


UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA

Reth KEM,	)	
	)	Case No. 4:25-cv-64
Petitioner,	)	
	)	
v.	)	
	)	
KRISTI NOEM, Secretary, U.S. Department of	)	Agency Case Number:
Homeland Security; Samuel Olson, Field	)	A 
Office Director, Chicago Field Office, Immigration	)	
and Customs Enforcement, and Brian English,	)	
Superintendent of Miami Correctional Facility.	)	
	)	
Respondents.	)	

**PETITION FOR WRIT OF HABEAS CORPUS AND  
COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF**

The Petitioner, Reth KEM, by and through his own and proper person and through his attorneys, JENNIFER PEYTON, of KRIEZELMAN BURTON & ASSOCIATES, LLC, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention in violation of his constitutional and statutory rights.

**INTRODUCTION**

1. Petitioner, Reth KEM, has been detained since October 17, 2025 by Immigration and Customs Enforcement (“ICE”) at the Miami Correctional Facility in Bunker Hill, Indiana.
2. Petitioner is a native and citizen of Cambodia.
3. Petitioner initially entered the United States on August 11, 1983, as a refugee. He became a permanent resident of the United States on August 11, 1983. He was ordered removed by an immigration judge on November 30, 1998. Upon information and belief, in May 2001, he was released post removal order as he had remained incarcerated for over 180 days, and ICE was unable to secure travel documents. Petitioner was placed on an order of supervision, and in

compliance with the Order of Supervision, checked in annually. He has been checking in with ICE for over twenty years with no compliance issues.

4. On October 17, 2025, Petitioner attended his annual check-in at the Dallas, Texas ICE Field Office. He was detained, transferred, and remains detained at the Miami Correctional Facility in Indiana.

5. ICE ERO has provided no information to Petitioner regarding the circumstances of his removal to Cambodia, neither has a third country for removal become identified. ICE ERO has failed to articulate any reason for the revocation of Petitioner's supervised release after he has complied with supervision since 2001.

6. To date, Petitioner has been detained, post-order, over 180 days after his initial order of removal, and at present, 48 days since his unjust re-detention on October 17, 2025.

7. In March and April of 2001, Petitioner communicated with the government of Cambodia, requesting travel documents. The government of Cambodia noted it was not authorized to issue travel documents; shortly after that information, ICE released the Petitioner on an order of supervision.

8. Petitioner's removal does not seem to be occurring in the reasonably foreseeable future.

9. Accordingly, to vindicate Petitioner's statutory and constitutional rights and to put an end to his continued arbitrary detention, this Court should grant the instant petition for a writ of habeas corpus.

10. Petitioner asks this Court to find that this prolonged and new incarceration is unreasonable and to order his immediate release.

**JURISDICTION**

11. Petitioner is detained in civil immigration custody at Miami Correctional Facility in Bunker Hill, Indiana. He has been detained since October 17, 2025. An individualized bond hearing before an immigration judge (IJ) is not provided under the Immigration and Nationality Act for those who are post-removal order, such as this Petitioner.

12. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. section 701 *et seq.*

13. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, 28 U.S.C. § 1331 (federal questions jurisdiction), 28 USC § 1361 (mandamus), and the All Writs Act, 28 U.S.C. § 1651.

14. No petition for habeas corpus has previously been filed in any court to review Petitioner’s case.

15. Nothing in federal immigration law strips this Court of its jurisdiction over Petitioner’s claims. *See* 8 U.S.C. § 1252 (specifying provisions governing judicial review of orders of removal).

16. The Supreme Court in *Jennings v. Rodriguez* determined that the “arising from” language of Section 1252(b)(9) should not be interpreted so expansively as to include any action that technically follows the commencement of removal proceedings, because that would bar judicial review of questions of law and fact that are unrelated to the removal proceedings until a final order of removal was issued. *583 U.S. 281, 292-295 (2018) (citing Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999))*. Petitioner, like the class in *Jennings*, “are not

asking for review of an order of removal, they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined.” *Id.* at 294-95.

17. Here, Petitioner does not challenge his removal order, he only challenges his current detention, which violates the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution.

### VENUE

18. Venue is proper because Petitioner is detained at Miami Correctional Facility in Bunker Hill, Indiana, which is within the jurisdiction of the Northern District of Indiana.

19. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e), because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to his claims occurred in this district, and no real property is involved in this action.

### PARTIES

20. Petitioner Reth KEM is a citizen of Cambodia, was ordered removed on November 30, 1998, following proceedings under 8 U.S.C. § 1229a, 8 U.S.C. § 1231(a)(5), 8 U.S.C. § 1228(b). He was detained for over six months over twenty years ago. Since October 17, 2025, he has been re-detained at the Miami Correctional Facility in Bunker Hill, Indiana. He is in the custody and under the direct control of Respondents and their agents.

21. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency

responsible for Petitioner's detention. Respondent Noem is empowered to carry out any administrative order against Petitioner and is a legal custodian of Petitioner.

