

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Sameth Nhean,

Civ. No. 17-28 (PAM/FLN)

Petitioner,

v.

**ORDER**

Sheriff Joel Brott, and  
Scott Banieceke,

Respondents.

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This matter is before the Court on Petitioner Sameth Nhean's Letter of August 2, 2017 (Docket No. 28). On July 28, 2017, an Immigration Judge granted Nhean a waiver and adjustment of status, allowing him to remain in this country legally and effectively putting an end to the long-running efforts of the Government to deport Nhean. In previous submissions to this Court, the Government indicated that Nhean would be released in the event of a favorable decision. (See Docket No. 24 at 11 ("If Nhean's final order of removal is overturned by the Immigration Court, then Nhean will be released.") Nhean's letter, however, indicates that he continues to be detained as the Government pursues an appeal of the Immigration Judge's decision.

Nhean has been detained for nearly a year, after remaining law-abiding for more than a decade before his detention. He is now lawfully in this country. His continued detention is contrary to the Supreme Court's holding in Zadvydas v. Davis, 533 U.S. 678 (2001), and contrary to the Government's representations to this Court. The time has come for the Government to allow Nhean to return to his family. Should the appeal be

successful, the Government can re-institute deportation proceedings, but the Court sees no reason for Nhean to remain in detention pending that appeal, nor should he be detained pending deportation. Nhean has sufficiently established that he is not a risk to the community or unlikely to comply with the order of removal. 8 U.S.C. § 1231(a)(6). Moreover, the Court is not convinced that, as the Government argues, Nhean's continued detention is mandatory under § 1226(c). Having received a waiver of inadmissibility, Nhean is no longer presumptively deportable or inadmissible, and absent special circumstances, he may not be detained indefinitely. Zadvydas, 533 U.S. at 690. As the Court noted in early June, Nhean has been detained for far too long already.

Accordingly, **IT IS HEREBY ORDERED that:**

1. This matter is **REOPENED**;
2. The Petition for a Writ of Habeas Corpus (Docket No. 1) is **GRANTED**;  
and
3. The Government is directed to immediately release Petitioner Sameth Nhean.

Dated: August 7, 2017

s/Paul A. Magnuson  
Paul A. Magnuson  
United States District Court Judge