UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOUNPANE PHAYMANY (A) [redacted]
NORTHWEST ICE PROCESSING CENTER
1623 E. J STREET
TACOMA WASHINGTON 98421
Full name, address and prison number (if any)

Petitioner

vs.

WARDEN: BRUCE SCOTT
Name of Respondent (person having custody of petitioner)

Respondent

Civil Case No.: 2:25-CV-854-RAJ-MLP

(To be supplied by the Clerk of the District Court)

PETITION FOR
WRIT OF HABEAS CORPUS

UNDER 28 USC 2241

INSTRUCTIONS – READ CAREFULLY

This petition must be legibly handwritten or typewritten, signed by the petitioner, and verified under penalty of perjury before an authorized institutional officer. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper pace on the form. Where more room is needed to answer any question, insert an additional blank page and be sure to use the question number on the additional page.

No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

Upon receipt of a fee of $5.00 your petition will be filed if it is in proper order. When the form is completed, the original and two copies should be mailed to the Clerk of the US District Court for the Western District of Washington, at Seattle or Tacoma.

If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the affidavit on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefore. You must also

have an authorized officer at the institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your account exceeds $100.00, you must pay the filing fee.

1. Place of detention NORTHWEST ICE PROCESSING CENTER 1623 E. J. STREET TACOMA WASHINGTON 98421

2. Name and location of court and name of judge who imposed sentence:

IMMIGRATION JUDGE FLOYD CHARLES / FEDERAL JUDGE S/RALPH R.BEISTLINE

3. The indictment number or numbers (if known) upon which, and the offenses for which, sentence was imposed:

   a. CODE 21 USC. 846, 841 (A)(1) & (B)(1)(A)

   b. 18 U.S.C. § 1956(H)

   c. N/A

4. The date upon which sentence was imposed and the terms of the sentence:

   a. 4/17/2019 IMPOSED

   b. TERMS OF SENTENCE 105 MONTHS

   c. N/A

5. Check whether a finding of guilty was made:

   a. After a plea of guilty MADE A PLEA OF GUILTY

   b. After a plea of not guilty N/A

   c. After a plea of nolo contendere N/A

6. If you were found guilty after a plea of not guilty, check whether that finding was made by:

   a. A jury N/A

   b. A judge without a jury N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

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BOUNPANE PHAYMANY A# [redacted]
NORTHWEST DETENTION CENTER
1623 E. J STREET, SUITE 5
TACOMA, WA 98421-1615

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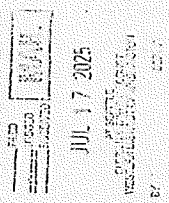
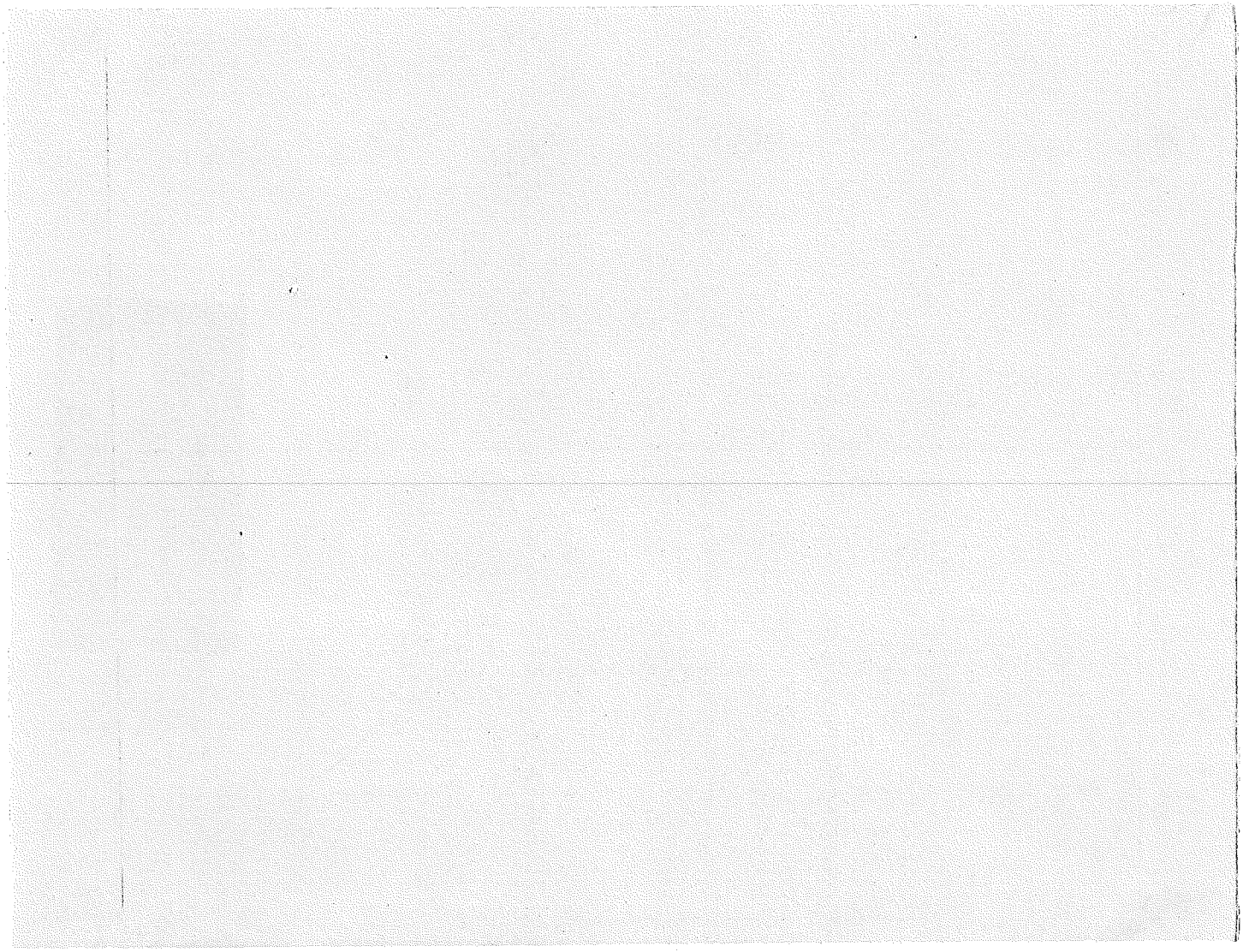


