ADAM GORDON
United States Attorney
MATTHEW RILEY
California State Bar No. 257643
ERIN M. DIMBLEBY
California State Bar No. 323359
Assistant U.S. Attorneys
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-9675/6987
Facsimile: (619) 546-7751
Email: matthew.riley2@usdoj.gov
Email: Erin.Dimbleby@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THAT TOM NGIAM,

Petitioner,

v.

KRISTI NOEM, Secretary of Homeland Security; *et al.*,

Respondents.

Case No. 25-cv-03405-TWR-BLM

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

At the hearing in this matter on December 11, 2025, the Court denied Petitioner That Tom Ngiam's request for a bond hearing on the grounds that his order of removal is final. *See* ECF No. 9. The Court also ordered the parties to file supplemental briefs regarding the impact of the settlement reached in *Chhoeun v. Marin*, C.D. Cal. Case No. 17-cv-01898-JWH-GJS, an issue which Petitioner raised for the first time in his traverse filed shortly before the hearing. *See* ECF No. 8. For the reasons set forth below, Petitioner misstates the government's obligations arising from the *Chhoeun* litigation, and his petition should be denied.

In his traverse, Petitioner argues that the government "is not honoring" the *Chhoeun* settlement and that his "detention is illegal because the settlement provides time for Mr. Ngiam, a class member time to try to set aside his convictions and reopen his case." *Id.* at ¶ 7. Petitioner also cites to the following provision in the *Chhoeun* settlement agreement: "This Agreement is intended to replace the permanent injunction with an immediate notice to class members of the Settlement Class, as defined herein, that they are subject to removal and can seek to reopen their removal proceedings if their circumstances or the law underlying their removal order has changed, or other grounds for reopening exist."

The problem with Petitioner's reliance on the *Chhoeun* settlement agreement is that the settlement has not yet become effective. Indeed, the *Chhoeun* settlement agreement states that the agreement's "'Effective Date' means the date when the Court issues an order finally approving this Agreement." ECF No. 8-1 at § II(D). Final approval of the settlement has not occurred. As reflected in the Central District of California's CM/ECF docket[1] for the *Chhoeun* action: (1) the parties in the *Chhoeun* action filed a joint motion for preliminary approval of the class action settlement on October 11, 2024 (Exhibit A, ECF No. 361); (2) the court granted preliminary approval

[1] A copy of the *Chhoeun* docket is attached to this supplemental brief as Exhibit A. Respondents request that the Court take judicial notice of the relevant *Chhoeun* docket history pursuant to Federal Rule of Evidence 201(b)(2) as it is "not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

of the settlement on July 9, 2025, clarified the preliminary approval order on July 22, 2025, and scheduled a final approval hearing for November 25, 2025 (Exhibit A, ECF Nos. 380, 384); and (3) in light of the federal lapse in appropriations, on October 27, 2025, the court granted the parties stipulation to stay the case, vacated the final approval hearing, and stayed the case pending further order of the court. (Exhibit A, ECF Nos. 390, 393.) The *Chhoeun* docket demonstrates that final approval of the settlement has not yet occurred. Thus, the settlement has not become effective, and the notice provisions contemplated by the settlement agreement have no force or effect.

Petitioner does not argue that ICE failed to adhere to its obligations under the operative injunction that the *Chhoeun* settlement agreement intends to replace. Nor can he, because he does not qualify as a "Class Member" as defined by the injunction. The *Chhoeun* injunction,[2] dated April 27, 2020, "permanently restrained and enjoined [ICE] from re-detaining for removal any Class Member . . . unless ICE first serves written notice . . . on the Class Member at least 14 days before re-detention in accordance with" the notice provisions of the injunction. Exhibit B at 1:7–11. The injunction defines "Class Members" as "all Cambodian nationals in the United States who are subject to final orders of deportation or removal, and were subsequently released from ICE custody, *and have not subsequently violated any criminal laws or conditions of their release*, and have been or may be re-detained for removal by ICE." *Id.* at 1:13–17 (emphasis added). Petitioner does not qualify as a "Class Member" entitled to the benefits of the injunction because he violated the law numerous times after he was ordered released and subsequently released from ICE custody. Specifically:

- On February 18, 1999, Petitioner was released from ICE custody under an Order of Supervision (OSUP) as ICE was unable to repatriate him to Cambodia at that time. *See* Declaration of Daniel Negrin at ¶ 4.

[2] A copy of the Judgment and Permanent Injunction in *Chhoeun* is attached to this supplemental brief as Exhibit B. Respondents request that the Court take judicial notice of this Judgment and Permanent Injunction pursuant to Federal Rule of Evidence 201(b)(2).

- On July 20, 1999, Petitioner was arrested by local law enforcement for a parole violation and was remanded to state custody for 32 months. *Id.* at ¶ 6.
- On June 8, 2001, Petitioner was transferred to ICE custody following his release from state criminal custody for violating the terms of his OSUP and to effectuate his removal to Cambodia. *Id.* at ¶ 7.
- On September 13, 2001, Petitioner was released from ICE custody under a new OSUP as ICE was unable to repatriate him to Cambodia at that time. *Id.* at ¶ 8.
- On or about January 28, 2003, Petitioner was arrested by local law enforcement for a parole violation and was remanded to state custody for 5 months. *Id.* at ¶ 9.
- On July 9, 2003, Petitioner was transferred to ICE custody following his release from state criminal custody for violating the terms his OSUP and to effectuate his removal to Cambodia. *Id.* at ¶ 10.
- On October 17, 2003, Petitioner was released from ICE custody under a new OSUP as ICE was unable to repatriate him to Cambodia at that time. *Id.* at ¶ 11.
- On September 17, 2005, Petitioner was arrested for violating Cal. Pen. Code § 243(e)(1), domestic battery. *Id.* at ¶ 12. Failure to obey criminal laws was a violation of the OSUP terms of release. *Id.*

Because Petitioner (repeatedly) violated the law after having been ordered removed to Cambodia and subsequently released from ICE custody, he is not a "Class Member" entitled to any protection under the *Chhoeun* injunction. *See id.* at ¶ 13.

Finally, even assuming Petitioner is a *Chhoeun* class member (he is not), neither the preliminarily-approved settlement nor the injunction in that case would entitle Petitioner to the relief he seeks, that is, a credible fear interview or bond hearing.

For the reasons stated above and in Respondents' return (ECF No. 7), Respondents respectfully request that the Court dismiss Petitioner's habeas petition.

Dated: December 17, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Matthew Riley
MATTHEW RILEY
Assistant United States Attorney

Attorneys for Respondents