

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON**

Sieng Kim Khim v. Pamela Bondi, et al.

No. 2:25-cv-02383-RSL (W.D. Wash. Dec. 17, 2025) · No. 2:25-cv-02383-RSL · Decided December 17, 2025

OPINION

1 2 3 4 5 UNITED STATES DISTRICT COURT 6 FOR THE WESTERN DISTRICT OF
WASHINGTON AT SEATTLE 7 8 SIENG KIM KHIM, CASE NO. 2:25-cv-02383-RSL 9
Petitioner, v. 10 11 PAMELA BONDI, et al., ORDER GRANTING A WRIT OF HABEAS
CORPUS AND 12 Respondents. INJUNCTION 13 14 This matter comes before the Court on a
“Petition for Writ of Habeas Corpus Under 15 28 U.S.C. § 2241 and Request for Injunctive
Relief.” Dkt.

2. Respondents oppose the 16 petition. Having reviewed the memoranda, declarations, and
exhibits submitted by the 17 parties, the Court finds as follows: 18 BACKGROUND 19 Mr. Khim
was born in Cambodia in October 1973 in the midst of a civil war: he has 20 no birth certificate or
other record proving Cambodian citizenship. He and his family were 21 admitted to the United
States as refugees in the early 1980s.1 Mr. Khim’s status was 22 adjusted to Lawful Permanent
Resident in January 1989, retroactive to his date of entry.

In 23 October 1993, Mr. Khim was convicted of possession of an unregistered firearm, and ICE
24 25 26 1 Mr. Khim asserts that he entered the United States in or around 1981. ICE records
reflect an entry date of July 24 or 26, 1984. Dkt. 13-1 at 2 and 4; Dkt. 13-2 at 3. ORDER
GRANTING A WRIT OF HABEAS CORPUS AND 1 issued an Order to Show Cause (the
precursor of the Notice to Appear).2 Mr. Khim was 2 ordered removed to Cambodia on October
26, 1995, and held in ICE detention for more 3 than three years.

He was released on an Order of Supervision on December 11, 1998, 4 because the United States
Immigration and Customs Enforcement (“ICE”) was unable to 5 obtain travel documents for him.
6 When Mr. Khim reported to ICE on August 22, 2025, in accordance with the 7 conditions of his
release, he was re-detained “[p]er ERO headquarters guidance [that] there 8 is now a significant
likelihood of removal to Cambodia in the reasonably foreseeable 9 future.” Dkt.

13-2 at 3. He was served with a Notice of Revocation of Release Letter and 10 interviewed on that
date. Deportation Officer Miller noted on the Record of 11 Deportable/Inadmissible Alien that Mr.
Khim “has 22 pages of criminal history.” Dkt. 13- 12 2 at 4.3 There is no indication, however, that
Mr. Khim failed to comply with the 13 conditions of his release prior to his re-detention in August
2025.4 Nor is there any 14 indication that Mr. Khim has been requested to complete a travel
document application, 15 that an application has been translated, that internal permissions to make

a Travel 16 Document Request (“TDR”) to the government of Cambodia have been sought or granted, 17 or that a TDR request has been made.

Mr. Khim remains in ICE custody at the Northwest 18 ICE Processing Center in Tacoma, Washington. 19 20 21 2 Although respondents argue that Mr. Khim was placed in removal proceedings because of four separate criminal 22 arrests, charges, and/or convictions occurring in 1993, Dkt. 11 at 5, only the October 12, 1993, conviction is mentioned in the contemporaneous records, Dkt.

13-1 at 4. 23 3 Deportation Officer Liu’s summary of an “FBI RAP sheet” that has not been submitted to the Court or 24 authenticated is inadmissible hearsay and has not been considered. Dkt. 12 at ¶ 5. Petitioner concedes his criminal conviction history in reply, however, and it can be considered as an admission. Dkt. 14 at 8. Nevertheless, the focus of the Zadvydas analysis is whether there is a significant likelihood of removal in the reasonably foreseeable future, not 25 whether the petitioner poses a flight risk or a danger to the community.