CLERK, UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
700 STEWART STREET, SUITE 2310
SEATTLE, WA 98101



2:25-cv-00854-RAJ-MLP

MEMORANDUM OF LAW IN SUPPORT OF PETITION OF WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Name: BOUNPANE PHAYMANY
Alien Registration No.: [redacted]
Pro Se Petitioner-Detained
Detention Center: NORTHWEST ICE PROCESSING CENTER
Address: 1623 E J STREET SUITE FIVE
TACOMA, WASHINGTON 98421

This was prepared by Rapid Defense Network, ACLU of Louisiana, and the Southern Poverty Law Center as part of a pro se guide.

INTRODUCTION

1. Petitioner, BOUNPAME PHAYMANY, petitions this Court for a writ of habeas corpus to remedy Petitioner's indefinite detention by Respondents. Petitioner submits this Memorandum of Law in Support of the Petition for a Writ of Habeas Corpus.
2. As the Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678 (2001), noncitizens cannot be detained indefinitely if the government is unable to carry out their removal. Instead, detention after a final order of removal is authorized only when removal is reasonably foreseeable. As a guide to courts, the Court in *Zadvydas* established a presumption that detention after a final order of removal was permissible for six months. Detention after a final order may be unlawful even when six months have not passed, particularly if it is clear that the United States will not be able to effect a noncitizen's removal. But after that six-month period, once a noncitizen provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." And the longer a noncitizen has been detained, the stronger the government's showing must be.
3. Petitioner is entitled to release under the framework of *Zadvydas* unless the government promptly demonstrates that there is a significant likelihood of removal in the reasonably foreseeable future.
4. Petitioner respectfully requests that the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time. *See* 28 U.S.C. § 2243 (stating that an order to show cause why a petition for a writ of habeas corpus should be denied is returnable "within three days unless for good cause additional time, not exceeding twenty days, is allowed").

11. Nonetheless, ICE has been unable to remove Petitioner from the United States. ICE is unlikely to remove Petitioner in the reasonably foreseeable future because: NO DOCUMENT OF CITIZENSHIP AND NO TRAVEL DOCUMENT.

12. Regarding Petitioner Detention: EXCEEDED 180 DAYS REMOVAL PERIOD.

13. If released, Petitioner will be supported by family and friends in the United States. In particular: WHERE I WILL LIVE IN ALASKA, WITH MY FAMILY SUPPORT AND KIDS.

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ARGUMENT

14. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA") §§ 101–507, 8 U.S.C. § 1101–1537, amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-1570.

