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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 NAK KIM CHHOEUN, MONY
 13 NETH, individually and on behalf of
 14 a class of similarly-situated
 15 individuals,

Petitioners,

v.

17 DAVID MARIN, Field Office
 18 Director, Los Angeles Field Office,
 19 United States Immigration and
 20 Customs Enforcement; DAVID W.
 21 JENNINGS, Field Office Director,
 22 San Francisco Field Office, United
 23 States Immigration and Customs
 24 Enforcement; THOMAS D.
 25 HOMAN, Acting Director, United
 26 States Immigration and Customs
 27 Enforcement; ELAINE C. DUKE,
 28 Acting Secretary, United States
 Department of Homeland Security;
 JEFFERSON B. SESSIONS III,
 United States Attorney General;
 SANDRA HUTCHENS, Sheriff of
 Orange County; and SCOTT R.
 JONES, Sheriff of Sacramento
 County,

Respondents.

Case No.

**HABEAS CORPUS CLASS ACTION
 PETITION AND CLASS ACTION
 COMPLAINT FOR INJUNCTIVE
 AND DECLARATORY RELIEF**

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INTRODUCTION

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2 1. Petitioners Nak Kim Chhoeun and Mony Neth bring this lawsuit
3 because, beginning in October 2017, they have been arbitrarily and unlawfully
4 detained by U.S. Immigration and Customs Enforcement (“ICE”). Petitioners’ and
5 class members’ families fled Cambodia in the 1970s to escape the Khmer Rouge’s
6 campaign of mass murder and torture. They arrived in the United States as small
7 children after their families secured refugee status. Petitioners and class members
8 have lived in the United States ever since. Almost all are lawful permanent
9 residents. Many have never set foot in Cambodia. In every possible sense, the
10 United States is their only home.

11 2. Petitioners and class members were ordered removed based on
12 criminal convictions—in many cases, decades-old convictions for offenses they
13 committed as teenagers. They were released from ICE custody because Cambodia
14 would not accept their repatriation. They returned to their communities under
15 orders of supervision, reporting regularly to ICE and complying with the conditions
16 of their release. Many have U.S. citizen spouses, children, siblings, and relatives
17 who rely on them for support. For years, they have cared for their families and led
18 peaceful and productive lives in their communities.

19 3. Nonetheless, beginning on approximately October 1, 2017, ICE
20 abruptly commenced a series of raids and other enforcement actions across
21 California and other states to detain Petitioners and class members without cause
22 and without providing procedural protections required by law. ICE detained
23 Petitioners and class members without any evidence that Cambodia would now
24 accept their repatriation. ICE also conducted raids in disregard of basic procedural
25 rights. On information and belief, Petitioners and class members have received no
26 adequate explanation of the reasons for detention, no opportunity to be heard
27 regarding any purported reasons for detention, and no individualized consideration
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1 before a neutral decisionmaker regarding whether they pose a danger or flight risk
2 that could warrant detention.

3 4. Petitioners bring this action on behalf of themselves and approximately
4 1,900 other similarly-situated persons to prevent and challenge arbitrary and
5 indefinite detentions that violate statutory and regulatory law as well as the
6 Constitution. On information and belief, over 100 Cambodian refugees already
7 have been unlawfully detained in the October 2017 raids, and ICE continues to
8 undertake unlawful actions to arbitrarily detain Cambodians. Many of those
9 targeted live in California, with large numbers residing in Long Beach, Modesto,
10 and Stockton, California.

11 **FACTUAL BACKGROUND**

12 5. Petitioners and class members came to the U.S. after fleeing as
13 children from the horrors of the Khmer Rouge in Cambodia or being born abroad to
14 parents fleeing Cambodia. They grew up in communities in crisis. Cambodian
15 refugee families struggled with unaddressed trauma, poverty, and violence-ridden
16 neighborhoods, with almost no culturally competent resources to address their
17 needs. Petitioners and class members made mistakes in their youth, which led to
18 involvement with the criminal justice system, and ultimately removal proceedings.

19 6. Petitioners were previously detained by ICE and ordered removed, but
20 were released from ICE custody years ago because Cambodia declined to permit
21 repatriation. ICE recognizes that Cambodia rarely permits repatriation and does so
22 only after conducting interviews and ascertaining the propriety of repatriation on a
23 case-by-case basis. Indeed, for many years, the United States lacked any
24 repatriation agreement with Cambodia, resulting in no realistic possibility that
25 Cambodia would accept Petitioners or class members for repatriation. Even after
26 the United States and Cambodia signed a repatriation agreement in March 2002,
27 Cambodia has accepted only a limited number of persons for repatriation each year
28 (an average of 35), and still regularly refuses to issue travel documents.

