

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**NAK KIM CHHOEUN AND MONY
NETH, individually and on behalf of a
class of similarly situated individuals,**

Petitioners,

v.

**DAVID MARIN, DAVID JENNINGS,
THOMAS HOMAN, ELAINE DUKE,
JEFFERSON SESSIONS III, SANDRA
HUTCHENS, AND SCOTT JONES,**

Respondents.

Case No.: SACV 17-01898-CJC(GJSx)

**ORDER GRANTING PETITIONERS'
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER [Dkt. 185]**

//
//

1 On October 27, 2017, Petitioners Nak Kim Chhoeun and Mony Neth filed this
2 class action challenging the Government’s policy of rounding up and placing in
3 immigration detention Cambodian nationals who have been living peaceably in our
4 communities for years. (Dkt. 1 [Complaint].)¹ Petitioners claim that the Government
5 violated the due process clause of the Constitution, along with several immigration
6 regulations and statutes, when it re-detained them without notice and without an
7 opportunity to challenge their removal. (*See generally* Dkt. 27 [First Amended
8 Complaint].) On August 14, 2018, the Court granted Petitioners’ motion for class
9 certification in substantial part. (Dkt. 149.) The Court certified a class consisting of

10
11 All Cambodian nationals in the United States who received final orders of
12 deportation or removal, and were subsequently released from ICE custody, and
13 have not subsequently violated any criminal laws or conditions of their release, and
14 have been or may be re-detained for removal by ICE.

15 (*Id.* at 16.)

16
17 According to Petitioners, the Government has continued to re-detain class
18 members without any notice. Since the raid involving the named Petitioners in late 2017,
19 the Government has carried out two smaller raids. In the spring of 2018, the Government
20 detained without notice approximately 30 Cambodians, many of whom are class
21 members, and interviewed them for travel documents. (Dkt. 127-1 [Declaration of Kevin
22 Lo] ¶ 6.) In the fall of 2018, the Government detained without notice approximately 50
23 Cambodians—again, many of whom are class members—and interviewed them for travel
24 documents. (Dkt. 185-8 [Declaration of Anoop Prasad] ¶ 3.) Those detained included

25
26 _____
27 ¹ “The Government” refers to Respondents David Marin, Field Office Director, Los Angeles Field
28 Office, United States Immigration and Customs Enforcement; David Jennings, Field Office Director,
San Francisco Field Office, United States Immigration and Customs Enforcement (“ICE”); Thomas
Homan, Acting Director, United States Immigration and Customs Enforcement; Kirstjen Nielsen,
Secretary of the Department of Homeland Security; and Jefferson Sessions III, United States Attorney
General.

1 Chhay Kim, who had reported to ICE consistently for 18 years and whose wife was
2 months away from giving birth to their fifth child. (Dkt. 185-10 [Declaration of Chhay
3 Kim] ¶¶ 9, 11, 12.) Class member Sene Sam was likewise re-detained without warning
4 in his own home, and in front of his 10-year-old daughter and mother-in-law. (Dkt. 185-
5 12 [Declaration of Sene Sem] ¶ 25.)

6
7 Petitioners have received “reliable information that [the Government] intends to
8 carry out large-scale raids and re-detain up to 100 class members beginning in January
9 2019.” (Dkt. 185 at 6.) On December 17, 2018, a Cambodian government official
10 alerted one of Petitioners’ counsel about a U.S. diplomatic note inviting Cambodian
11 officials to conduct interviews of 100 Cambodian nationals from January 28, 2019 to
12 February 8, 2019. (Dkt. 185-5 [Declaration of Kevin Chun Hoi Lo] ¶ 3.) According to
13 Petitioners, such interviews have always been preceded by Government raids, which
14 must be conducted sufficiently in advance to transport individuals to their interview
15 location. (*Id.* ¶¶ 3–5.)