15. This Court has jurisdiction under 28 U.S.C. § 2241, the Suspension Clause, U.S. Const. art. I § 9, cl. 2, and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and Petitioner's custody is in violation of the Constitution, laws, or treaties of the United States. *See Zadvydas*, 566 U.S. 678. This Court may grant relief under 28 U.S.C. § 2241 (habeas corpus), 5 U.S.C. § 702 (establishing the right of review for a person suffering a legal wrong due to agency action), and 28 U.S.C. § 1651 (All Writs Act).

16. The Due Process clause applies to all persons in the United States, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. In *Zadvydas*, the Supreme Court emphasized, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical lies at the heart of the liberty that [the Due Process] Clause protects." 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Court noted, "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem." *Id.*; *see also Plyer v. Doe*, 457 U.S. 202, 210 (1982) ("Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.").

17. Under 8 U.S.C. § 1231(a)(2), noncitizens subject to final orders of removal "shall" be detained during the first 90 days—the "removal period"—and they "shall" be removed during that period under § 1231(a)(1). Under 8 U.S.C. § 1231(a)(6), the government "may" continue detention beyond the 90-day removal period if a noncitizen falls within certain broad categories of removability or is determined "to be a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. §1231(a)(6).

18. In *Zadvydas*, the Supreme Court construed 8 U.S.C. §1231(a)(6) to authorize detention only where it is significantly likely that removal will occur in the reasonably foreseeable future, in order to avoid the serious due process concerns that would be presented by permitting detention for an indefinite period of time. *Zadvydas*, 533 U.S. at CITE. After a noncitizen meets his or her initial burden to show that no such likelihood of removal exists, the burden shifts to the Government to "respond with evidence sufficient to rebut [the alien's] showing." *Id.* at 701.

19. Courts have rejected conclusory claims by ICE agents which claim, without submitting concrete factual information about scheduled flights or repatriation agreements, that removal is imminent. "[A] theoretical possibility of eventually being removed does not satisfy the government's burden once the removal period has expired and the petitioner establishes good reason to believe his removal is not significantly likely in the reasonably foreseeable future." *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020) (internal quotation marks and citation omitted). "[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to be repatriated, [a] Court certainly cannot conclude that [a] removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Id.* at *5 (internal quotation marks and citation omitted). *See also,*

Gomez Barco v. Witte, No. 6:20-CV-00497, 2020 WL 7393786 (W.D. La. Dec. 16, 2020) (ordering release of a petitioner who was detained longer than six months because ICE had not been able to secure necessary travel documents, noting that the ICE officer "clearly has no factual basis for his 'belief' that there is no foreseeable impediment to Petitioner's removal or that her removal is imminent," and that there was no foundation for the "expectation" that the COVID-19 related travel restrictions in place would soon be lifted); *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) (same).[1] In granting Ms. Balza's release, the court considered and rejected a conclusory declaration by a local ICE Assistant Field Officer that removal was imminent. *Id.* at *5. In *Alexis v. Smith*, the petitioner, Mr. Alexis, had been in detention for almost a year and subject to a removal order for over a year. An ICE official testified to an informal agreement that permitted removals but acknowledged that there were far fewer removals to Haiti in the aftermath of the 2010 hurricane. The Haitian government had an issue with identity documents and it was unknown when that would be resolved. The magistrate did not credit ICE's vague statements that it was "endeavoring to rectify the issue" and concluded there was no end in sight for detention, and recommended release. The District Court Judge agreed and ordered release. ICE then released Mr. Alexis on an Order of Supervised release

[1] Other district courts in the Fifth Circuit and elsewhere have similarly granted habeas relief when the noncitizen has shown that there is no significant likelihood of removal in the reasonably foreseeable future. *See, e.g.*, *Carreno v. Gillis*, No. 5:20-cv-44-KS-MTP, 2020 WL 8366735 (S.D. Miss. Dec. 16, 2020) (granting habeas relief to petitioner detained for approximately sixteen months due to a lack of diplomatic relations with Venezuela); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703 (S.D. Tex. 2020) (granting habeas relief to petitioner initially detained for three years, released and detained again for four months when petitioner could not be removed due to travel restrictions to Pakistan); *Sharifi v. Gillis*, No. 5:20-cv-5-DCB-MTP, 2020 WL 7379211 (S.D. Miss. Oct. 9, 2020) (granting habeas relief to petitioner detained for seventeen months after Iranian officials failed to respond to a travel document request for more than seven months).

and moved to get the judgment vacated on mootness, which it was. However, this does not invalidate the reasoning and conclusions of the Magistrate Judge and District Court Judge on this subject, and this case is still informative and persuasive to the body of law on this subject. *Alexis v. Smith*, No. CIV.A. 11-0309, 2011 WL 3924247 (W.D. La. Aug. 3, 2011), report and recommendation adopted, No. CIV.A. 11-0309, 2011 WL 3954945 (W.D. La. Sept. 6, 2011), vacated, No. CV 11-0309, 2011 WL 13386020 (W.D. La. Sept. 15, 2011).