26 4 Respondents’ assertion that one of the conditions of Mr. Khim’s release was that he refrain from committing any federal, state, or local crimes is not supported by the cited document. Dkt. 11 at 5-6; Dkt. 13-4 at 2. ORDER GRANTING A WRIT OF HABEAS CORPUS AND 1 On November 25, 2025, Mr. Khim filed the present petition for writ of habeas 2 corpus pursuant to 28 U.S.C § 2241 challenging his immigration detention under the 3 United States Constitution, the Immigration and Nationality Act (“INA”) and its 4 implementing regulations, the Convention Against Torture (“CAT”), and the 5 Administrative Procedure Act (“APA”).

Mr. Khim argues that he is entitled to habeas 6 relief on five grounds: (1) his recent detention is unreasonable because there is no 7 significant likelihood of removal in the reasonably foreseeable future; (2) Mr. Khim was 8 detained without notice and an opportunity to be heard; (3) respondents failed to comply 9 with the requirements of 8 C.F.R. § 241.13 before detaining Mr. Khim; (4) respondents’ 10 conduct shocks the conscience and interferes with rights at the core of our concept of 11 ordered liberty because Mr. Khim’s detention is punitive and exceeds the regulatory 12 purpose of immigration detention; and (5) deporting Mr. Khim to a third country would 13 constitute punitive third country banishment and violate the Fifth and Eighth Amendments.

14 Mr. Khim seeks immediate release from custody, an order prohibiting his further detention 15 without notice and a hearing before a neutral decisionmaker, an order requiring 16 respondents to reopen removal proceedings and provide notice and an opportunity to be 17 heard before attempting to remove Mr. Khim to a third country, and a finding that third- 18 country removal imposes unconstitutional punishment and is not available here.

19 DISCUSSION 20 The Court first considers the legal standards for detaining noncitizens during
21 immigration proceedings and then turns to the parties' arguments concerning the present 22
immigration habeas petition. 23 A. Legal Standards Under the INA 24 The INA expressly permits
detention of noncitizens who were admitted to the 25 United States but subsequently ordered
removed during immigration proceedings.

8 U.S.C. 26 §§ 1225(b), 1226(a), 1226(c), 1231(a). Once a noncitizen is ordered removed, the
ORDER GRANTING A WRIT OF HABEAS CORPUS AND 1 Department of Homeland
Security (of which ICE is a part) has 90 days in which to 2 accomplish removal. 8 U.S.C. § 1231.
During that 90-day removal period, the noncitizen 3 must be detained. 8 U.S.C. § 1231(a)(2).
When the government fails to remove the 4 noncitizen during that period, detention may continue
if: (1) the noncitizen is 5 "inadmissible" for specified reasons, (2) the noncitizen is "removable" as
a result of 6 violations of status requirements or entry conditions, violations of criminal law, or
reasons 7 of security or foreign policy, or (3) the noncitizen has been "determined by the Attorney
8 General to be a risk to the community or unlikely to comply with the order of removal." 8 9
U.S.C. § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).

10 Even if detention past the statutory 90-day removal period is justified under 8 11 U.S.C. §
1231(a)(6), the INA does not permit indefinite detention. *Zadvydas*, 533 U.S. at 12 682 (finding
that, in order to avoid serious constitutional concerns, the INA must be 13 interpreted to limit
detention following entry of a removal order to a "period reasonably 14 necessary to secure [the
noncitizen's] removal" from the United States) (emphasis in 15 original).

When determining whether continued detention was justified, the reviewing 16 court "should
measure reasonableness primarily in terms of the statute's basic purpose, 17 namely assuring the
[noncitizen's] presence at the moment of removal.

Thus, if removal is 18 not reasonably foreseeable, the court should hold continued detention
unreasonable and no 19 longer authorized by the statute." *Id.* at 699-700. 20 The Supreme Court
recognized, however, that the Executive Branch has greater 21 immigration-related expertise, is
enforcing a complex and extensive statute, and is the 22 nation's voice in immigration matters.