1 7. In 2016, Cambodia’s Prime Minister convened a taskforce to study
2 repatriation in response to public outcry regarding the harm caused to individuals,
3 families, and communities when a child refugee is repatriated to a country they do
4 not know and is not their home. Like Petitioners and class members, those deported
5 had never lived in Cambodia or left as children, had U.S. citizen family members
6 who depended upon them for affection, care, and support, lacked any personal or
7 business ties in Cambodia, and had made the U.S. their home for decades.
8 Deportation meant leaving behind U.S. citizen spouses, children, siblings, and
9 elderly parents, many of whom lost children to war, only to be separated from
10 another child by the very government that promised to protect their families. In
11 October 2016, Cambodia notified the United States that the 2002 repatriation
12 agreement would be suspended until appropriate revisions could be negotiated,
13 including to account for humanitarian, compassionate, and human rights
14 considerations.

15 8. On September 13, 2017, the United States announced that it was
16 placing visa sanctions on Cambodia, denying tourist visas to certain government
17 officials and their families until Cambodia agreed to facilitate U.S. removal efforts.
18 Within weeks, ICE began conducting raids that targeted Cambodian refugees on a
19 scale never seen before. Armed ICE officers raided homes and workplaces. Some
20 class members were detained at ICE offices during regularly-scheduled reporting
21 dates. Some received phone calls or letters from ICE asking without explanation for
22 them to report early and were detained upon appearing. On information and belief,
23 ICE continues to engage in such activities that target child refugees from
24 Cambodia.

25 9. The individuals detained to date have been given little, if any,
26 information about why their orders of supervision were revoked even though they
27 have been fully complying with the orders. Petitioners and class members have not
28 been provided with any reliable grounds to believe that Cambodia will agree that

1 repatriation would be humane, appropriate, or warranted in their cases. On
2 information and belief, ICE has no particularized evidence that Petitioners and class
3 members can be repatriated to Cambodia. In addition, Petitioners and class
4 members have not received an individualized hearing before a neutral
5 decisionmaker to assess whether detention is warranted due to danger or flight risk.

6 10. ICE has transferred Petitioners and class members from one end of the
7 country to another, in some instances multiple times, placing greater financial and
8 emotional strain on Petitioners and their families, and impairing their ability to
9 obtain counsel or exercise legal and constitutional rights. On information and belief,
10 ICE often has provided inaccurate or incomplete information, or outright refused to
11 provide information, to family, friends, and attorneys about transfers, exacerbating
12 fear and uncertainty for Petitioners and class members, as well as their spouses,
13 children, relatives, and communities.

14 **JURISDICTION**

15 11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241
16 (habeas corpus), the Suspension Clause of Article I of the U.S. Constitution, 28
17 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361 (mandamus), and 5 U.S.C. §§
18 701 *et seq.* (Administrative Procedures Act). The Court may also grant relief under
19 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act) and 28 U.S.C. § 1651 (All Writs
20 Act).

21 **VENUE**

22 12. Venue is proper in the Central District of California under 28 U.S.C. §
23 1391(e) because Respondents are federal officers sued in their official capacity,
24 Respondent Marin is based in this district, Petitioner Chhoeun and numerous class
25 members reside in this district, and a substantial part of the events or omissions
26 giving rise to these claims occurred in this district. Venue is also proper under 28
27 U.S.C. § 2241 because Petitioner Chhoeun and numerous class members are
28

1 confined in this district, and because Respondents have the authority to detain and
2 release Petitioners and class members.

3 **PARTIES**

4 13. Petitioner Nak Kim Chhoeun is a 42-year-old citizen of Cambodia
5 who entered the United States in 1981 as a refugee when he was six years old. Mr.
6 Chhoeun became a lawful permanent resident when he was a child. In 1999, he
7 pleaded to simple assault and unlawful possession of a firearm. Based on these
8 convictions, he was ordered removed to Cambodia in 2003. Cambodia, however,
9 declined to accept repatriation. After filing a petition for writ of habeas corpus
10 challenging his indefinite detention, Mr. Chhoeun was released from custody in
11 2003. Since his release from custody, Mr. Chhoeun has had no further convictions
12 or arrests and has complied with the terms of his order of supervision with ICE. Mr.
13 Chhoeun is employed as a technician with AT&T, a job that he has held for
14 fourteen years. His mother and six siblings are all U.S. citizens. On October 20,
15 2017, ICE unexpectedly asked Mr. Chhoeun to report. When he reported as
16 requested, ICE officers arrested him and transported him to the Theo Lacy Facility
17 in Orange, California. On information and belief, ICE has no individualized basis to
18 believe that Mr. Chhoeun can be repatriated to Cambodia. ICE did not provide Mr.
19 Chhoeun with notice of the reason for his arrest or an opportunity to respond. Nor
20 has Mr. Chhoeun received individualized consideration before a neutral
21 decisionmaker of whether he poses a danger or flight risk.

