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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UDON KATEPHAN,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 26-cv-3240-LL-MMP

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

Having received the government's Return and supporting evidence, this Court may grant Mr. Katephan's petition on the basis of either his regulatory or his *Zadvydas* claim. To do so, the Court need only follow recent decisions in this district and around the country.

First, this Court should grant the petition on Claim One because the government has not complied with 8 C.F.R. § 241.4 or § 241.13. For persons like Mr. Katephan, those regulations permit re-detention only if ICE (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2), (2) makes that finding "on account of changed circumstances," *id.*, (3) provides "an initial informal interview promptly," *id.* §§ 241.4(*l*)(1), 241.13(i)(3), and (4) "affords the [person] an opportunity to respond to the reasons for revocation," *id.* Here, ICE provided Mr. Katephan a Notice of Revocation of his supervised release stating that "ICE is seeking a travel document to effect your expeditious removal to LAOS or ALT Thailand." ECF No. 4-3 at 2. But ICE has been "seeking a travel document" to Laos and Thailand for 22 years. And while ICE alternatively alleged in the Notice of Revocation of Release that Mr. Katephan had been "arrested for" possession of a stolen vehicle, it provides no proof that he was ever convicted of or committed this crime. ECF No. 4-3 at 2. Thus, ICE violated the regulations.

Second, this Court may grant the petition on Claim Two because the government provides no evidence to satisfy the success element ("a significant likelihood of removal") or timing element ("in the reasonably foreseeable future") of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The Notice of Revocation states only that ICE is "seeking a travel document"—not that ICE has "obtained" one. ECF No. 4-3 at 2. This Court should therefore grant the petition on either ground and order Mr. Katephan's immediate release.

ARGUMENT

I. Claim One: Respondents violated the regulations governing re-detention.

Because Respondents' evidence is insufficient to rebut the regulatory violations alleged in Mr. Katephan's petition, this Court should order his immediate release.

First, ICE has not complied with 8 C.F.R. § 241.4 or § 241.13. The government does not deny that these regulations apply to Mr. Katephan, that he may challenge them in this habeas case, or that failure to comply with them is grounds for release. *See* ECF No. 4 at 2–3. To the contrary, the government appears to agree that Mr. Katephan's release was revoked under 8 C.F.R. § 241.4(l)(2)(iii) and 8 C.F.R. § 241.13(i)(2). Dkt. 4 at 2. But the government claims that ICE complied with these regulations. *Id.* ICE did not.

Begin with 8 C.F.R. § 241.13(i)(2). That section provides that 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) (emphasis added). That "regulation require[s] (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023).

Here, the Notice of Revocation of Release simply states that "ICE has the ability and means to effectuate your removal" because it is "seeking a travel document to effect your expeditious removal to LAOS or ALT Thailand." ECF No. 4-3 at 2. But ICE has been "seeking a travel document to effect [Mr. Katephan's] expeditious removal" for 22 years, ever since he was ordered removed in 2004. So nothing about these statements shows what circumstances have "changed" since 2013 under § 241.13(i).

The Notice of Revocation also states twice that Mr. Katephan was "arrested for" possession of a stolen vehicle. ECF No. 4-3 at 2. But Respondents never state that Mr. Katephan was *convicted of* this offense—in fact, they report that Mr. Katephan was released from state criminal custody three days later. ECF No. 4-1 at 3. This suggests that Mr. Katephan was not actually convicted of this offense—in fact, it suggests that there was insufficient evidence he committed the offense at all. Thus, this allegation was not sufficient to trigger Mr. Katephan's arrest for a violation of a condition of his release.

Finally, the Notice of Revocation alleges that Mr. Katephan did not appear at a scheduled appointment on October 20, 2014. ECF No. 4-3 at 2. But in his interview, Mr. Katephan stated that he "did not receive a letter to go to the appointment." ECF No. 4-3 at 4. And the regulations require that any revocation "include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." 8 C.F.R. § 241.13(i)(3). But here, there is no evidence that Respondents ever evaluated "whether the facts as determined warrant revocation and further denial of release"—i.e., whether Mr. Katephan actually received a letter advising him of his scheduled appointment. These regulatory violations alone justify granting the habeas petition.

