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**UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO**

Civil Action No. 1:25-cv-03242

VENG VANG,

Petitioner

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT GAUDIAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,

TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,

PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Respondents' incarceration of Mr. Veng Vang ("Mr. Vang") is unlawful. More than six months have passed since the entry of his final order of removal and there is no significant likelihood of removal in the reasonably foreseeable future. Moreover, Immigration and Customs Enforcement ("ICE") violated Mr. Vang's right to due process when it ignored its own procedures to jail him. Mr. Vang now seeks redress from this Court to remedy his unlawful loss of liberty.

2. Mr. Vang lawfully entered the United States in 1994 as the child of a refugee and adjusted to a lawful permanent resident ("LPR") on September 16, 1996. He was only eight years old when he arrived and has not left the United States since. ICE first jailed Mr. Vang at the ICE Denver Contract Detention Facility in Aurora, Colorado ("Aurora Facility")¹ and placed him in 8 U.S.C. § 1229a removal proceedings on May 30, 2012, because of his contact with the criminal legal system. Ex.1, Notice to Appear. An Immigration Judge ("IJ") ordered Mr. Vang removed to Thailand at his one and only court appearance on June 14, 2012. Ex.2, Removal Order. The IJ denied Mr. Vang's request for bond that same day. Ex. 3, Bond Order. Despite the removal order, ICE released Mr. Vang into the United States on an Order of Supervision ("OSUP") on September 14, 2012, Ex. 4, OSUP, because it was unable to secure travel documents to remove him and determined he was neither a risk of flight nor a danger to the community, *see* Ex. 5, Release Notification. Almost thirteen years later on July 8, 2025, ICE re-jailed Mr. Vang again to ostensibly seek his removal. Ex. 8, Warrant for Arrest. Nevertheless, Mr. Vang remains at the Aurora Facility 98 days later despite ICE admitting that there is no significant likelihood of removal in the

¹ This Petition does not refer to the Aurora Facility or Mr. Vang's loss of liberty as detention because it does not accurately reflect the conditions at the Aurora Facility. *E.g., L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. of Colo. 2024) (citation omitted) (acknowledging that the District of Colorado has already found that the GEO Facility is "more akin to incarceration than civil confinement").

reasonably foreseeable future. Ex. 6, EARM Case Summary² (ICE internal documents, dated August 25, 2025, acknowledging that it cannot proceed with removal).

3. Mr. Vang, through counsel, respectfully moves the Court for a writ of habeas corpus to remedy the unlawful deprivation of his liberty and enjoin further unlawful incarceration by Respondents.

II. PARTIES

Petitioner

4. ICE jails Mr. Vang at the Aurora Facility in Aurora, Colorado. Mr. Vang has lived in the United States for more than thirty years along with his lawful permanent resident (“LPR”) mother, three U.S. citizen children, and U.S. citizen fiancé.

Respondents

5. Juan Baltazar is the Warden of the Aurora Facility where ICE jails Mr. Vang, and is an employee of the GEO Group, the for-profit prison company that operates the facility. Mr. Baltazar is a legal custodian of Mr. Vang. He is sued in his official capacity.

6. Robert Gaudian is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Mr. Gaudian is the immediate custodian of Mr. Vang and is responsible for Mr. Vang’s detention and removal.

7. Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”). Ms. Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act (“INA”). DHS is the parent agency of ICE, and thus Ms. Noem also oversees ICE, which is

² EARM stands for “Enforcement Alien Removal Module” and is issued by ICE to maintain information related to investigations, arrests, bookings, detention, and removal of noncitizens in the United States.

responsible for Mr. Vang's illegal detention. Ms. Noem has ultimate custodial authority over Mr. Vang and is sued in her official capacity.

8. Todd M. Lyons is the Acting Director of ICE and is sued in his official capacity. Mr. Lyons is responsible for Mr. Vang's illegal detention and has custodial authority over him.

9. Pam Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice ("DOJ"). The Executive Office for Immigration Review ("EOIR") and the immigration court system it operates are a component agency of DOJ. Ms. Bondi is sued in her official capacity.

III. REQUIREMENTS OF 28 U.S.C. § 2243

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed." *Id.* (emphasis added).

