

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

Chansarath Duong,



Petitioner,

Docket No:

v.

Raul Maldonado, Jr., in his official capacity as Warden,
Metropolitan Detention Center, Brooklyn;

William P. Joyce, in his official capacity as
Acting Field Office Director, New York Field
Office, U.S. Immigration and Customs
Enforcement;

Todd M. Lyons, in his official capacity as Acting Director,
U.S. Immigration and Customs Enforcement;

Markwayne Mullin, in his official capacity as
Secretary, U.S. Department of Homeland
Security;

Todd Blanche, in his official capacity as Acting
Attorney General of the United States,

Respondents.

**VERIFIED EMERGENCY PETITION FOR A WRIT OF HABEAS
CORPUS AND COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF, AND EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING ORDER AND STAY OF TRANSFER**

The Petition of Petitioner Chansarath Duong,  ("Petitioner"), by and through undersigned counsel, respectfully shows:

1. Petitioner Chansarath Duong is a 52-year-old former lawful permanent resident who has lived in the United States since 1982, when he was admitted as a Cambodian refugee child. Upon information and belief, he is the son of two naturalized United States citizens, the father of two United States citizen sons, and the partner of a United States citizen of more than thirty years.
2. An immigration judge ordered Mr. Duong removed to Cambodia on March 1, 1999. In the more than twenty-seven years since, the Government has never removed him.
3. Upon information and belief, Cambodia has never issued a travel document for him. Recognizing that it could not carry out the removal, Immigration and Customs Enforcement ("ICE") released Mr. Duong on an order of supervision on October 12, 2006, and he complied with that supervision faithfully for roughly two decades, reporting as directed and never absconding.
4. On or about May 4, 2026, when Mr. Duong appeared for a scheduled ICE report, ICE detained him. Nothing had changed: Cambodia still will not take him, and ICE still has no travel document. ICE first held

him at 26 Federal Plaza and then moved him to the Metropolitan Detention Center in Brooklyn, within this District.

5. Upon information and belief, there were no changed circumstances required by the regulations governing redetention 8 C.F.R. § 241.13(i)(2). No travel documents were issued. No passport was imminent, and no other factors that would indicate removal was reasonably foreseeable to make redetention authorized by law.
6. The Supreme Court has held that the post-removal-order detention statute, 8 U.S.C. § 1231(a)(6), does not authorize detention once “removal is no longer reasonably foreseeable.” *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). Mr. Duong’s removal has not been reasonably foreseeable for a quarter century. His continued detention is unlawful, and he is entitled to immediate release. To preserve this Court’s jurisdiction over the petition, Mr. Duong also moves for a temporary restraining order barring Respondents from transferring him outside this District pending decision.

JURISDICTION

7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), the Administrative Procedure Act, 5 U.S.C. § 701 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201,

the federal mandamus statute, 28 U.S.C. § 1361, the All Writs Act, 28 U.S.C. § 1651, and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).

8. The jurisdiction-channeling provisions of 8 U.S.C. § 1252 do not bar this petition. Mr. Duong does not challenge his order of removal; he challenges the lawfulness of his present physical detention.
9. “At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *INS v. St. Cyr*, 533 U.S. 289, 301 (2001).
10. Section 1252(g) “applies only to three discrete actions that the Attorney General may take: her decision or action to commence proceedings, adjudicate cases, or execute removal orders,” and does not impose “a general jurisdictional limitation.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quotation marks omitted). The Second Circuit has confirmed that the Suspension Clause preserves habeas review notwithstanding § 1252(g). *Ragbir v. Homan*, 923 F.3d 53, 54 (2d Cir. 2019).

PARTIES

11. Petitioner Chansarath Duong, DHS A-File No. [REDACTED], is a native and citizen of Cambodia and a former lawful permanent resident of the United States. He is detained at the Metropolitan Detention Center, Brooklyn, New York.
12. Respondent Raul Maldonado, Jr., upon information and belief, is the Warden of the Metropolitan Detention Center, Brooklyn, and is Mr. Duong's immediate custodian and is named in his official capacity.
13. Respondents William P. Joyce (Acting Field Office Director, ICE New York Field Office), Todd M. Lyons (Acting Director, ICE), Markwayne Mullin (Secretary of Homeland Security), and Todd Blanche (Acting Attorney General) are sued in their official capacities as officials responsible for Mr. Duong's custody and removal.

