

District Judge Lauren King

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOKHA SUONG,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02309-LK

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
December 8, 2025

I. INTRODUCTION

The Court should dismiss Petitioner Sokha Suong's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). Petitioner challenges his post-order re-detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional while he awaits removal from the United States. Contrary to his allegations, Petitioner's detention is lawful. He is a noncitizen, with no legal immigration status, subject to an administratively final order of removal, whose removal ICE has determined is now foreseeable. Petitioner is lawfully detained under Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner's detention also is not indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). ICE is working to effectuate Petitioner's removal

1 to Cambodia, and a travel document request is pending. ICE anticipates that Petitioner will be
2 removed to Cambodia in the reasonably foreseeable future.

3 Accordingly, Federal Respondents respectfully request that the Court deny the Petition.
4 The return is supported by the pleadings and documents on file in the case, the Declaration of
5 Deportation Officer Yrales Melendez Diaz ("Melendez Decl.") and the Declaration of Katherine
6 G. Collins ("Collins Decl.") with accompanying exhibits. Federal Respondents do not believe any
7 hearing is necessary.

8 II. FACTUAL AND PROCEDURAL BACKGROUND

9 A. Detention Authorities and Removal Procedures

10 The INA governs the detention and release of noncitizens during and following their
11 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
12 detention periods are generally referred to as "pre-order" (meaning before the entry of a final
13 order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of
14 removal). Compare 8 U.S.C. § 1226 (authorizing pre-order detention) with § 1231(a) (authorizing
15 post-order detention).

16 When a final order of removal has been entered, a noncitizen enters a 90-day "removal
17 period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
18 "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for
19 removal and to protect the community from noncitizens who may present a danger, Congress has
20 mandated detention while removal is being effectuated:

21 During the removal period, the [Secretary of Homeland Security]¹ shall
22 detain the [noncitizen]. Under no circumstance during the removal period

23 ¹ Although 8 U.S.C. § 1231(a)(2) refers to the "Attorney General" as having responsibility for detaining
24 noncitizens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002),
transferred this authority to the Secretary of the Department of Homeland Security ("DHS"), of which ICE is a
component. *See also* 6 U.S.C. § 251.

1 shall the [Secretary] release [a noncitizen] who has been found
2 inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of the title or
deportable under section 1227(a)(2) or 1227(a)(4)(B) of the title.

3 8 U.S.C. § 1231(a)(2).

4 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration
5 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
6 and does not place any temporal limit on the length of detention under that provision:

7 [A noncitizen] ordered removed who is inadmissible under section 1182,
8 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of the
title or who has been determined by the [the Secretary of Homeland
9 Security] to be a risk to the community or unlikely to comply with the order
of removal, *may be detained beyond the removal period* and, if released,
10 shall be subject to the terms of supervision in paragraph (3).

11 8 U.S.C. § 1231(a)(6) (emphasis added).

12 During the removal period, ICE² is charged with attempting to effect removal of a
13 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit
14 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may
15 be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal
16 from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six
17 months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.* at 701.

18 **B. Petitioner Sokha Suong**

19 Petitioner is a native and citizen of Cambodia, who was born in Thailand. Melendez Decl.
20 ¶ 3; Collins Decl., Exh. A (2021 I-213). He was lawfully admitted to the United States as a refugee
21 in 1981, and adjusted to refugee status (RE8) on May 14, 1987. *Id.*, ¶¶ 4-5. As an adult, Petitioner
22 engaged in repeated criminal activity. Between 2000 and 2014, Petitioner was convicted of

23
24 ² Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

1 offenses including gambling violations, false imprisonment, ten counts of violating a domestic
2 violence protection order, harassing communication, burglary, and assault. Melendez Decl. ¶ 6.,
3 Collins Decl., Exh. A (2021 I-213).