11. Courts have long recognized the significance of the habeas statute protecting individuals from unlawful incarceration. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

IV. JURISDICTION AND VENUE

12. This action arises under the Constitution of the United States, 28 U.S.C. § 2241(c)(1), (3), and the INA, 8 U.S.C. § 1101 *et seq.*

13. Under 28 U.S.C. § 1331, this Court has federal question jurisdiction over actions arising under the Constitution, laws, or treaties of the United States.

14. Federal courts have subject matter jurisdiction under 28 U.S.C. § 2241(c)(1) and (c)(3) (habeas corpus) to determine whether people imprisoned in federal custody are held in violation of law. *INS v. St. Cyr*, 533 U.S. 289, 305 (2001) *superseded by statute*, REAL ID Act of 2005, 119 Stat. 310 (codified as amended at 8 U.S.C. § 1252(a)(5) (2005)), *as recognized in Nasrallah v. Barr*, 140 S. Ct. 1683 (2020); *Boumediene v. Bush*, 128 S.Ct. 2229, 2248 (2008) (citing *St. Cyr*).

15. Jurisdiction is also proper pursuant to 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (waiver of sovereign immunity); 28 U.S.C. § 1346 (original jurisdiction); Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); the All Writs Act, 28 U.S.C. § 1651; and 28 U.S.C. §§ 2201–02 (Declaratory Judgement Act).

16. Mr. Vang is “in custody,” and the custody is “in violation of the Constitution or laws or treaties of the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (“We conclude that § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.”); *St. Cyr*, 533 U.S. at 301 (“at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.”).

17. Venue properly lies in the District of Colorado. 28 U.S.C. §§ 1391(b)(2), (e); 2241. This petition is filed while Mr. Vang is physically present within the district because he is incarcerated by Respondents Baltazar and Gaudian at the Aurora facility in Aurora, CO. The material events leading to Mr. Vang’s detention and removal proceedings also occurred in the District of Colorado: the relevant removal order stemmed from immigration proceedings in Aurora, Colorado, prosecuted by the Office of the Principal Legal Advisor for ICE in Centennial, CO, and presided

over by an IJ located in Aurora, CO; he also has Colorado-based counsel and ICE jailed him within the District. The place of employment of Respondent Baltazar is at the Aurora facility, located at 3130 N. Oakland Street, Aurora, CO 80010. The place of employment of Respondent Gaudian is also located within the district, at 12445 East Caley Avenue, Centennial, CO 80111. *See* 28 U.S.C. §§ 1391(b)(2) and (e); 2241(d); *Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493–94 (1973) (laying out traditional venue factors).

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. Exhaustion is not required because Congress did not codify a requirement that petitioners seeking a writ of habeas corpus exhaust administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (“Where Congress specifically mandates, exhaustion is required... But where Congress has not clearly required exhaustion, sound judicial discretion governs.”) (citation omitted).

19. While inapplicable here, some courts require prudential exhaustion of administrative remedies prior to seeking a writ under § 2241. *Baquera v. Longshore*, 948 F. Supp. 2d 1258, 1259 (D. Colo. 2013) (citing *Williams v. O'Brien*, 792 F.2d 986, 987 (10th Cir. 1986) (per curiam)) *abrogated on different grounds by Nielsen v. Preap*, 139 S. Ct. 954 (2019). However, exhaustion of remedies is unnecessary if futile. *Goodwin v. State of Okl.*, 923 F.2d 156, 157 (10th Cir. 1991) (finding that exhaustion is not required due to futility where the state’s highest court recently decided the precise legal issue petitioner raised in his federal habeas petition).

20. Here, exhaustion would be futile because the detention statute does not provide for a bond hearing when an individual is held pursuant to 8 U.S.C. § 1231. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2277 (2021) (when a noncitizen “is ordered removed and the order becomes ‘administratively final,’ detention becomes mandatory.”). Thus, an IJ does not have jurisdiction to

reconsider Mr. Vang's custody status. In other words, exhaustion is futile because there is no process to exhaust.