VENUE

14. Venue is proper in this District. For "core" habeas petitions challenging present physical confinement, "the proper respondent is the warden of the facility where the prisoner is being held," and "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 443 (2004); see 28 U.S.C. § 2241(a); *id.* § 1391(e). Mr. Duong is confined at MDC Brooklyn, in this District.

EXHAUSTION

15. No administrative remedy bars this petition. The custody-review regulations at 8 C.F.R. §§ 241.4 and 241.13 are not a prerequisite to habeas review of the legality of detention under *Zadvydas*, and any further administrative process would be futile on this record: the Government has been unable to remove Mr. Duong for more than twenty-seven years and has no travel document.

FACTUAL BACKGROUND

16. Mr. Duong was born in Cambodia on [REDACTED]. As a child, he and his family fled Cambodia to Thailand, and on January 8, 1982, he was admitted to the United States and accorded lawful permanent residence.
17. Upon information and belief, Mr. Duong's parents are naturalized United States citizens; his partner of more than thirty years is a United States citizen, as are his two sons; his father, who is approximately 83 years old, is seriously ill, bedridden, and dependent on supplemental oxygen; and Mr. Duong is employed as a heavy-machine operator.
18. On October 27, 1997, Mr. Duong was arrested in Bronx County. On November 25, 1997, he pleaded guilty to attempted criminal sale of a controlled substance in the third degree, N.Y. Penal Law §§

110/220.39, and on February 3, 1998, he was sentenced to an indeterminate term of one to three years. Upon information and belief, that is Mr. Duong's only criminal conviction, and he has not been arrested since 1997.

19. On March 1, 1999, an immigration judge ordered Mr. Duong removed. He did not appeal, and the order became administratively final. See 8 U.S.C. § 1231(a)(1)(B)(i).

20. The Government did not remove Mr. Duong within the ninety-day removal period, or at any time thereafter. Upon information and belief, Cambodia did not issue a travel document. On October 12, 2006, ICE released Mr. Duong on an order of supervision, which recites that ICE "has not effected your deportation or removal during the period prescribed by law."

21. From 2006 forward, Mr. Duong complied with the terms of his supervision. ICE's own Personal Report Records document his regular in-person reporting from 2006 through 2020, and a Form I-220A continuation documents reporting in 2021 and 2022. He never absconded and committed no new offense.

22. Upon information and belief, on or about May 4, 2026, Mr. Duong appeared for a scheduled ICE report and was detained. He was first

held at 26 Federal Plaza in Manhattan and then transferred to the Metropolitan Detention Center, Brooklyn, where he remains.

23. Cambodia has still issued no travel document, and ICE has identified no changed circumstance making removal more likely. Upon information and belief, ICE intends to transfer Mr. Duong to the Delaney Hall facility in Newark, New Jersey imminently.

CLAIMS FOR RELIEF

COUNT I: MR. DUONG'S CONTINUED DETENTION VIOLATES 8 U.S.C. § 1231(A)(6) BECAUSE HIS REMOVAL TO CAMBODIA IS NOT REASONABLY FORESEEABLE.

24. Section 1231(a)(6) does not authorize indefinite detention. The Supreme Court has read it “to contain an implicit ‘reasonable time’ limitation,” and has held that “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Zadvydas*, 533 U.S. at 682, 699. Six months of post-order detention is “presumptively reasonable.” *Id.* at 701.
25. After six months, the burden framework shifts: “once the alien 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.* at 701. And “for

detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Id.*

26. That framework remains binding. Section 1231(a)(6) “does not permit indefinite detention,” but instead “limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689; see *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) (reaffirming *Zadvydas*’s reasonable-time limitation); *Jennings v. Rodriguez*, 583 U.S. 281, 301 (2018). The Second Circuit applies the same rule: “detention is presumptively reasonable for six months following a final removal order, and . . . after the first six months, detention violates § 241 if (1) an alien demonstrates that there is no significant likelihood of removal in the reasonably foreseeable future and (2) the government is unable to rebut this showing.” *Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003).