22. Respondent Department of Homeland Security is the federal agency responsible for implementing and enforcing the INA. DHS oversees ICE and the detention of noncitizens. DHS is a legal custodian of Petitioner.

23. Respondent Samuel Olson is sued in his official capacity as the Director of the Immigration and Customs Enforcement Field Office of U.S. Immigration and Customs Enforcement. Respondent Olson is a legal custodian of Petitioner and has authority to release him.

24. Respondent Brian English is sued in his official capacity as warden of the Miami Correctional Facility in Bunker Hill, Indiana. Respondent English is the legal custodian of Petitioner and as such, the legal custodian with authority to release him.

#### **STATEMENT OF FACTS**

25. Petitioner is a 50 year old citizen of Cambodia. He was initially admitted to the United States as a refugee on or about August 11, 1983, when he was thirteen years old. On or about October 28, 1998, he was ordered removed from the United States before the Immigration Court in Houston, Texas. The removal order remains final, and is not the subject of this instant habeas.

26. After Petitioner was ordered removed, he remained in detention for 180 days. He was released from detention on or around May 2021, and ordered to report on an annual basis with ICE ERO.

27. Petitioner complied with this annual reporting requirement for over twenty years. He presented himself for his annual report in October 17, 2025, and was detained with no explanation of the changed circumstances requiring his re-detention.

### **LEGAL FRAMEWORK**

28. Pursuant to 28 U.S.C. § 2243, the Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response “within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” 28 U.S.C. § 2243 (emphasis added).

29. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

30. This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious.”). It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.* at 690.

31. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during “the removal period,” which is defined as the 90-day period beginning on “the latest” of either “[t]he date the order of removal becomes administratively final”; “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the

court's final order"; or "[i]f the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement."

32. Although 8 U.S.C. § 1231(a)(6) permits detention "beyond the removal period" of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that "the statute, read in light of the Constitution's demands, limits [a noncitizen's] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

33. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen's due process right to liberty. 533 U.S. at 701. In this circumstance, if the 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." *Id.*

34. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any

other justification.

35. The first justification of preventing flight, however, is “by definition . . . weak or nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is “no longer practically attainable, detention no longer ‘bears [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, “preventive detention based on dangerousness” is permitted “only when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.

36. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should consider the risk of the [noncitizen’s] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period.” *Id.* at 700.

37. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the constitutionality of detention for more than six months” and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005).

38. The Code of Federal Regulations establishes procedures that govern when a noncitizen subject to a removal order has been detained past the expiration of the removal period

and shows that there is no significant likelihood that he will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(a).

39. If ICE determines that there is no significant likelihood that the noncitizen will be removed in the reasonably foreseeable future, and that no changed or special circumstances justify continued detention, then ICE must release the noncitizen subject to appropriate conditions of supervised release. 8 C.F.R. § 241.13(g). After the noncitizen has been released, section 241.13(i) regulates any revocation of the noncitizen's supervised release.

40. The regulations set out a procedure where the Petitioner would be notified of the reasons for revocation of his release, including an initial informal interview, submission of evidence, and an evaluation of the contested facts relevant to the revocation. 8 CFR § 241.13(i)(3).

41. There has been no presentation of any special circumstances, see CFR § 241.14 set forth by ICE ERO to detain Petitioner.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### **Violation of Fifth Amendment Right to Due Process**

42. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

43. 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.

44. Petitioner was detained by Respondents for over six months previously and there are no changed circumstances that provide for detention anew. Petitioner has not violated the conditions of his release from ICE, complied with his order of supervision for over twenty years.

45. Petitioner's removal order became administratively final on October 28, 1998.

Upon information and belief, the Petitioner was in immigration custody concurrently to a criminal sentence; the criminal sentence was completed, and the post-detention removal period elapsed on or about April 2001.

46. Petitioner's prolonged detention is not likely to end in the reasonably foreseeable future. The circumstances upon his initial detention and previous releases have not materially changed. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

47. For these reasons, Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment.

**COUNT TWO**  
**Violation of 8 U.S.C. § 1231(a)**

48. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

49. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."). Because Petitioner's removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

**COUNT THREE**

*Accardi Doctrine*

50. Petitioner repeats and incorporates by reference all allegations above as though fully

set forth fully herein.

51. In compliance with Petitioner's order of supervision, Petitioner presented himself at the Dallas Texas field office on October 17, 2025. At that point, he was detained.
52. Under the *Accardi* Doctrine, Respondents are required to follow their own rules and procedures. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.")
53. As set forth, *supra*, Respondents are required to follow regulatory procedures upon the re-detention of a Petitioner, after the initial post-order detention. They have failed to do so in this circumstance. *See*, ¶¶ 37-40.

#### **PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Declare that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1231(a);
- (3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- (4) Grant any further relief this Court deems just and proper.

Respectfully submitted,

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