VI. FACTUAL AND PROCEDURAL BACKGROUND

A. Mr. Vang's Removal Proceedings and Initial 92 Days Incarcerated after His June 14, 2012 Final Removal Order.

21. ICE first jailed Mr. Vang and put him in removal proceedings on May 30, 2012. Ex. 7, 2012 ICE Warrant for Arrest. ICE alleged that Mr. Vang was a citizen of Thailand and charged him as removable pursuant to 8 U.S.C. §§ 237(a)(2)(A)(iii), (B)(i). Ex. 1. The IJ denied Mr. Vang's request for bond on June 14, 2012, concluding they did not have jurisdiction. Ex. 3. The IJ then sustained ICE's allegations and charges and ordered his removal to Thailand on that same day. Ex. 2. It was Mr. Vang's only appearance before an IJ and at no time did either party or the IJ designate a country other than Thailand for removal. *Id.* Both parties waived appeal. *Id.* Mr. Vang's removal order was final as of June 14, 2012 and ICE's 90-day removal period began to run. 8 U.S.C. § 1231(a)(1)(B)(i).

22. Concluding that it could not secure Mr. Vang's travel documents and that he was neither a risk of flight nor danger, *see Zadvydas*, 533 U.S. at 690 (discussing that flight and danger are the only two justifications for immigration detention post-final order); *Lopez v. Sessions*, 18-cv-4189 (RWS), 2018 WL 2932726, at *12 (SDNY 2018) (acknowledging that the OSUP release process involves a determination that the noncitizen is neither a flight risk nor danger), ICE released Mr. Vang on an OSUP on September 14, 2012, Ex. 4; Ex. 5. He was thereafter required to periodically report to ICE. Ex. 4. Mr. Vang's release paperwork acknowledged that ICE would continue to try and secure travel documents for his physical removal and that ICE would give him "the opportunity to prepare for an orderly departure" once it had those documents. Ex. 5.

B. Mr. Vang's Life at Liberty for Almost Thirteen Years

23. Mr. Vang obliged by the terms of his OSUP for the next thirteen years. He was required to physically report to ICE a few times a year until ICE determined he only needed to physically report once a year; he did so without fail.³ While at liberty Mr. Vang established himself as a valuable member of his community. He owns his home and has worked at the same construction company for 13 years. He is now a supervisor for the company on the night shift and still has a job waiting for him if released.

24. He also raised his three U.S. citizen children, aged four, eight, and twelve. He is engaged to a U.S. citizen and supported her along with his children until ICE took him back into custody on July 8, 2025.

25. While in the community for thirteen years, Mr. Vang largely avoided criminal legal contact. The limited exceptions were two arrests for driving while ability impaired, one in of 2016 and one in October of 2024.⁴ Otherwise, his time on an OSUP was unblemished and Mr. Vang understood from his release notification accompanying the OSUP paperwork that ICE would give him “the opportunity to prepare for an orderly departure” after securing his travel documents. Ex. 5.

26. Nevertheless, an ICE Supervisory Deportation Officer (“SDDO”) ordered ICE to reincarcerate Mr. Vang on July 6, 2025. Ex. 8. ICE officers fulfilled that order on July 8, 2025 when they stopped Mr. Vang while he was driving his car to pick up his fiancé at the airport. *See*

³ The only exception was when Mr. Vang proactively called ICE to report during the first year of COVID. ICE considered his phone call as his check-in for that year.

⁴ Of note, Mr. Vang checked in with ICE pursuant to his OSUP after each of these arrests, the most recent check-in being on January 15, 2025. ICE did not revoke his OSUP after either arrest. Rather, the only reason he was given in July of 2025 for the OSUP revocation was that he had a final order of removal. The arrests were not mentioned. Mr. Vang successfully completed probation for the 2016 case and ICE arrested him while still on probation for the 2024 case. Neither case involved accidents, flight from authority, injury, or other aggravating circumstances.

id. ICE did not provide him with advanced notice of its intent to revoke his OSUP and it did not provide him with a reason for its revocation beyond the fact that he has a final order of removal. ICE also did not give Mr. Vang an opportunity to present evidence or argument as to why his reincarceration was unnecessary. Rather, ICE forced him to pull over on the side of the road, demanded his driver's license, and then told him there was a warrant for his arrest. Mr. Vang has not been at liberty since, and ICE has not provided him with any process to contest his reincarceration and revocation of his OSUP.

27. Upon information and belief, the official responsible for revoking Mr. Vang's OSUP did not first refer the case to the ICE Executive Associate Director, did not make a finding that revocation was in the public interest, and did not make a finding that circumstances did not reasonably permit referral to the Executive Associate Director. Also upon information and belief, the person that revoked Mr. Vang's OSUP was not a delegated authority to revoke an OSUP, but rather a SDDO who signed a warrant for Mr. Vang's arrest on July 6, 2025. Ex. 8.