27. Mr. Duong has made the *Zadvydas* showing many times over. His removal order has been final for more than twenty-seven years; the Government has never removed him; and, upon information and belief, Cambodia has never issued a travel document. As the period of

confinement (measured from the 1999 order) is now extraordinary, the “reasonably foreseeable future” has correspondingly “shrink[ed]” to the vanishing point. *Zadvydas*, 533 U.S. at 701. The Government cannot rebut this showing.

28. Courts have ordered release on materially similar facts, including for noncitizens whom Cambodia and other countries would not repatriate. In *Kem v. Noem*, No. 3:25-cv-997 DRL-SJF (N.D. Ind. Jan. 14, 2026), a Cambodian refugee who became a lawful permanent resident, was ordered removed, released on an order of supervision when Cambodia denied travel documents, and re-detained at a 2025 check-in, the court granted the writ, holding that “[t]here is nothing in *Zadvydas*, or in a statute that the government cites, that would support allowing ICE to re-detain a noncitizen in Mr. Kem’s shoes, who remains subject to an order of supervision, and hold that person for six months without justification,” and observing that “[n]o additional travel documents have been requested from Cambodia, and no alternative country has been identified that might accept Mr. Kem for removal.” *See also Rajigah v. Conway*, 268 F. Supp. 2d 159, 166, 168 (E.D.N.Y. 2003) (granting the writ where “plaintiff has shown that there is a significant likelihood that he will not be removed in the reasonably foreseeable

future,” and ordering ICE “to release petitioner immediately . . . in an order of supervision”); *D’Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 377 (W.D.N.Y. 2009) (finding the petitioner made the *Zadvydas* showing “and . . . respondents have not rebutted that showing”).

29. Mr. Duong’s removal is, if anything, less foreseeable than in those cases. *See also Poenv v. Smith*, 169 F. Supp. 3d 297, 300 (D. Mass. 2016) (Cambodian national; denying motion to dismiss where the Government “ha[d] not submitted any information suggesting that Cambodia is likely to approve the Petitioner’s repatriation”).
30. The proper remedy is immediate release. *Zadvydas* directs release once the showing is unrebutted, and the Supreme Court has held that § 1231(a)(6) does not require, in lieu of release, a bond hearing at which the Government bears the burden of proof by clear and convincing evidence. *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) (so holding). Mr. Duong therefore seeks release on an order of supervision, not a bond hearing.

**COUNT II: MR. DUONG’S RE-DETENTION,
AFTER ROUGHLY TWENTY YEARS OF
COMPLIANT SUPERVISION AND WITHOUT ANY
CHANGED CIRCUMSTANCE, IS UNLAWFUL; THE
PRESUMPTIVELY-REASONABLE PERIOD DOES
NOT RESTART, AND THE GOVERNMENT BEARS
THE BURDEN**

31. Mr. Duong is not a newly-ordered detainee in his first removal period. His removal period began, and the six-month presumptively-reasonable period elapsed, and elapsed a quarter of a century ago. The Government may not manufacture a fresh six-month window by re-arresting a noncitizen who has lived for decades under an order of supervision.
32. Where a noncitizen is re-detained after release on supervision, the re-detention is governed by 8 C.F.R. § 241.13(i)(2), and the Government bears the burden to show both changed circumstances and a significant likelihood of removal. See *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) (re-detention requires “an individualized determination” “by ICE” that, “based on changed circumstances,” “removal has become significantly likely in the reasonably foreseeable future”); *Pan v. Oddo*, No. 3:25-cv-265 (W.D. Pa. Dec. 1 & 21, 2025) (slip op.) (holding “it is the Government’s burden to show a significant likelihood that the noncitizen may be removed,” and ordering release).

33. No circumstance has changed. Cambodia still issues no travel document; Mr. Duong committed no supervision violation; and ICE has identified no new basis for believing removal is now likely. Re-detention on this record is unlawful.