"When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(*l*) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). "The procedures in § 241.4"

and § 241.13 therefore "are not meant merely to facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees." *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R. §§ 241.4, 241.13 are "intended to provide due process to individuals in [Mr. Katephan's] position," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable. Thus, this Court should order Mr. Katephan released on the basis of Claim One alone.

II. Claim Two: The government has not proved a significant likelihood of removal in the reasonably foreseeable future.

Even if no regulatory violations had occurred, Respondents have failed to show that Mr. Katephan will likely be removed to Laos at all, let alone in the reasonably foreseeable future.

To begin, Respondents claim that this Court should "conclude Petitioner has not yet been detained an unreasonable time because, despite having the removal order in place for several decades, Petitioner has only been detained a handful of times." ECF No. 4 at 4. But Respondents admit that Mr. Katephan was ordered removed on April 13, 2004. ECF 4 at 1. And as Judge Sabraw recently held in held in *Baythavong v. Noem*, 26-cv-1138-DMS-MSB (S.D. Cal. Apr. 6, 2026), the plain language of the statute states that the six-month removal period began on that date, regardless of the length of time Mr. Katephan was detained.

The Immigration and Nationality Act states that the government "shall detain" a noncitizen ordered removed during the 90-day "removal period." 8 U.S.C. 1231(a)(2)(A). This removal period "begins on the latest of the following":

(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 alien, the date of the court's final order.

> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. 1231(a)(1)(B). Here, neither (ii) nor (iii) apply because Mr. Katephan's removal order is not being "judicially reviewed" and he is being detained "under an immigration process." Because Mr. Katephan's order of removal became "administratively final" on April 13, 2004, the plain language of the statute mandates a finding that the six-month removal period elapsed 22 years ago, in October 2004. *See also* 8 C.F.R. § 235.3(b)(7) (stating that an expedited removal order that is "reviewed and approved by the appropriate supervisor" is "considered final").

That is precisely what Judge Sabraw recently held in *Baythavong v. Noem*, 26-cv-1138-DMS-MSB (S.D. Cal. Apr. 6, 2026). There, the noncitizen was ordered removed and then released on an order of supervision for approximately seven years. When ICE redetained him, Judge Sabraw noted that "Respondents failed to cite any authority to support their position that the presumptively reasonable period of detention only applies when the individual is actually in detention, i.e., that the nearly seven-year period in which Petitioner was on supervision is not relevant to the *Zadyvdas* argument." *Id.* at *2. "On the contrary," Judge Sabraw explained, "courts have held the presumptively reasonable six-month period of detention does not stop and re-start if the individual is released and later re-detained." *Id.* at *2–3 (citing cases). Thus, the six-month period here has elapsed.

Moreover, Respondents have submitted no evidence that there is a significant likelihood of removal in the reasonably foreseeable future under *Zadvydas*. Respondents state only that a new travel document request was "submitted on May 12, 2026." ECF No. 4-1 at 3. But they do not say whether this request was made to Laos or ICE's own internal agency. ECF No. 4-1 at 3. Thus,

it appears Respondents have not yet requested a travel document request from Laos.

What's more, good faith efforts to secure a travel document do not themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, "the Government is required to demonstrate the likelihood of not only the *existence* of untapped possibilities, but also of a probability of success in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010).

Here, then, "[w]hile the respondent asserts that [Mr. Katephan's] travel document requests with [the Vietnamese] Consulate[]" will be lodged, "this is insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019). Many courts have agreed that requesting travel documents does not itself make removal reasonably likely. *See, e.g.*, *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case was "still under review and pending a decision" did not meet respondents' burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D.

Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might be forthcoming or why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

For these reasons, the six-month presumptively-reasonable period has passed, and Respondents have not shown a significant likelihood of removal in the reasonably foreseeable future.

CONCLUSION

For these reasons, this Court should grant Mr. Katephan's petition and order his immediate release.

Respectfully submitted,

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s/ Kara Hartzler

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