UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Chhot, Petitioner, vs. Deville, *et al.*, Respondents.	**CASE NO: 3:25-cv-1172**

REPLY MEMORANDUM OF LAW IN SUPPORT OF PETITIONER CHANTHAN CHHOT'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Under Respondent Brian Acuna and Todd Lyons's theory of the above-captioned Petition, U.S. Immigration and Customs Enforcement ("ICE") wielded unlimited and unreviewable discretion when it arrested Petitioner Chanthan Chhot by surprise and detained him for months in order to figure out whether ICE could remove Chhot from the United States. However, this theory – while convenient for Respondents – is supported by neither applicable law nor the operative facts of Mr. Chhot's case. Respondents adduce no facts – beyond their own *ipse dixit* – which suggest that ICE's release of Mr. Chhot from immigration detention in February of 2005 resulted from the agency's exercise of discretion rather than the agency's legal obligation to release a noncitizen whose country of origin had refused to repatriate him and thus whose removal from the United States was not significantly likely to occur in the reasonably foreseeable future. Respondents do not – because they cannot – articulate a legitimate change of circumstances which explains why ICE was authorized to re-detain Mr. Chhot in May of 2025, *i.e.*, either because the agency had determined that Cambodia or another country had become likely to accept Chhot for removal or because the agency needed to prevent Chhot from violating the terms of his supervised release. And Respondents cite no persuasive authority which supports the proposition that federal courts lack jurisdiction to review the propriety of immigration detention for noncitizens in circumstances like those of Mr. Chhot. For these reasons, and for the reasons outlined in his moving papers, Mr. Chhot reiterates his request that the Court: (1) issue a temporary restraining order which prohibits the Respondents from transferring Chhot out of the Western District of Louisiana in the absence of judicial permission obtained after adequate notice to Chhot's counsel; and (2) set a hearing pursuant to Rule 65(a)(2) for adjudication of the instant Motion and above-captioned Petition.

ARGUMENT

I. THE COURT HAS JURISDICTION TO DETERMINE THE LAWFULNESS OF MR. CHHOT'S CURRENT DETENTION

For more than 20 years, federal courts have affirmed that they retain jurisdiction to review the lawfulness of the immigration detention of noncitizens who have received final orders of removal, irrespective of the amendments to the Immigration and Nationality Act adopted by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 or the REAL ID Act of 2005. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) ("We conclude that § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention."); *accord. Alam v. Nielsen*, 312 F. Supp. 3d 574, 579-81 (S.D. Tex. 2018) (Ellison, J.); *Escalante v. Noem*, 2025 WL 2206113, *2 (E.D. Tex. Aug. 2, 2025) (Truncale, J.). Respondents attempt to side-step this well-established principle by arguing that Mr. Chhot is not challenging the lawfulness of his current detention but rather is improperly interfering with ICE's execution of his removal order. *See* Resp'ts Opp'n to Pet'rs Mot. for Temporary Restraining Order and Preliminary Injunction ("Resp'ts Opp'n"), Doc No. 8, at pp. 4-7. Yet, this argument incorrectly conflates Mr. Chhot's detention – which Respondents cannot contest was designed to investigate whether ICE could execute Chhot's removal order, *see* Decl. of Chanthan Chhot, Doc No. 3-2, at ¶¶ 9-13 – with the detention of a noncitizen designed to actually execute a removal order, that is, to place a noncitizen on a plane leaving the United States. If ICE had obtained Cambodian travel documents for Mr. Chhot and was ready to repatriate him, Chhot agrees that this Court would lack jurisdiction to adjudicate the claims advanced in the above-captioned Petition.[1]

[1] Accordingly, if the Court were to issue Mr. Chhot's requested temporary restraining order and preliminary injunction, *see* Doc No. 3-9, the proposed order would contemplate a streamlined process through which Respondents could demonstrate to the Court that they are ready to place

