

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THAI SENG, 02774945,  
Petitioner,

v.

WARDEN OF IMMIGRATION  
DETENTION FACILITY,  
Respondent.

Case No. 16-6818 SK (PR)

**ORDER TO SHOW CAUSE**  
(ECF Nos. 2, 3 & 6)

Petitioner Thai Seng has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2241 challenging his ongoing detention by the United States Immigration and Customs Enforcement (ICE) at the Rio Cosumnes Correctional Center in Elk Grove, California. He also seeks appointment of counsel and leave to proceed in forma pauperis (IFP) under 28 U.S.C. § 1915.

The petition is properly before the undersigned for initial review because petitioner has consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c).

**BACKGROUND**

Petitioner was born in Cambodia, admitted into the United States in 1986, and is not a citizen of the United States. On an unstated date, petitioner was convicted of first degree murder. On or about February 24, 2016, petitioner was detained by ICE and has remained in ICE custody since that date. On or about May 11, 2016, an Immigration Judge ordered

1 petitioner removed from the United States. Petitioner did not appeal that decision. On or  
2 about May 16, 2016, petitioner received a decision to continue detention from ICE, and on  
3 or about August 8, 2016 he received a second such decision to continue detention.  
4 Petitioner “has cooperated fully with all of ICE’s efforts to remove” him, but ICE has been  
5 unable to remove him and is unlikely to be able to remove him because Cambodia “is not  
6 responding most likely they can’t locate[] my birth certificate or other documents for that  
7 matter.” Pet. (ECF No. 1) at 4.

8 **DISCUSSION**

9 A. Standard of Review

10 This court may entertain a petition for a writ of habeas corpus in behalf of a person  
11 “in custody in violation of the Constitution or laws or treaties of the United States.” 28  
12 U.S.C. § 2241(c)(3).

13 It shall “award the writ or issue an order directing the respondent to show cause  
14 why the writ should not be granted, unless it appears from the application that the applicant  
15 or person detained is not entitled thereto.” Id. § 2243.

16 B. Claims

17 District courts have jurisdiction under 28 U.S.C. § 2241 to review habeas petitions  
18 by non-citizens challenging the lawfulness of their detention. Zadvydas v. Davis, 533 U.S.  
19 678, 699 (2001). Although 8 U.S.C. § 1231(a)(6) authorizes the government to continue to  
20 detain an alien after entry of a final removal order, it does not permit indefinite detention  
21 of an alien whose native country will not accept him if he is removed. Id. at 687-88, 697-  
22 98. Once removal is no longer reasonably foreseeable, continued detention is no longer  
23 authorized by statute. Id. at 699-700.

24 Petitioner contends that his continued detention is unlawful under 8 U.S.C.  
25 § 1231(a)(6) as interpreted by the Supreme Court in Zadvydas. Liberally construed, the  
26 petition states a cognizable claim for habeas relief under § 2241 based on petitioner’s  
27 prolonged detention by ICE. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001)  
28 (federal courts must construe pro se petitions for writs of habeas corpus liberally).



1 Cosumnes Correctional Center) and respondent's attorney, the United States Attorney for  
2 the Northern District of California, and the Attorney General of the United States in  
3 Washington, D.C. The clerk also shall serve a copy of this order on petitioner.

4 3. Respondent shall file with the court and serve on petitioner, within 60 days  
5 of the issuance of this order, an answer responding to the allegations in the petition and  
6 showing cause why a writ of habeas corpus should not be granted. Respondent shall file  
7 with the answer and serve on petitioner a copy of all documents that are relevant to a  
8 determination of the issues presented by the petition.

9 4. If petitioner wishes to respond to the answer, he shall do so by filing a  
10 traverse with the court and serving it on respondent within 30 days of his receipt of the  
11 answer.

12 5. Petitioner is reminded that all communications with the court must be served  
13 on respondent by mailing a true copy of the document to respondent's counsel. Petitioner  
14 also must keep the court and all parties informed of any change of address.

15 **IT IS SO ORDERED.**

16 Dated: January 12, 2017



17 SALLIE KIM  
18 United States Magistrate Judge