22 14. Petitioner Mony Neth is a 42-year-old citizen of Cambodia who
23 entered the United States in 1985 as a refugee fleeing the Khmer Rouge when he
24 was ten years old. Mr. Neth became a lawful permanent resident. He lives with his
25 wife, 16-year-old daughter, and parents, all U.S. citizens, in Modesto, California. In
26 1995, Mr. Neth was convicted of unlawful possession of a weapon and receipt of
27 stolen property. In 1997, Mr. Neth completed his sentence and was transferred to
28 ICE custody, but was released on bond because he did not pose a danger or flight

1 risk. In 2010, Mr. Neth received a final order of removal to Cambodia and
2 surrendered himself to ICE for removal. After repatriation efforts failed, Mr. Neth
3 was released on an order of supervision and has fully complied with the terms of
4 that order. Mr. Neth works as a foreman installing solar panels. He is an active
5 member in his local church community, and he regularly serves meals to the
6 homeless. Mr. Neth has had no convictions since 1995 and has received a certificate
7 of rehabilitation for the 1995 convictions from Stanislaus County Superior Court,
8 the first step to receiving a governor's pardon. On October 20, 2017, without
9 warning, ICE arrested Mr. Neth while he was driving to work. ICE is detaining Mr.
10 Neth in the Rio Cosumnes Correctional Center in Elk Grove, California. On
11 information and belief, ICE has no individualized basis to believe that Mr. Neth can
12 be repatriated to Cambodia. ICE did not inform Mr. Neth why he was being
13 detained or give him an opportunity to respond. Moreover, ICE has detained Mr.
14 Neth without regard to whether he poses a danger or flight risk, and he has not
15 received individualized consideration of danger or flight risk before a neutral
16 decisionmaker.

17 15. Respondent David Marin is the Field Office Director for the Los
18 Angeles Field Office of ICE, which has detention authority over noncitizens in the
19 Los Angeles metropolitan area and California's central coast. Respondent Marin is
20 a legal custodian of Petitioner Chhoeun, and of all members of the proposed class
21 who are detained in the Los Angeles Field Office's area of responsibility.

22 16. Respondent David W. Jennings is the Field Office Director for the San
23 Francisco Field Office of ICE, which has detention authority over noncitizens in
24 northern California, Hawaii, Guam, and Saipan. Respondent Jennings is a legal
25 custodian of Petitioner Neth, and of all members of the proposed class who are
26 detained in the San Francisco Field Office's area of responsibility.

27 17. Respondent Thomas D. Homan is the Acting Director of ICE. As the
28 head of ICE, an agency within the United States Department of Homeland Security

1 that detains and removes noncitizens, Respondent Homan is a legal custodian of
2 Petitioners and all class members.

3 18. Respondent Elaine C. Duke is the Acting Secretary of the United
4 States Department of Homeland Security. She is responsible for the implementation
5 and enforcement of the immigration laws and oversees ICE. Respondent Duke has
6 ultimate custodial authority over Petitioners and all class members.

7 19. Respondent Jefferson B. Sessions III is the Attorney General of the
8 United States. As the head of the United States Department of Justice, which
9 oversees the immigration courts, Respondent Sessions shares responsibility for
10 enforcement of the immigration laws with Respondent Duke.

11 20. Respondent Sandra Hutchens is the Sheriff of Orange County, which
12 holds a contract with ICE to detain noncitizens. Respondent Hutchens is
13 responsible for the operation of the Theo Lacy Facility in Orange, California, where
14 Petitioner Chhoeun is detained.

15 21. Respondent Scott R. Jones is the Sheriff of Sacramento County, which
16 holds a contract with ICE to detain noncitizens. Respondent Jones is responsible for
17 the operation of the Rio Cosumnes Correctional Center in Elk Grove, California,
18 where Petitioner Neth is detained.

19 22. All Respondents are sued in their official capacity.