**COUNT III — ICE’S REDETENTION OF MR.
DUONG AND FAILURE TO FOLLOW ITS OWN
MANDATORY REVOCATION AND CUSTODY-
REVIEW PROCEDURES VIOLATES ITS
REGULATIONS AND THE DUE PROCESS CLAUSE**

34. An agency is bound to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954). ICE’s regulations prescribe the process for revoking an order of supervision and for custody review. See 8 C.F.R. §§ 241.4(l), 241.13. A noncitizen released on supervision retains constitutional protections when ICE moves to revoke that release. *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y. 2025) (“Noncitizens, even those subject to a final removal order, have constitutional rights just like everyone else in the United States.”) (citing *Zadvydas*, 533 U.S. at 693) (granting the writ in part and ordering release).

35. Upon information and belief, ICE re-detained Mr. Duong at his scheduled report without affording him the notice, the opportunity for an informal interview, or the post-revocation custody review required

by 8 C.F.R. § 241.4(l) and § 241.13. ICE's failure to follow its own mandatory procedures violated those regulations and deprived Mr. Duong of due process.

**COUNT IV — ICE'S DETENTION OF MR.
DUONG IS ARBITRARY, CAPRICIOUS, AND
CONTRARY TO LAW UNDER THE
ADMINISTRATIVE PROCEDURE ACT**

36. ICE's detention of Mr. Duong, in contravention of § 1231(a)(6), *Zadvydas*, and ICE's own regulations, is agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," and must be set aside. 5 U.S.C. § 706(2)(A); see *id.* § 555(b). This Court's review of ICE's legal authority to detain is not foreclosed by § 1252. *Calderon v. Sessions*, 330 F. Supp. 3d 944, 954 (S.D.N.Y. 2018) ("The Court's review of ICE's legal authority is not foreclosed by 8 U.S.C. § 1252(g).").

**COUNT V: MR. DUONG IS ENTITLED TO A
STAY OF REMOVAL TO ANY THIRD COUNTRY
AND A MEANINGFUL OPPORTUNITY TO SEEK
WITHHOLDING OF REMOVAL AND PROTECTION
UNDER THE CONVENTION AGAINST TORTURE
BEFORE ANY SUCH REMOVAL.**

37. Mr. Duong fears return to Cambodia and has never had the opportunity to seek protection. Should the Government attempt to remove him to a third country in lieu of Cambodia, he is entitled to a meaningful

opportunity to seek withholding of removal and protection under the Convention Against Torture before any such removal. See 8 U.S.C. § 1231(b)(3); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 393 (D. Mass. 2025) (a noncitizen must be provided meaningful opportunity, and a minimum of 15 days, to seek to move to reopen immigration proceedings to challenge the potential third-country removal); *E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir. 2020) (the “now or never” principle permits a noncitizen to raise such a challenge before removal).

38. Mr. Duong therefore requests an order staying any third-country removal and requiring thirty days’ advance written notice of any designated third country, together with a meaningful opportunity to seek protection before removal.

IRREPARABLE HARM AND THE NEED FOR EMERGENCY RELIEF

39. Mr. Duong is suffering ongoing unlawful detention, which is itself irreparable injury. The threatened transfer out of this District compounds that harm: it would separate Mr. Duong from his counsel and his family and would threaten to defeat this Court’s jurisdiction over his petition before it can be decided. The equities and the public interest favor relief; there is no legitimate governmental interest in

detaining a long-compliant lawful permanent resident whom the Government cannot remove. See *Zadvydas*, 533 U.S. at 690.

DEMAND FOR RETURN WITHIN THREE DAYS

40. Petitioner demands that, pursuant to 28 U.S.C. § 2243, the writ be made returnable within three days. Expedited consideration is warranted because: (a) Mr. Duong's removal order has been final since March 1, 1999, and, upon information and belief, no travel document has issued and Cambodia has not accepted his return in the more than twenty-seven years since; (b) Mr. Duong has been detained since on or about May 4, 2026, with no indication that removal is imminent or possible, and faces imminent transfer out of this District; (c) Mr. Duong's father, an eighty-three-year-old United States citizen, is seriously ill, bedridden, and dependent on supplemental oxygen, and his continued detention compounds the hardship to his United States citizen family; (d) courts have ordered release on materially identical facts, see *Kem v. Noem*, No. 3:25-cv-997 DRL-SJF (N.D. Ind. Jan. 14, 2026), and *Rajigah v. Conway*, 268 F. Supp. 2d 159 (E.D.N.Y. 2003); and (e) upon information and belief, the Government failed to comply with mandatory regulatory procedures in re-detaining Mr. Duong.

