period. ICE conducts periodic custody determinations
5 considering factors such as the noncitizen's criminal convictions, evidence of rehabilitation,
6 evidence of family and other ties to the United States, and any prior immigration violations. 8
7 C.F.R. §§ 241.4(f)(1)-(8). Before releasing a noncitizen, ICE *must* conclude, among other things,
8 that the noncitizen "is not likely to pose a threat to the community following release" and "does
9 not pose a significant flight risk if released." 8 C.F.R. §§ 241.4(e)(4), (6); *see also* §§ 241.4(d)(1)
10 (providing that ICE may grant release *if* the noncitizen demonstrates that "his or her release will
11 not pose a danger to the community or to the safety of other persons or to property or a significant
12 risk of flight pending such [noncitizen's] removal from the United States"), (h)(3).

13 45. 8 C.F.R. § 241.13 creates "special review procedures" where the noncitizen "has
14 provided good reason to believe there is no significant likelihood of removal . . . in the reasonably
15 foreseeable future." 8 C.F.R. § 241.13(a). When a noncitizen submits a written request for release
16 asserting that there is no significant likelihood of removal, ICE headquarters must acknowledge
17 the response in writing, afford the noncitizen the opportunity to respond to any evidence ICE
18 intends to consider, and issue a written decision. *See* 8 C.F.R. §§ 241.13(d)-(g). Unless ICE
19 "makes a determination" under these procedures that there is no significant likelihood of removal
20 in the reasonably foreseeable future, section 241.4 "shall continue to govern the detention of
21 [noncitizens] under a final order of removal." 8 C.F.R. § 241.4(b)(1).

22 46. 8 C.F.R. § 241.4 provides that ICE may re-detain a noncitizen who was released
23 under section 241.4 for specified reasons and following specified procedures. 8 C.F.R. § 241.4(l).
24 A noncitizen "who violates the conditions of release may be returned to custody." § 241.4(l)(1).
25 In addition, certain ICE officials may revoke release "in the exercise of discretion when, in the
26 opinion of the revoking official," the "purposes of release have been served," the noncitizen
27 violates a condition of release, it is "appropriate to enforce a removal order," or the "conduct of
28 the [noncitizen], or any other circumstance, indicates that release would no longer be

appropriate.” §§ 241.4(l)(2)((i)-(iv). Upon revoking release, ICE must notify the noncitizen of the reasons for revocation and give the noncitizen an “initial informal interview” to afford them “an opportunity to respond to the reasons for revocation stated in the notification.” § 241.4(l)(1).

47. 8 C.F.R. § 241.13 likewise outlines criteria and procedures for re-detention. *See* 8 C.F.R. § 241.13(i).

48. The Due Process Clause constrains ICE’s ability to re-detain a noncitizen who was previously released on an order of supervision. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Even where a noncitizen has a final order of removal, their liberty interest remains, “at the least, strong enough” to trigger due process analysis. *Id.* at 696; *see also Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding that the liberty of a parolee “is valuable and must be seen as within the protection of” the Constitution); *Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025) (“Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty.”).

49. Substantive due process requires that a noncitizen’s detention bear a reasonable relationship to the purposes of immigration detention: to prevent flight and to protect the community. *Zadvydas*, 533 U.S. at 690-91; *see also Cty. of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (“[T]he touchstone of due process is protection of the individual against arbitrary action of government.”) (citation omitted).

50. In addition, procedural due process requires “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). The “specific dictates of due process” in a particular situation depend on a balancing of three factors: the private interest at stake; the “risk of erroneous deprivation of such interest through the procedures used” and the value of additional safeguards; and the government’s interest. *Id.* at 335.