20 **LEGAL BACKGROUND**

21 23. 8 U.S.C. § 1231(a) governs the detention of persons like Petitioners
22 and class members who have been ordered removed. The statute directs ICE to
23 detain individuals for 90 days while carrying out a removal order. § 1231(a) 2). The
24 90-day “removal period” generally begins when a removal order becomes final.
25 Absent an applicable exception, a person who is not removed within the 90-day
26 removal period is supposed to be released subject to supervision. § 1231(a)(3).

27 24. Section 1231(a)(6) permits detentions beyond 90 days in limited
28 circumstances. But even when § 1231(a)(6) applies, the Supreme Court in

1 *Zadvydas v. Davis* has held that § 1231(a)(6) does not permit indefinite detentions.
2 533 U.S. 678, 689 (2001). ICE’s detention authority is limited to a period
3 “reasonably necessary” to carry out removal and only when necessary to assure a
4 person’s presence for removal. Detention is not permissible when removal is not
5 “reasonably foreseeable.”

6 25. To provide guidance to lower courts, the Supreme Court in *Zadvydas*
7 recognized six months as a “presumptively reasonable period of detention.” The
8 six-month period, however, is a presumption, not a rule. A person must be released
9 before six months if repatriation is not reasonably foreseeable, and ICE’s
10 regulations authorize release anytime after the 90-day removal period if removal is
11 not reasonably foreseeable. 8 C.F.R. § 241.13.

12 26. Even when removal appears reasonably foreseeable, detention must
13 serve a legitimate government interest, namely to prevent danger or flight risk. Due
14 process requires a meaningful, individualized hearing before a neutral
15 decisionmaker to assess danger and flight risk. The government’s own regulations
16 permit the release of a person who does not pose a danger or flight risk pending
17 removal—“without regard to the likelihood of the alien’s removal in the reasonably
18 foreseeable future.” 8 C.F.R. § 241.13(b)(1). The regulations require ICE to
19 conduct a post-order custody review (“POCR”) by the end of the 90-day removal
20 period to assess the need for further detention. 8 C.F.R. § 241.4(h)(1).

21 27. A person with a removal order who is released from custody generally
22 is subject to an order of supervision. 8 C.F.R. § 241.4(j); 241.13(h). Such an order
23 typically requires, among other things, that the person report to ICE periodically
24 and continue cooperating with ICE’s efforts to carry out removal. 8 C.F.R. §
25 241.5(a).

26 28. Regulations outline when ICE can revoke orders of supervision and re-
27 detain individuals. A person who was released because removal was not reasonably
28 foreseeable can be re-detained only for violating a condition of release (§

1 241.13(i)(1)), or if removal has become reasonably foreseeable in light of changed
2 circumstances (§ 241.13(i)(2)). A person whose order of supervision is being
3 revoked is entitled to notice and an opportunity to be heard. ICE is required by
4 regulation to inform the person of the reasons for revocation and allow the person
5 to respond. § 241.13(i)(3). ICE must evaluate any contested facts and determine
6 whether the facts “warrant revocation and further denial of release.” *Id.*

7 **CLASS ALLEGATIONS**

8 29. Subject to their right to amend at the time of class certification,
9 Petitioners bring this action on behalf of themselves and all other similarly-situated
10 individuals pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) and as
11 a representative habeas class action.

12 30. Subject to their right to amend at the time of class certification,
13 including to allege subclasses (if any), the proposed class is defined as: All
14 Cambodian citizens in the United States who received final orders of deportation or
15 removal to Cambodia, and were subsequently released from ICE custody, who have
16 been or may be re-detained for removal by ICE.

17 31. Petitioners seek injunctive and declaratory relief on grounds that apply
18 to the class as a whole.

19 32. Members of the proposed class are so numerous that joinder is
20 impracticable. Upon information and belief, there are approximately 1,900 class
21 members, and more than 100 class members have been detained by ICE since
22 October 2017.

23 33. There are multiple questions of law and fact common to members of
24 the proposed class, including:

25 a. Whether Respondents complied with regulations requiring them to
26 provide class members notice and an interview upon revocation of release;

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28

1 b. Whether Respondents had and have sufficient evidence that class
2 members' removal is reasonably foreseeable to justify revocation of release and
3 continued detention; and

4 c. Whether Respondents afforded class members individualized
5 determinations of the need for detention that satisfy due process.

6 34. Petitioners' claims are typical of the claims of the proposed class. In
7 addition, Petitioners will fairly and adequately represent the interests of all
8 members of the proposed class. Petitioners seek relief that is identical to the relief
9 sought by all class members, and they have no interests that are adverse to other
10 class members. Petitioners have retained *pro bono* counsel who have experience in
11 immigration law and class action litigation and will adequately represent the
12 interests of the class.