20. Courts in this District have—pursuant to *Zadvydas*—released individuals who have been detained for over six months. *See, e.g., Gomez Barco*, 2020 WL 7393786 (ordering release of an immigrant detainee who was a native and citizen of Venezuela who was detained longer than six months because ICE had not been able to secure necessary travel documents); *Balza*, 2020 WL 6143643, at *5 (ordering release of petitioner and noting that "[a]fter more than a year of detention, Petitioner's removal need not necessarily be imminent, but it cannot be speculative") (internal quotation marks omitted).

21. Under *Zadvydas*, courts have found that there is no significant likelihood of removal and granted relief where:

- No country will accept the petitioner. *See, e.g., Jabir v. Ashcroft*, No. 03-2480, 2004 WL 60318 (E.D. La. Jan. 8, 2004) (granting habeas relief to petitioner detained for more than fourteen months after numerous countries refused to repatriate the petitioner).[2]

- The petitioner's country of origin refuses to issue a travel document. *See, e.g., Alexis v. Smith*, No. 11-0309, 2011 WL 3924247 (W.D. La. Aug. 3, 2011) (granting habeas relief to petitioner detained for approximately one year due to the Haitian government rejecting the quality of identity documents provided); *Fermine v. Dir.*

[2] *See also Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *4 (W.D.N.Y. Jan. 2, 2019) (ordering release of petitioner detained fourteen months after petitioner showed "that the countries with which he has any affiliation will not accept him"); *Yusupov v. Love*, No. 4:CV-06-1804, 2007 WL 5063231 (M.D. Pa. Jan. 12, 2007); *Abel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418 (M.D. Pa. 2004) (ordering release of petitioner detained approximately two years after refusal of several countries to accept petitioner).

of Immigr. & Customs Enf't, No. 2:06-cv-1578, 2007 WL 2284606 (W.D. La. May 23, 2007) (granting habeas relief to petitioner detained for fifteen months due to Trinidad's refusal to issue travel documents); *Lijadu v. Gonzales*, No. 06-1208, 2006 WL 3933850 (W.D. La. Dec. 18, 2006) (granting habeas relief to petitioner detained nineteen months because Nigeria refused to issue travel documents due to petitioner's HIV status).[3]

- There is no removal agreement between the United States and a country. In these scenarios, courts have found that the lack of a formal agreement regarding repatriation, lack of diplomatic relationship, and lack of a functioning government support a finding that there is no significant likelihood of removal. *See, e.g., Negusse v. Gonzales*, No. 06-1382, 2007 WL 708615 (W.D. La. Mar. 1, 2007) (granting habeas relief to petitioner detained for approximately one year because the United States did not have a repatriation agreement with Ethiopia and Ethiopia would not issue travel documents because one of petitioner's parents was not Ethiopian).[4]

- There is either no response from a country designated for removal or a significant delay in receiving a response. *See, e.g., Gonzalez-Rondon v. Gillis*, 5:19-cv-109-DCB-MTP, 2020 WL 3428983 (S.D. Miss. June 23, 2020) (granting habeas relief to petitioner detained thirteen months where there was no response from Venezuelan officials).[5]

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[3] *See also Ka v. Bureau of Immigr. & Customs Enf't*, No. B-07-197, 2008 WL 11462867, at *8 (S.D. Tex. June 24, 2008) (ordering release of petitioner detained twelve months after Senegal "refused to issue Ka a travel document because he d[id] not have proper identity documentation"); *Moreira v. Gonzales*, No. CIVA CV05-588 A, 2006 WL 3861972 (W.D. La. Nov. 2, 2006) (granting habeas relief to petitioner detained for three years because Cape Verde advised that it would not accept the petitioner for repatriation); *Khan v. Gonzales*, 481 F. Supp. 2d 638 (W.D. Tex. 2006).

[4] *See also Gomez Barco*, 2020 WL 7393786; *Islam v. Kane*, No. CV–11–515–PHX–PGR (LOA), 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011) (ordering release of petitioner detained ten months where petitioner presented evidence that Bangladesh "is one of fifteen countries identified by ICE as least likely to issue travel documents"); *Carreno*, 2020 WL 8366735; *Simoza Rangel v. Gillis*, No. 5:19-cv-118-DCB-MTP, 2020 WL 7223258 (S.D. Miss. Sept. 2, 2020) (granting habeas relief to petitioner detained for sixteen months due to a lack of diplomatic relations with Venezuela); *Abduelle v. Gonzales*, 422 F. Supp. 2d 774 (W.D. Tex. 2006) (concluding that the petitioner met the burden to show removal was not reasonably foreseeable after being detained for more than one year when an injunction restricted the government's ability to remove the petitioner to Somalia).