See, e.g., Kong v. U.S., 62 F.4th 608, 618 (1st Cir. 2023) (judicial review barred when challenge to post-order detention concerns "'brief door-to-plane detention[s]' that are 'integral to the act of execut[ing] [a] removal order[].'") (quoting *Tazu v. Att'y Gen.*, 975 F.3d 292, 298-99 (3d Cir. 2020) (internal quotation omitted)). However, in the present circumstances, ICE has detained Mr. Chhot for months without obtaining travel documents for him, without securing a country which will accept his removal and without any concrete plans to place Chhot on a plane to anywhere – except perhaps to another ICE detention facility. *See* Decl. of Charles Ward AFOD ("Ward Decl."), Doc No. 8-1, at ¶¶ 8-10.[2] In these circumstances, "the connection between executing a removal order and detaining a noncitizen unravels" such that the only agency conduct being reviewed by the Court is the propriety of Mr. Chhot's detention, conduct which the Court has jurisdiction to review. *Kong*, 62 F.4th at n.12; *see also, e.g., Alam*, 312 F. Supp. 3d at 581 (jurisdiction proper when noncitizen "does not challenge the order of removal entered against him" but rather "the process ICE followed in cancelling his Order of Supervision and returning him to detention."); *Escalante*, 2025 WL 2206113 at *3 (jurisdiction proper when noncitizen is "merely asking to be placed back on supervised release pending his removal").

II. THE LAWFULNESS OF MR. CHHOT'S CURRENT DETENTION IS GOVERNED BY REGULATION 241.13

Respondents' next maneuver to avoid judicial review of the claims in the above-captioned Petition is to recast the circumstances under which ICE released Mr. Chhot from immigration

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Chhot on a plane and in response to which the Court could dissolve the order as well as dismiss the above-captioned Petition for want of jurisdiction.

[2] To the extent that the Court deems relevant Assistant Field Office Director Ward's vague assertion that Mr. Chhot "refused to answer interview questions," Decl. of Charles Ward AFOD ("Ward Decl."), Doc No. 8-1, at ¶ 10, Chhot contests this assertion and would request an evidentiary hearing to resolve the factual dispute. *See* Decl. of Chanthan Chhot, Doc No. 3-2, at ¶¶ 8, 12.

detention in 2005 as a pure exercise of agency discretion, which – according to Respondents – ICE may retract at any time, for any reason and without meaningful review. *See* Resp'ts Opp'n, Doc No. 8, at pp. 8-10, 12-14. To reach this result, Respondents creatively interpret the circumstances surrounding Mr. Chhot's 2005 release and conclude that ICE relinquished custody of Chhot at that time pursuant to the discretion vested in the agency by Regulation 241.4, and not pursuant to the requirements of Regulation 241.13 as argued by Chhot. *See id.*, Doc No. 8, at p. 9. Yet this creative interpretation is supported by nothing more than ICE's *ipse dixit* statement, made 20 years after-the-fact, that the agency had revoked Mr. Chhot's supervised release pursuant to Regulation 241.4, *see* Decl. of Janet H. Vo ("Vo Decl."), Doc No. 3-3, at Sub-Ex. G, and all but ignores the historical context in which ICE was attempting to repatriate Chhot in 2004 or 2005.[3]

As outlined in the Declaration of Deputy Assistant Director John A. Schultz, Jr. ("Schultz Decl."), in 2004 and 2005, ICE could only repatriate a noncitizen to Cambodia if the Royal Government of Cambodia ("RGC") interviewed the noncitizen, verified his Cambodian nationality and issued corresponding travel documents. *See* Schultz Decl., Doc No. 3-5, at ¶¶ 5-9. Respondents do not – because they cannot – dispute that ICE engaged in this process during 2004 and 2005, when the agency requested that the RGC issue travel documents for Mr. Chhot. *See* Vo Decl., Doc No. 3-3, at Sub-Ex. D. Moreover, Respondents do not – because they cannot – dispute that the RGC declined to issue travel documents and, as a result, ICE released Mr. Chhot from the agency's custody. *See id.*, Doc No. 3-3, at Sub-Ex. E – p. 3 ("Once a travel document is obtained, you will be required to surrender to ICE for removal."). Under these facts, the only logical explanation for ICE's release of Mr. Chhot from immigration custody in February of 2005 is ICE's

[3] Assistant Field Office Director Ward's Declaration, which was made based on Ward's thorough review of Mr. Chhot's immigration file, is silent on this issue. *See* Ward Decl., Doc No. 8-1, at ¶¶ 2, 6-7.