C. Mr. Vang's Second 98 Days in Incarcerated after his June 14, 2012 Final Order of Removal.

28. ICE once again incarcerated Mr. Vang at the Aurora Facility. ICE did not have a travel document for Mr. Vang prior to incarcerating him. In fact, ICE told undersigned counsel 14 days after it reincarcerated him that it was still in the process of obtaining a travel document, confirmation of which is confirmed by ICE's own documents. *E.g.*, Ex. 6. For example, its EARM paperwork, produced on August 25, 2025, acknowledges that Mr. Vang's removal order had been final for 4820 days and that it still cannot proceed with removal because ICE is "[a]waiting travel documents." *Id.* Notably, ICE answers the question of whether it can "[p]roceed with removal" in the negative. *Id.*

29. Mr. Vang cooperated with ICE on July 27, 2025 to apply for a travel document from Thailand. ICE has not asked Mr. Vang to cooperate in the application for a travel document from any other country.

30. ICE has not explained to Mr. Vang why it revoked his OSUP beyond saying he has a final order of removal nor has it given him an opportunity to respond to that reason.

31. ICE has not provided him with a single custody review since his reincarceration.

32. ICE has not given him the opportunity to establish why his continued incarceration is unnecessary.

33. ICE acknowledges that it cannot remove Mr. Vang because it does not have a travel document. Ex. 6.

34. As of the date of this petition, Mr. Vang has been deprived of his liberty at the Aurora Facility for the past 98 days and 190 days in the aggregate since his removal order became final 4870 days ago.

35. This petition follows.

VII. LEGAL FRAMEWORK FOR RELIEF SOUGHT

A. Mr. Vang's Ongoing Incarceration Violates the Statute.

36. In *Zadvydas*, the U.S. Supreme Court held that 8 U.S.C. § 1231(a)(6), when “read in light of the Constitution’s demands, limits a [noncitizen]’s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]’s removal from the United States.” 533 U.S. at 689. A “habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal.” *Id.* at 699. If the individual’s removal “is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute.” *Id.* at 699–700.

37. The INA provides, in relevant part, that the removal period begins on the latest of the following dates: “(i) The date the order of removal becomes administratively final; or (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court’s final order.” 8 U.S.C. § 1231(a)(1)(B)(i)–(ii).

38. The Supreme Court adopted a “presumptively reasonable period of detention” of six months when reviewing someone’s loss of liberty after a final order of removal. *Zadvydas*, 533 U.S. at 701. After six months of incarceration, if there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*

39. ICE’s administrative regulations also recognize that the Headquarters Post-Order Detention Unit (“HQPDU”) has a six-month period for determining whether there is a significant likelihood of a noncitizen’s removal in the reasonably foreseeable future. 8 C.F.R. § 241.4(k)(2)(ii).

40. “[F]or detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Zadvydas*, 533 U.S. at 701.

41. Mr. Vang presents “good reason” to believe that his removal is not significantly likely in the reasonably foreseeable future. *E.g.*, Ex. 6. In addition to his 190 days incarcerated and 4870 days since his removal order was final, ICE acknowledges its inability to remove Mr. Vang and that it does not have travel documents to do so. *Id.* Mr. Vang therefore met his threshold burden to show removal is not reasonably foreseeable; ICE must now release Mr. Vang unless it can rebut that showing. *Zadvydas*, 533 U.S. at 701 (after “the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the

Government must respond with evidence to rebut that showing” or the petition will be granted); *Morales-Fernandez v. INS*, 418 F.3d 1116, 1124 (10th Cir. 2008) (“The Government having brought forward nothing to indicate that a substantial likelihood of removal subsists despite the passage of six months . . . the petitions for habeas corpus should have been granted”); *Nzayikorera v. Fabbriatore*, 21-CV-02037-RMR, 2021 WL 9385836 (D. Colo. Sep. 9, 2021) (same).