13 **CLAIMS FOR RELIEF**

14 **COUNT ONE**

15 **Unlawful Revocation of Release**

16 35. The foregoing allegations are realleged and incorporated herein.

17 36. Petitioners and class members were previously detained by
18 Respondents and released only because their removal could not be effectuated.

19 37. As long as Petitioners and class members comply with the conditions
20 of their release, Respondents have authority to revoke release only if circumstances
21 have changed to permit Petitioners' and class members' removal in the reasonably
22 foreseeable future. 8 C.F.R. § 241.13(i)(2); 8 U.S.C. § 1231(a)(6).

23 38. Respondents revoked Petitioners' and class members' release without
24 evidence that any particular person can now be repatriated, where previous
25 repatriation efforts failed, and without regard to the person's likelihood of removal.
26 Respondents know based on past experience and recent public statements that
27 Cambodia intends to restrict the criteria it applies when considering whether to
28 accept a person for repatriation.

1 47. Post-removal order detention violates 8 U.S.C. § 1231(a)(6) where
2 removal is not significantly likely to occur in the reasonably foreseeable future.
3 *Zadvydas v. Davis*, 533 U.S. 678 (2001).

4 48. Detention where removal is not reasonably foreseeable also violates
5 due process.

6 49. Petitioners and class members already have endured months or years
7 of post-removal order detention before being released prior to October 2017
8 because they could not be repatriated. They have made their initial showing under
9 *Zadvydas* of “good reason to believe” that their removal is not significantly likely.
10 *Id.* at 701.

11 50. Respondents cannot rebut this showing, as they lack any
12 individualized evidence to believe that removal of Petitioners or class members is
13 reasonably foreseeable.

14 51. ICE’s practice of initiating a new six-month period of detention for
15 each detention frustrates and defeats the constitutional limits on detention
16 recognized by the Supreme Court in *Zadvydas* and results in detentions that serve
17 no legitimate governmental interest.

18 52. Petitioners’ and class members’ detention under these circumstances
19 violates Section 1231 and due process under the U.S. Constitution.

20 53. Petitioners and class members are entitled to immediate release on
21 orders of supervision.

22 **COUNT FOUR**

23 **Unlawful Detention Without Individualized Determinations of Danger and** 24 **Flight Risk**

25 54. The foregoing allegations are realleged and incorporated herein.

26 55. Detention violates Section 1231 and due process under the U.S.
27 Constitution unless it is reasonably related to the government’s purposes of
28 preventing flight and protecting the community. *Zadvydas*, 533 U.S. at 690-91.

1 56. Before being re-detained, Petitioners and class members lived in their
2 communities for months or years without absconding or harming the community.
3 Petitioners and class members have received no process whatsoever to determine
4 whether their detention is warranted.

5 57. Petitioners and class members are entitled to individualized
6 determinations by impartial adjudicators of whether detention is justified based on
7 danger or flight risk.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Petitioners respectfully request that the Court grant the following
10 relief:

- 11 a. Assume jurisdiction over this matter;
- 12 b. Certify this matter as a class action, name Petitioners as class
13 representatives, and appoint Petitioners' counsel as class counsel;
- 14 c. Declare that Respondents have violated the rights of the class;
- 15 d. Order Respondents to notify Petitioners and class members of the
16 reasons for revocation of their release and provide Petitioners and class members a
17 prompt interview as required by regulation;
- 18 e. Order Respondents to release from detention Petitioners and all class
19 members for whom Respondents lack individualized evidence that removal is not
20 significantly likely to occur in the reasonably foreseeable future;
- 21 f. Order Respondents to release Petitioners and all class members from
22 detention absent an individualized determination by an impartial adjudicator that
23 their detention is justified based on danger or flight risk, which cannot be
24 sufficiently addressed by alternative conditions of release and/or supervision;
- 25 g. Enjoin Respondents from revoking any class member's release unless
26 Respondents have individualized evidence that the class member's removal is
27 reasonably foreseeable;
- 28

1 h. Enjoin Respondents from revoking any class member’s release, at least
2 until they can ensure that class members will be provided minimum procedural
3 protections required by regulation;

4 i. Award Petitioners reasonable attorneys’ fees and costs under the Equal
5 Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law;
6 and

7 j. Grant any other and further relief as the Court deems just and proper.
8

9 Dated: October 27, 2017

Respectfully submitted,

10 

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