determination that the agency was not significantly likely to remove Chhot from the United States in the reasonably foreseeable future, per Regulation 241.13, and Respondents offer no viable alternative theory as to why ICE might have released Chhot from immigration custody at this time. Indeed, Respondents' suggestion that ICE voluntarily released Mr. Chhot from immigration detention in 2005, pursuant to Regulation 241.4, defies logic. Before ICE could have released Mr. Chhot from custody pursuant to Regulation 241.4, the agency would have been required to determine that Chhot did not pose a danger to the public. *See* 8 C.F.R. § 241.4(d)(1); *see also* U.S. Dep't of Justice, *Detention of Aliens Ordered Removed*, 65 Fed. Reg. 80281-01, 80282 (Final Rule Dec. 21, 2000) (Regulation 241.4 "implements an important program in furtherance of congressional and executive policy to ensure the removal of aliens … and to protect the safety of our citizens and lawful residents against dangerous individuals or those posing a flight risk."). Such a determination is not only absent from the record before the Court but would have been highly improbable, given Mr. Chhot's then-recent conviction for a violent felony which had served as the predicate for his removal order. *See* Ward Decl., Doc No. 8-1, at ¶ 4.

In this way, the record before the Court demonstrates that ICE released Mr. Chhot from immigration detention in February of 2005 because such release was required by Regulation 241.13. Accordingly, ICE did not have unfettered discretion to re-detain Mr. Chhot in 2025, but rather could only do so if the agency determined that Chhot's circumstances vis-à-vis Cambodia had changed or if detention were necessary to enforce the terms of Chhot's supervision. *See* 8 C.F.R. § 241.13(*i*). And given that Respondents all but admit that ICE could substantiate neither of these two reasons in May of 2025, when the agency took Mr. Chhot back into immigration

custody, Chhot's arrest and continued detention have been unlawful and the above-captioned Petition should be granted.[4]

CONCLUSION

Based on the foregoing, Mr. Chhot respectfully reiterates his request that the Court: (1) issue a temporary restraining order which prohibits the Respondents from removing Chhot from the Western District of Louisiana in the absence of judicial permission obtained after adequate notice to Chhot's counsel, as outlined in the proposed form of Order submitted with his Motion, *see* Doc No. 3-9; and (2) set a hearing pursuant to Rule 65(a)(2) for adjudication of the instant Motion and above-captioned Petition.[5]

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[4] Respondents' assertion that ICE may revoke an order of supervision for any violation of release conditions – no matter how minor or stale the violation may be – is astounding and flies in the face of decades of jurisprudence placing Due Process limitations on such revocations. *See* Resp'ts Opp'n to Pet'rs Mot. for Temporary Restraining Order and Preliminary Injunction, Doc No. 8, at p. 14. Even if Regulation 241.13 places no express limitation on ICE's authority to revoke supervised release based on a releasee's conduct, the Due Process Clause certainly does. *See Holt v. Alexander*, 493 Fed. Appx. 608, 610 (5th Cir. 2012) (*per curiam*) ("An unreasonable delay may violate the due process requirement that revocation hearings comport with principles of fundamental fairness.") (citing *U.S. v. Tyler*, 605 F.2d 851 (5th Cir. 1979) (*per curiam*)); *see also*, *e.g.*, *Greene v. Mich. Dep't of Corr.*, 315 F.2d 546, 547 (6th Cir. 1963) ("When there has been a violation of the conditions of a parole, the parole authorities, if they desire to take advantage of it, should proceed with reasonable diligence to issue and execute a warrant for the arrest of the parolee. Failure to do so may result in a waiver of the violation and loss of jurisdiction."); *U.S. v. Hamilton*, 708 F.2d 1412, 1415 (9th Cir. 1983) ("Revocation of probation after unreasonable delay or under circumstances inherently misleading to the probationer is an abuse of discretion."); *Farabee v. Clarke*, 967 F.3d 380, 393 (4th Cir. 2020) ("After an unreasonable time, violations of which the state is aware become stale or are waived as a basis for revoking probation.").

[5] Mr. Chhot respectfully submits that a Rule 65(c) bond is inappropriate for the limited provisional remedy he seeks, insofar as Respondents have not articulated and cannot articulate any costs or damages that could possibly result from keeping Chhot in his current detention location until the Court has adjudicated the instant Motion or Respondents produce evidence that ICE is actually able to remove Chhot from the United States. *See*, *supra*, n.1.

Respectfully submitted,
CHANTHAN CHHOT,

Dated: August 22, 2025

By his attorneys,

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CERTIFICATE OF SERVICE PURSUANT TO LOCAL RULE 65.1

I hereby certify that on August 22, 2025, I electronically filed the foregoing Memorandum with the Clerk of the Court using the CM/ECF system. I further certify that on August 22, 2025, I will send by electronic mail the foregoing Memorandum to the U.S. Attorney's Office for the Western District of Louisiana at the following electronic mail addresses and have notified said counsel of the date and time the foregoing was filed:

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