4 Because of his criminal convictions, on May 10, 2016, immigration officials detained
5 Petitioner and served him with a Notice to Appear. Melendez Decl. ¶ 7; Collins Decl., Exhs. A
6 (2021 I-213), B (2013 Warrant for Arrest); C (NTA). ICE charged Petitioner with being
7 removeable from the United States based on having been convicted of an aggravated felony, under
8 INA § 237(a)(2)(A)(iii) and for violating a domestic violence protective order, under INA §
9 237(a)(2)(E)(ii). *See id.* On July 8, 2021, the Immigration Judge denied Petitioner's application
10 for relief and ordered Petitioner removed to Thailand, and in the alternative, Cambodia. Melendez
11 Decl. ¶ 10; Collins Decl., Exh. D (Order of Removal). Both parties waived appeal and the order
12 became administratively final that same day. *See id.*

13 On November 19, 2021, ICE released Petitioner on an Order of Supervision (OSUP)
14 because at the time ICE was unable to obtain the travel documents required to remove Petitioner
15 to Thailand or to Cambodia. Melendez Decl. ¶ 9; Collins Decl. Exhs. E (Release Notification), F
16 (OSUP). Therefore, Petitioner's post-removal order detention in 2021 totaled 134 days. At the
17 time of his release on OSUP, Petitioner served with a notice that advised him that he was being
18 released "pending [his] removal from the United States," and that "ICE will continue to make
19 efforts to obtain [his] travel document that will allow the United States government to carry out
20 [his] removal[.]" Collins Decl. Exh. E (Release Notification). Petitioner signed the notice
21 containing these advisals. *See id.* The OSUP placed several conditions on Petitioner's release,
22 including "[t]hat [he] appear in person at the time and place specified, upon each and every request
23 of the agency, for identification and for deportation or removal." Collins Decl., Exh. F (OSUP),
24 at 1.

On September 9, 2025, because of cooperation between the United States and Cambodia, ICE determined that there was now a significant likelihood of ICE's ability to remove Petitioner to Cambodia. Melendez Decl. ¶ 10; Collins Decl., Exh. G (2025 I-213), at 3. Because of this, ICE revoked Petitioner's OSUP and took Petitioner into custody at a check-in appointment. Melendez Decl. ¶ 10; Collins Decl., Exhs. G (2025 I-213) at 3, H (2025 Warrant for Arrest). On October 30, 2025, ICE submitted a completed travel documents request to the Government of Cambodia. Melendez Decl. ¶ 11; Collins Decl., Exh. I (TDR Request). The request remains pending at this time. *Id.*, ¶ 12. Though Petitioner states in his petition that he believes ICE may be trying to remove him to an unnamed third country, other than Cambodia or Thailand, Petitioner provides no facts to support for this claim. *See* Pet., pp. 13-19, 21-24. Petitioner is a citizen of Cambodia, born in Thailand, he was ordered removed to Thailand and Cambodia in the alternative, and ICE is only seeking to remove Petitioner to Cambodia at this time. Melendez Decl. ¶¶ 3, 10-15.

III. ARGUMENT

A. Petitioner's Detention is not Indefinite or Unconstitutionally Prolonged

Petitioner has not demonstrated that his detention has become "indefinite" or unconstitutional. In *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit limitation of post-removal detention "to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. It was further specified that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for detention to remain reasonable, as the period of post-removal confinement

1 grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink”).
2 However, the Supreme Court determined that it is “presumptively reasonable” for the
3 Government to detain a noncitizen for six months following entry of a final removal order, while
4 it worked to remove the noncitizen from the United States. *Id.* at 701. Thus, the Supreme Court
5 implicitly recognized that six months is the *earliest* point at which a noncitizen’s detention could
6 raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption
7 “does not mean that every [noncitizen] not removed must be released after six months. To the
8 contrary, [a noncitizen] may be held in confinement until it has been determined that there is no
9 significant likelihood of removal in the reasonably foreseeable future.” *Id.*

10 Here, ICE has detained Petitioner less than three months since his OSUP was revoked and
11 he was taken into custody. Melendez Decl. ¶ 10; Collins Decl., Exhs. G (2025 I-213) at 3, H (2025
12 Warrant for Arrest). While the Government does not concede that Petitioner’s detention should
13 be measured in the aggregate, even assuming arguendo that it is, Petitioner’s total detention after
14 his removal became administratively final order is 219 days. This is but one month more than the
15 “presumptively reasonable” six-month custody period. *Zadvydas*, 533 U.S. at 701.