**MOTION FOR A TEMPORARY RESTRAINING ORDER AND STAY
OF TRANSFER**

41. To preserve the status quo and this Court's jurisdiction, Mr. Duong moves under Federal Rule of Civil Procedure 65 and the All Writs Act, 28 U.S.C. § 1651(a), for a temporary restraining order prohibiting Respondents from transferring him outside this District or removing him from the United States pending decision on this petition.
42. The All Writs Act confers "a limited judicial power to preserve the court's jurisdiction or maintain the status quo by injunction." *FTC v. Dean Foods Co.*, 384 U.S. 597, 604 (1966). That power "include[s] . . . [the] grant of authority to enjoin and bind non-parties to an action when needed to preserve the court's ability to reach or enforce its decision in a case over which it has proper jurisdiction." *In re Baldwin-United Corp.*, 770 F.2d 328, 338 (2d Cir. 1985); see *United States v. Int'l Bhd. of Teamsters*, 266 F.3d 45, 49-50 (2d Cir. 2001). A district court retains jurisdiction over a habeas petition even if the Government later moves the petitioner. *Rumsfeld v. Padilla*, 542 U.S. at 441; see *id.* at 454 (Kennedy, J., concurring). Courts have used this authority to bar the transfer or removal of immigration detainees to preserve jurisdiction. See *Dvortsin v. Noem*, No. 25-cv-01741-NYW (D. Colo. June 4, 2025) (ordering, "[p]ursuant to the All Writs Act, 28 U.S.C. § 1651(a) and

Fed. R. Civ. P. 65(b), and in order to preserve the Court’s jurisdiction,” that “Defendants SHALL NOT REMOVE [the petitioners] . . . from the District of Colorado or the United States unless or until this Court or the Court of Appeals for the Tenth Circuit vacates this Order”).

43. Mr. Duong satisfies the standard for preliminary relief. This Circuit requires (a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief. *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010); see *Salinger v. Colting*, 607 F.3d 68, 79-80 (2d Cir. 2010); *Winter v. NRDC*, 555 U.S. 7 (2008). For the reasons in Counts I and II, Mr. Duong is likely to succeed, and the balance of hardships tips decidedly in his favor.

44. This relief rests on the Court’s independent jurisdiction under §§ 2241 and 1331; the All Writs Act operates “in aid of” that jurisdiction and is not itself a grant of jurisdiction. *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 31 (2002).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Issue a writ of habeas corpus and order Mr. Duong's immediate release from custody on an appropriate order of supervision;
- b. Declare that Mr. Duong's continued detention violates 8 U.S.C. § 1231(a)(6), the Fifth Amendment Due Process Clause, the Administrative Procedure Act, the *Accardi* doctrine, and 8 C.F.R. §§ 241.4 and 241.13;
- c. Declare that Mr. Duong's re-detention without changed circumstances violates 8 C.F.R. § 241.13(i)(2) and due process;
- d. Order that any future revocation of supervision comply with the notice, interview, and custody-review requirements of 8 C.F.R. § 241.4(l);
- e. Stay removal to any third country and order thirty days' advance written notice of any designated third country, with a meaningful opportunity to seek withholding of removal and protection under the Convention Against Torture;
- f. Issue a temporary restraining order and preliminary injunction prohibiting Respondents from transferring Mr. Duong outside this District or removing him from the United States pending decision, and

retain jurisdiction until Respondents fully comply with the Court's orders;

g. Award costs and reasonable attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

h. Grant such other and further relief as is just and proper.

Dated: May 27, 2026
New York, New York

Respectfully submitted,



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VERIFICATION

I, Joshua E. Bardavid, declare under penalty of perjury under 28 U.S.C. § 1746 that I am counsel for Petitioner; that I have prepared this Petition based on the records in my possession and information provided by Petitioner's family; and that the factual allegations herein are true and correct to the best of my knowledge, information, and belief.

Dated: May 27, 2026
New York, New York

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'J. Bardavid', written in dark ink.

Joshua E. Bardavid