16
17 Concerned about the possibility of yet another raid, Petitioners contacted the
18 Government on December 19, 2018 to determine whether the Government would provide
19 notice to class members before re-detaining them. (Dkt. 185-9 [Declaration of Jingni
20 Zhao, hereinafter “Zhao Decl.”] ¶ 2.) When the Government responded that it would not
21 provide notice without a Court order, Petitioners stated they would seek emergency relief
22 in this Court. (*Id.* ¶ 3.) The Government asked Petitioners to postpone their filing in
23 light of the Government shutdown. (Dkt. 185 at 6.) Petitioners agreed to do so on the
24 understanding that no raids would be conducted before January 7, 2019. (*Id.*) Petitioners
25 then filed their application for a temporary restraining order on December 31, 2018, (Dkt.
26 185), and the Government agreed to file its opposition by January 2, 2019, (Zhao Decl. ¶
27 4).

1 The Government failed to file an opposition to Petitioners’ application for a
2 temporary restraining order. Instead, the Government requested to stay the briefing
3 schedule on Petitioners’ application until appropriations resume. (Dkt. 186.) Despite
4 asking the Court to stay its resolution of Petitioners’ application for a temporary
5 restraining order, the Government did not agree to postpone any raids on Petitioners for
6 the duration of that stay. (See Dkt. 189.) Given the Government’s failure to provide the
7 Court adequate assurances that Petitioners will be afforded sufficient pre-detention notice
8 before the Court issues its ruling, the Court finds that a temporary restraining order is
9 necessary. The Court ORDERS the Government to show cause why a preliminary
10 injunction should not issue. The temporary restraining order will preserve the status quo
11 pending the Court’s Order to Show Cause.

12
13 It is hereby ORDERED that Petitioners’ application for a temporary restraining
14 order is GRANTED, according to the terms set forth below:

15
16 **TEMPORARY RESTRAINING ORDER**

17
18 IT IS HEREBY ORDERED that the Government is temporarily restrained and
19 enjoined from re-detaining any class member unless the Government first provides
20 written notice to a class member at least 14 days before detention (“Notice”). Notice
21 must be simultaneously provided to the class member and class counsel, and must include
22 copies of (1) the class member’s charging documents in immigration court, (2) the
23 removal order, and (3) the criminal conviction records upon which the removal order
24 rests. This Order extends to the Government Respondents here and any other federal
25 officials and personnel involved in the removal process.

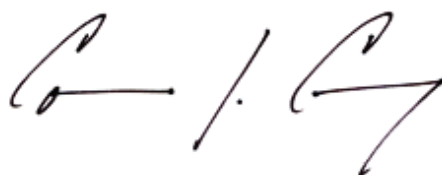
26
27
28 //

1 IT IS FURTHER ORDERED that this temporary restraining order shall remain in
2 effect until the date for the hearing on the Order to Show Cause set forth below, or until
3 such further date as set by the Court or stipulated to by the parties.
4

5 **ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD**
6 **NOT ISSUE AND ORDER OF NOTICE**
7

8 IT IS HEREBY ORDERED that the Government shall show cause why a
9 preliminary injunction should not issue pursuant to Federal Rule of Civil Procedure
10 65(a), restraining the Government from engaging in the activities that are the subject of
11 the above restraining order. A hearing on the Order to Show Cause shall proceed in the
12 United States Courthouse located at 350 West 1st Street, Los Angeles, California,
13 Courtroom 7C, on **Monday, January 28, 2019 at 1:30 p.m.** The Government shall file
14 and serve an opposition to the Court's Order on or before **January 10, 2019.** Petitioners
15 shall file and serve any papers in reply on or before **January 17, 2019.** The above dates
16 may be revised upon stipulation by all parties and approval of this Court.
17
18
19

20 DATED: January 3, 2019

21 
22 _____
23 CORMAC J. CARNEY
24 UNITED STATES DISTRICT JUDGE
25
26
27
28