Id. at 700. In the hopes of saving federal courts 23 from having to make difficult judgment calls
regarding how much leeway to give the 24 Executive and in order to promote the uniform
administration of the statute, the Court 25 adopted a presumptively reasonable period of detention
of six months. *Id.* at 700-01.

After 26 six months of detention, a noncitizen may seek release by showing "good reason to
believe ORDER GRANTING A WRIT OF HABEAS CORPUS AND 1 that there is no significant
likelihood of removal in the reasonably foreseeable future." *Id.* 2 at 701.

The burden then shifts to the government to present “evidence sufficient to rebut 3 that showing.” Id. If the government is unable to meet its burden, then the noncitizen must 4 be released from detention. *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018). 5 A noncitizen who is subject to a final order of removal but has been released from 6 custody may be re-detained for failure to comply with the conditions set forth in the Order 7 of Supervision or if, pursuant to a change in circumstances, ICE “determines that there is a 8 significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable 9 future.” 8 C.F.R. § 241.13(i)(1)-(2).

Upon the noncitizen’s return to custody, he must be 10 given notice of the reasons his release was revoked and an opportunity to respond and 11 submit evidence. 8 C.F.R. § 241.13(i)(3). When a noncitizen is re-detained because of a 12 change in circumstances, 8 C.F.R § 241.13(f) sets forth the factors the government must 13 consider when determining whether there is a significant likelihood that the noncitizen will 14 be removed in the reasonably foreseeable future.

15 B. Mr. Khim’s Detention is Unlawful 16 1. *Zadvydas v. Davis* 17 Mr. Khim has been detained for significantly more than six months. He was first 18 detained after his weapons conviction from October 1995 to December 1998 – more than 19 three years. He was again detained on August 22, 2025, and remains in ICE custody.

In 20 total, Mr. Khim has been detained for almost three and a half years. His detention is not, 21 therefore, presumed to be reasonable under *Zadvydas*, 533 U.S. at 701. Respondents do not 22 concede that the presumptively reasonable period has ended, but provide no argument or 23 case law suggesting that the period restarts with each non-consecutive detention.

This and 24 other courts around the country have rejected similar arguments. *Abubaka v. Bondi*, No. 25 2:25-cv-01889-RSL, 2025 WL 3204369, at *3 (W.D. Wash. Nov. 17, 2025); *Nguyen v. 26 Scott*, 796 F. Supp. 3d 703, 721-22 (W.D. Wash. 2025); *Sied v. Nielsen*, No. 17-cv-06785-ORDER GRANTING A WRIT OF HABEAS CORPUS AND 1 LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr.

19, 2018); *Chen v. Holder*, No. 6:14-cv- 2 2530, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015). This Court agrees with that 3 analysis: Mr. Khim’s detention is not presumptively reasonable. 4 In this situation, Mr. Khim’s burden is to “offer a valid reason why removal is 5 unforeseeable, which the government must then disprove.” *Cesar v. Achim*, 542 F. Supp. 6 2d 897, 903 (E.D.

Wis. 2008) (emphasis in original). “[A]s the period of postremoval 7 confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would 8 have to shrink.” *Zadvydas*, 533 U.S. at 701. Mr. Khim argues that there is reason to believe 9 that he will not be removed in the reasonably foreseeable future (much less in the shorter 10 period that applies when an individual has already been detained for almost seven times 11 the presumptively reasonable period).

Mr. Khim points out that the government has been 12 unable to obtain travel documents for him for almost three decades, that he has no 13 documentation or records showing that he is a Cambodian citizen, and that it appears that 14 he was swept back into custody because ICE has a quota for immigrant detentions, not 15 because of any individualized determination that he was likely to be removed in the near 16 future.