[5] *See also Sharifi*, 2020 WL 7379211; *Aung v. Barr*, No. 20-CV-681-LJV, 2020 WL 4581465 (W.D.N.Y. Aug. 10, 2020); *Edwards v. Barr*, No. 4:20cv350-WS-MAF, 2020 WL 6747737 (N.D. Fla. Oct. 14, 2020); *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319 (W.D.N.Y. July 14, 2020); *Rodriguez Del Rio v. Price*, No. EP-20-CV-00217-FM, 2020 WL

- ICE fails to take action to secure travel documents for a prolonged period. *See, e.g., Senor*, 401 F. Supp. 3d at 430–31 (granting habeas relief after ICE initially requested travel documents but where "there [wa]s no indication from the record that anyone ha[d] taken any further action in the eight months since that time . . . to facilitate Senor's receipt of the necessary travel documents").[6]

22. As the length of detention grows, the period of time that would be considered the "reasonably foreseeable future" shrinks. *See, e.g., Zadvydas*, 533 U.S. at 701 (stating that as the length of time in detention grows "what counts as the 'reasonably foreseeable future' conversely would have to shrink"); *Senor*, 401 F. Supp. 3d at 430 ("'[T]he passage of time combined with' the 'government [being] no closer to . . . repatriating [a detainee] than they were once they first took him into custody' [is] sufficient to meet that 'initial burden.'"); *Lawrikow*, 2009 WL 2905549, at *12.

23. Petitioner's continued detention is unlawful, and Petitioner is unlikely to be removed in the reasonably foreseeable future. Therefore, Petitioner's detention violates the statute and s/he is entitled to immediate release.

24. Petitioner's detention also violates the Due Process Clause. 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. "Freedom from imprisonment—from

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7680560 (W.D. Tex. Nov. 3, 2020); *Singh v. Whitaker*, 362 F. Supp. 3d 93 (W.D.N.Y. 2019); *Butt v. Holder*, No. CA 08–0672–CG–C, 2009 WL 1035354 (S.D. Ala. Mar. 19, 2009) (holding that petitioner met his initial burden where he was held in ICE custody for more than ten months after the issuance of his removal order with no indication from the Pakistani Embassy that travel documents would be issued); *Lawrikow v. Kollus*, No. CV–08–1403–PHX–GMS (LOA), 2009 WL 2905549 (D. Ariz. July 27, 2009); *Reid v. Crawford*, No. 06-02436 PHX JWS (MEA), 2007 WL 1063413 (D. Ariz. Jan. 31, 2007); *Gui v. Ridge*, No. 3CV031965, 2004 WL 1920719 (M.D. Pa. Aug. 13, 2004); *Shefqet v. Ashcroft*, No. 02 C 7737, 2003 WL 1964290 (N.D. Ill. Apr. 28, 2003).

6 *See also Chun Yat Ma v. Asher*, No. C11–1797 MJP, 2012 WL 1432229, at *4 (W.D. Wash. Apr. 25, 2012) (ordering petitioner's release where the government failed "to provide any documentation of efforts . . . to effectuate removal . . . [for] nearly six months").

government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *See id.* (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and prevent danger to the community. *Id.* Petitioner's prolonged civil detention, which has lasted well beyond the end of the removal period, and which is likely to continue indefinitely, is no longer reasonably related to the primary statutory purpose of ensuring imminent removal. Thus, Petitioner's detention violates Petitioner's right to due process.

CONCLUSION

25. In conclusion, Petitioner's indefinite detention violates the detention statute and is unconstitutional. Petitioner respectfully requests that this Court order Respondents to show cause why the writ should not be granted "within three days unless for good cause additional time, not exceeding twenty days, is allowed," and set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243 and grant the Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from their custody.

Respectfully submitted,

Signature: B

Name: BOUNPANE PHAYMANY

A-Number: [redacted]

Detention Center: NORTHWEST ICE PROCESSING CENTER

Address: 1623 EAST "J" STREET Suite five
TACOMA WASHINGTON 98421

BOUNPANE PHAYMANY
[redacted]
1623 EAST J STREET SUITE FIVE
TACOMA, WASHINGTON 98421

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
700 STEWART STREET, SUITE 2310 SEATTLE
WA 98101

Address: 1602 EAST "J" STREET SUITE FIVE
TACOMA, WASHINGTON 98421