16 This period of detention is not unreasonable given the facts of Petitioner’s case. Petitioner
17 was convicted of an aggravated felony offense and domestic violence protection order violations.
18 Section 1231(a)(6) dictates that an alien who is removeable for having been convicted of an
19 aggravated felony (as Petitioner has been), or who has been determined by the Attorney General
20 to be a risk to the community “may be detained beyond the removal period.” Albeit Petitioner’s
21 criminal history is now older, it cannot be overlooked that he has demonstrated a concerning
22 pattern of domestic abuse, and public safety weighs in favor of Petitioner’s detention at this time.

23 Furthermore, Petitioner’s detention is not constitutionally indefinite. ICE has taken active
24 and concrete steps to remove Petitioner to Cambodia by submitting a travel document request to

1 the Cambodian government. Melendez Decl. ¶ 11-12; Collins Decl., Exh. I (TDR Request). That
 2 request is pending at this time. *Id.* While there is no definitive timeframe for when the travel
 3 document request will be approved, there is increased cooperation between Cambodia and the
 4 United States, and Cambodia has indeed accepted removed citizens in 2025. Melendez Decl. ¶
 5 11-12. It is therefore anticipated that Petitioner's removal will likely occur in the reasonably
 6 foreseeable future. *Id.* ¶ 13-14, 17. The fact that Petitioner does not yet have a specific date of
 7 anticipated removal does not make his detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222,
 8 1233 (9th Cir. 2008). Detention becomes indefinite in situations where the country of removal
 9 refuses to accept the noncitizen or if removal is legally barred. *Id.* There is no reason to believe
 10 that is the situation here. Consequently, Petitioner has failed to demonstrate a good reason to
 11 believe that there is no significant likelihood of his removal in the reasonably foreseeable future.
 12 *Zadvydas*, 533 U.S. at 701.

13 **B. Petitioner's Re-Detention Comports With Due Process**

14 "Due process is flexible and calls for such procedural protections as the particular situation
 15 demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that
 16 Petitioner's detention is consistent with his due process rights. Under *Mathews*, "[t]he
 17 fundamental requirement of due process is the opportunity to be heard at a meaningful time and
 18 in a meaningful manner." *Id.*, at 333 (internal quotation marks omitted). This calls for an analysis
 19 of (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous
 20 deprivation of such interest through the procedures used, and probable value, if any, of additional
 21 or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35.

22 Respondents recognize the "weighty liberty interests implicated by the Government's
 23 detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y.
 24 Aug. 20, 2021). However, Petitioner's interest in his liberty *generally* does not mean that he

1 possesses a separate or heightened liberty interest in the continuation of his conditional release
 2 on OSUP.³ The recognized liberty interests of U.S. citizens and aliens are not coextensive: the
 3 Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress may make rules
 4 as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz*, 53 F.4th at 1206
 5 (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, “[i]n
 6 the exercise of its broad power over naturalization and immigration, Congress regularly makes
 7 rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80
 8 (1976).

9 Petitioner’s release on OSUP was always subject to many conditions. Collins Decl., Exhs.
 10 E (Release Notification), F (OSUP). When released on OSUP, Petitioner was notified that his
 11 release was “pending [his] removal from the United States.” *Id.*, Exh. F (OSUP). Accordingly,
 12 Petitioner cannot now claim that the Respondents promised him ongoing, limitless, indefinite
 13 freedom from detention while he remained in the United States.