By their own admission, respondents have no idea how long it will take Cambodia 17 to process a TDR for Mr. Khim, and, at this point in time, no such request has even been 18 made. Respondents' avowed belief that Mr. Khim can be removed in the reasonably 19 foreseeable future is based on little more than the facts that Cambodia has increased the 20 number of removals over the past three years (from 6 in 2023, to 20 in 2024, to 55 in the 21 first nine months of 2025) and that Thailand might be willing to issue travel documents.

22 Dkt. 12 at ¶¶ 13-14. Neither of those facts suggest that Mr. Khim, with his characteristics 23 and circumstances, is likely to be removed in the reasonably foreseeable future.⁵ 24 25 5 The Court rejects respondents' argument that detention becomes indefinite under Zadvydas only when the 26 designated country of removal affirmatively refuses to issue travel documents or removal is otherwise a legal impossibility.

Dkt. 11 at 9. ORDER GRANTING A WRIT OF HABEAS CORPUS AND 1 Given the shrunken period in which Mr. Khim can reasonably be held in aide of 2 deportation, his continued detention is unreasonable and no longer authorized by the INA. 3 Zadvydas, 533 U.S. at 699-700. 4 2. 8 C.F.R. § 241.13 and Due Process 5 To the extent Mr. Khim seeks release from custody to remedy alleged violations of 6 8 C.F.R. § 241.13(i), 8 C.F.R. § 241.13(f), and the Due Process Clause of the Fifth 7 Amendment, the relief is duplicative of that to which he is entitled under Zadvydas.

Mr. 8 Khim's challenges to the adequacies of the procedures used in re-detaining him are not 9 moot, however, because he also seeks an order prohibiting his future detention without 10 notice and a hearing before a neutral decisionmaker.

The Court must therefore determine 11 whether Mr. Khim received the process that was due and whether injunctive relief is 12 appropriate. 13 Petitioner has not proven that respondents' conduct in re-detaining Mr. Khim 14 violated 8 C.F.R. § 241.13(f) or (i). Pursuant to the regulations, ICE may revoke a 15 noncitizen's release and take him into custody "if, on account of changed circumstances, 16 [ICE] determines that there is a significant likelihood that the alien may be removed in the 17 reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

While the Court disagrees with 18 that determination for the reasons discussed above, that does not mean that ICE did not 19 make the determination or that it did not consider the factors set forth in 8 C.F.R. 20 § 241.13(f). Once Mr. Khim was re-detained, ICE provided notice that his

release had been 21 revoked because of a change of circumstances, and he was informally interviewed to see if 22 he had any response to the reasons for the revocation.

Dkt. 13-2 at 4. That seems to be all 23 that is required by 8 C.F.R. § 241.13(i)(3). 24 Those meager procedures do not, however, provide the process due under the Fifth 25 Amendment, which prohibits the federal government from depriving any person of “life, 26 liberty, or property, without due process of law[.]” The right to due process of law extends ORDER GRANTING A WRIT OF HABEAS CORPUS AND 1 to “all ‘persons’ within the United States, including [non-citizens], whether their presence 2 here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

For the 3 reasons set forth by the Honorable Kymberly K. Evanson in *E.A T.-B. v. Wamsley*, 795 F. 4 Supp.3d 1316 (W.D. Wash. 2025), the Court finds that the government action at issue here 5 is at the core of the liberty protected by the Due Process Clause, that the risks of erroneous 6 deprivation of liberty are high, and that the government’s interest in arresting and detaining 7 a noncitizen without a hearing is low where the noncitizen was already released because 8 the government had been persuaded that he would not abscond and would not pose a 9 danger to the community.

10 C. Removal to a Third Country 11 Mr. Khim also seeks an order requiring respondents to reopen removal proceedings 12 and provide notice and an opportunity to be heard before removing or attempting to 13 remove him to a third country, as well as a finding that respondents’ third-country removal 14 policy imposes unconstitutional punishment and cannot be applied as written.