51. The Supreme Court “usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Substantive Due Process

52. The allegations in the above paragraphs are realleged and incorporated herein.

53. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

54. ICE's re-detention of Mr. Neou would violate his right to substantive due process. *See Zinerman*, 494 U.S. at 125 (explaining that “the Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them”) (internal quotation marks and citation omitted); *Zadvydas*, 533 U.S. at 696 (finding “a serious question as to whether” indefinite detention is unconstitutional “irrespective of the procedures used”).

55. In releasing him on an order of supervision over a decade ago, ICE necessarily determined that Mr. Neou was not a danger to the community or a flight risk. 8 C.F.R. § 241.4(e); *see also Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169 (W.D.N.Y. 2025) (“Noncitizens . . . who are released on orders of supervision under section 241.4 necessarily have been found not to constitute either a danger to the community or a flight risk.”) Mr. Neou’s upstanding conduct since his release confirms that finding. Because Mr. Neou poses neither a danger nor a flight risk, his detention would bear no reasonable relationship to any permissible purpose for immigration detention, and therefore would violate substantive due process. *See Zadvydas*, 533 U.S. at 690-91.

COUNT TWO

Violation of Procedural Due Process

56. The allegations in the above paragraphs are realleged and incorporated herein.

57. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

58. ICE's re-detention of Mr. Neou without a pre-deprivation hearing before a neutral arbiter would violate his right to procedural due process. *See Mathews*, 424 U.S. at 335 (outlining three-factor balancing test for procedural due process claims). Mr. Neou has a strong private interest in remaining out of custody so that he can continue raising his children and living the life he has built during more than four decades in the United States. The risk of erroneous deprivation is high because the "sole procedural protections" associated with re-detention "are found in administrative proceedings, where the [noncitizen] bears the burden of proving he is not dangerous." *See Zadvydas*, 533 U.S. at 692 (commenting that "[t]he Constitution demands greater procedural protection" than that provided by the regulations "even for property"). The value of additional safeguards—namely a hearing before a neutral arbiter—would be substantial, affording Mr. Neou the opportunity to rebut the government's evidence, if any, that his re-detention is necessary. And the government's interest in re-detaining Mr. Neou without a hearing is low, given that he has been living in the community without incident and reporting to ICE for well over a decade.

59. Due process therefore requires a hearing before a neutral adjudicator for Mr. Neou prior to any re-detention. *See, e.g., Zakzouk v. Becerra*, No. 25-CV-06254-RFL, 2025 WL 2097470, at *3 (N.D. Cal. July 26, 2025) (enjoining ICE from re-detaining a noncitizen with a final order of removal absent notice and a pre-deprivation hearing); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *8 (N.D. Cal. Aug. 6, 2025) (same); *Pinchi*, 2025 WL 2084921, at *6 (same for noncitizen whom ICE released in its discretion during the pendency of her removal proceedings).

PRAYER FOR RELIEF

WHEREFORE, Petitioner-Plaintiff respectfully requests that the Court:

- a. Assume jurisdiction over this matter;
- b. Order Respondents-Defendants to show cause why the petition and complaint should not be granted, *see* 28 U.S.C. § 2243;
- c. Order that Respondents-Defendants may not re-detain Petitioner-Plaintiff, and declare that Petitioner-Plaintiff's re-detention would violate substantive due process;

- 1 d. Order that Respondents-Defendants may not re-detain Petitioner-Plaintiff without
2 first affording him a hearing before a neutral adjudicator at which ICE bears the burden to prove
3 that Petitioner-Plaintiff poses a danger or flight risk warranting re-detention, and declare that
4 Petitioner-Plaintiff's re-detention without such a hearing would violate procedural due process;
- 5 e. Award costs and reasonable attorneys fees under the Equal Access to Justice Act,
6 28 U.S.C. § 2412; and
- 7 f. Grant any other and further relief as the Court deems just and proper.

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9 Dated: September 22, 2025

Respectfully submitted,

10 /s/ Jingni (Jenny) Zhao

11 Jingni (Jenny) Zhao

12 *Attorney for Petitioner-Plaintiff*
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