14 Turning to the second Mathews factor, the risk of a constitutionally significant deprivation
 15 of Petitioner’s liberty here is minimal. Congress established a clear statutory framework in 8
 16 C.F.R. § 241.13(i) that sets forth the requirements for affecting an OSUP revocation. When ICE
 17 determines that there is a “significant likelihood” an alien can be removed from the United States
 18 within the “reasonably foreseeable future,” ICE is clearly permitted to revoke the OSUP and take
 19 the alien into custody; nothing else is required for revocation under these circumstances. *Id.* §
 20 241.13(i)(1) and (2); *see also Nizar Esmail v. Noem*, et al., 2025 WL 3030590, at *2 (C.D. Cal.
 21 Sept. 12, 2025). Here, ICE properly took custody of Petitioner based on its individualized
 22 determination that Petitioner could now be removed to Cambodia. Melendez Decl., ¶ 10. As

23
 24 ³ Federal Respondents acknowledge that courts in this District have found that noncitizens have a liberty interest in their release on OSUP but respectfully disagree with those decisions.

1 discussed, Petitioner was on notice that this was a possibility since he was released from ICE
2 custody in 2021.

3 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
4 test “must account for the heightened government interest in the immigration detention context.”
5 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth
6 Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
7 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,
8 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). This is especially the case here, given
9 Petitioner’s serious criminal history involving violence. The government’s interest in detaining
10 Petitioner pending his removal is therefore heightened.

11 In sum, the three *Mathews* factors demonstrate that Petitioner’s detention comports with
12 due process.

13 **C. Petitioner’s Arguments Relating to Third-Country Removal are not Ripe**
14 **for Review**

15 Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing
16 cases or controversies. *Deakins v. Monaghan*, 484 U.S. 193, 199, 108 S.Ct. 523, 528, 98 L.Ed.2d
17 529 (1988). “Ripeness is an Article III doctrine designed to ensure that courts adjudicate live
18 cases or controversies and do not ‘issue advisory opinions [or] declare rights in hypothetical
19 cases.’” *Bishop Paiute Tribe v. Inyo Cty.*, 863 F.3d 1144, 1153 (9th Cir. 2017) (alteration in
20 original) (quoting *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1138 (9th Cir.
21 2000) (en banc)). The Supreme Court has stated that to meet the ripeness standard, plaintiffs must
22 show either a specific present objective harm or the threat of specific future harm. *Laird v. Tatum*,
23 408 U.S. 1, 14 (1972). “A claim is not ripe for adjudication if it rests upon contingent future
24 events that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*,

1 523 U.S. 296, 300 (1998) (internal citations omitted). “For a case to be ripe, it must present issues
2 that are definite and concrete, not hypothetical or abstract.” *Bishop*, 863 F.3d at 1153.

3 Here, Petitioner’s argument that he could be removed to some unnamed third country is
4 without merit, speculative, and not ripe for review. There is no case or controversy because there
5 is no concrete indication that such removal to a third country will occur. The record contains no
6 evidence supporting the claim. ICE is currently seeking travel documents only to Cambodia.
7 Accordingly, the claim should be dismissed as premature. *Cf. Spencer v. Kemna*, 523 U.S. 1, 16
8 (1998) (rejecting habeas petitioner’s alleged consequences as “a possibility rather than a certainty
9 or even a probability” and as “purely a matter of speculation”).

10 **IV. CONCLUSION**

11 With his removal pending, the government has significant legitimate interests in
12 Petitioner’s continued detention to ensure he will appear for removal and to keep the public safe.
13 Petitioner’s detention has not become unconstitutionally “indefinite.” Furthermore, Petitioner’s
14 third country claim is premature and speculative and should be denied. Accordingly, the Court
15 should not order that he be released or otherwise order that Petitioner cannot be removed to a
16 third country.

17 //

18 //

1 DATED this 3rd day of December, 2025

2 Respectfully submitted,

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10 *Attorneys for Federal Respondents*

11 *I certify this memorandum contains 2,824 words,*
12 *in compliance with Local Civil Rules.*