Respondents 15 only answer is an assertion that Mr. Khim’s concern that he might be deported to a country 16 other than Cambodia is not ripe for consideration because “that is not the case at this time 17 and Petitioner provides no evidence ICE is seeking to remove him to a third country.” Dkt. 18 11 at 7. That respondents may or may not be moving through the steps necessary to 19 remove petitioner to Cambodia does not mean that they will forego the options set forth in 20 ICE’s July 9, 2025, internal memorandum regarding third-country removals.

Dkt. 2 at 17; 21 *Nguyen v. Scott*, No. 2:25-cv-1398-TMC, Dkt. 26-1 (W.D. Wash.). That memorandum, in 22 conjunction with the likelihood that Mr. Khim will not be issued travel documents to 23 Cambodia in the near future, the recent third-country deportations of hundreds of 24 immigrants under ICE’s new policies, and ICE’s bald assertion that it may be able to 25 obtain travel documents from Thailand give rise to an imminent threat that Mr. Khim will 26 ORDER GRANTING A WRIT OF HABEAS CORPUS AND 1 face third-country removal in the absence of an injunction.

Dkt. 2 at 17-18; Dkt. 12 at ¶ 14; 2 *Nguyen*, 796 F. Supp.3d at 736-37. 3 In 2019, this Court held that a “noncitizen must be given sufficient notice of a 4 country of deportation that, given his capacities and circumstances, he would have a 5 reasonable opportunity to raise and pursue his claim for withholding of deportation.” *Aden v. Nielsen*, 409 F. Supp. 3d 998 at 1009-11 (W.D.

Wash. 2019). Relying on the Due 7 Process Clause and the relevant statutes and regulations, the undersigned also held that 8 “[g]iving petitioner an opportunity to file a motion to reopen [his removal proceedings]... 9 is not an adequate substitute for the process that is due process in these circumstances.” *Id.* 10 Rather, a petitioner must be able to pursue his claim for withholding of deportation in 11 reopened removal proceedings before an immigration judge.

Id. The *Aden* decisions “flow 12 directly from binding Ninth Circuit precedent,” and ICE’s current policy on third-country 13 removals “contravenes Ninth Circuit law.” *Nguyen*, 796 F. Supp. 3d at 727-28. 14 With regards to the punitive nature of ICE’s current third-country removal policy, 15 the Court adopts the reasoning set forth in *Nguyen*, 796 F. Supp. 3d at 732-35, and finds 16 that the government is intentionally removing noncitizens to countries with which they 17 have no connection, often in contravention of the governing statute and regulations, and 18 knowing that they will be subject to imprisonment or other punishment.

Deportation with 19 the intent to punish is punitive and violates the Due Process Clause. See *Wong Wing v. 20 U.S.*, 163 U.S. 228, 236-38 (1896); *Abubaka v. Bondi*, No. 2:25-cv-01889-RSL, 2025 WL 21 3204369, at *8 (W.D. Wash. Nov. 17, 2025). 22 CONCLUSION 23 For all of the foregoing reasons, the court GRANTS Mr. Khim’s petition for writ of 24 habeas corpus (Dkt. # 2).

The Court ORDERS that Mr. Khim be released from custody 25 immediately under the conditions of his most recent Order of Supervision and that he may 26 not be re-detained unless and until notice and an opportunity to be heard before an ORDER GRANTING A WRIT OF HABEAS CORPUS AND 1 immigration judge is provided to determine whether re-detention is appropriate.

2 Respondents, their officers, agents, employees, attorneys, and persons acting on their 3 behalf or in concert with them are PROHIBITED from (a) removing or attempting to 4 remove Mr. Khim to a country other than Cambodia without notice and a meaningful 5 opportunity to be heard in reopened removal proceedings before an immigration judge and 6 (b) removing Mr. Khim to any country where he is likely to face imprisonment or other 7 punishment upon arrival.

8 9 Dated this 17th day of December, 2025. 10 11 Robert S. Lasnik 12 United States District Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 ORDER GRANTING A WRIT OF HABEAS CORPUS AND