42. ICE cannot avoid that responsibility and continue to detain someone beyond the presumptive six months pursuant to 8 U.S.C. § 1231(a)(1)(C) except in limited circumstances. “A review of the case law shows that the courts have read § 1231(a)(1)(C) narrowly.” *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 501 (S.D.N.Y. 2009) (collecting cases); *See Morales-Fernandez*, 418 F.3d at 1123; *Nzayikorera*, 2021 WL 9385836 at *2. “The Congressional intent underlying § 1231 is for the Attorney General to remove a [] [noncitizen] subject to an order of removal within the 90-day removal period, if possible.” *Farez-Espinoza*, 600 F. Supp. 2d at 502; *Morales-Fernandez*, 418 F.3d at 1123. It is “the responsibility of [ICE] to make a bona fide attempt to do so within the removal period.” *Id.* When ICE does not fulfill its responsibility, § 1231(a)(1)(C) does not apply. *Nzayikorera*, 2021 WL 9385836, at *2 (“[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute”) (citation and quotations omitted); *Farez-Espinoza*, 600 F. Supp. 2d at 502).

43. Moreover, the statute does not permit ICE to pause and restart the presumptively reasonable period of post-removal detention by repeatedly detaining and releasing a noncitizen after a final removal order. *Farez-Espinoza*, 600 F. Supp. 2d at 499; *Ulysse v. Department of Homeland Sec.*, 291 F.Supp.2d 1318, 1325 (M.D.Fla. 2003). ICE cannot “arbitrarily trigger commencement of the removal period by simply waiting to take a [noncitizen] into custody . . . If [ICE] are allowed the liberty to decide when they will comply or even attempt compliance with the statutes that they are

charged with enforcing, the statutory scheme will be rendered a nullity Federal agencies should not and do not have such power.” *Uylsee*, 291 F.Supp.2d at 1325–26; *Diaz-Ortega v. Lund*, 1:19-cv-670-P, 2019 WL 6003485, at *9–10 (W.D.La. Oct. 15, 2019).

44. The statute is unambiguous: the removal period begins and stops in limited circumstances, 8 U.S.C. § 1231(a)(1)(A), (B), (C), and ICE cannot restart the period when it lapsed long ago, such as the near 13-year lapse in this case. *Tadros v. Noem*, No. 25-cv-4108 (EP), 2025 WL 1678501, at *3 (D.NJ June 13, 2025); *Farez-Espinoza*, 600 F. Supp. 2d at 499; *Uylsee*, 291 F.Supp.2d at 1325–26; *Diaz-Ortega*, 2019 WL 6003485 at *9–10.

45. The removal period expired 4780 days ago; ICE’s inability to remove Mr. Vang is evidenced by his 190 days of incarceration, the 4870 days since his removal order was final, the 4780 days since the removal period expired, and its own admission. Ex. 6. ICE must release Mr. Vang forthwith. *Zadvydas*, 533 U.S. at 699–700.

B. ICE’s Reincarceration of Mr. Vang Violates Procedural Due Process

46. Alternatively, this Court must order Mr. Vang’s release because ICE did not provide Mr. Vang with procedural due process when it decided to re-jail him despite knowing his removal is not significantly likely in the reasonably foreseeable future.

47. “Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333 (citation modified). The “touchstone” of due process is protecting people against arbitrary government action, whether from “denial of a fundamental procedural fairness, or the exercise of power without any reasonable justification in

the service of a legitimate government objection.” *Cty. of Sacramento v. Lewis*, 532 U.S. 833, 845–46 (1998).

48. Whether government action violates procedural due process is determined by the three-factor balancing test in *Mathews*. 424 U.S. at 335. The test requires the Court to balance (1) “the private interest that will be affected by the official action”; (2) “the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* A proper application of the test demonstrates ICE’s unlawfulness and the need for this Court to order Mr. Vang’s release.

49. First, the private liberty interest at stake is the most significant liberty interest there is, the interest in being free from imprisonment. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Incarceration “constitutes a significant deprivation of liberty that requires due process protection” no matter the purpose. *Jones v. United States*, 463 U.S. 354, 361 (1983).

50. Mr. Vang’s has a protected liberty interest even though he was “subject to extensive conditions of release” *Guillermo M.R. v. Kaiser*, --- F.Supp.3d ---, 2025 WL 1983677, at *4 (N.D.Ca. Jul. 17, 2025) (citation omitted); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

51. In *Morrissey v. Brewer*, the Supreme Court addressed for the first time whether an individual had a constitutionally protected liberty interest in parole after criminal conviction and, if so, the procedures required before that interest may be terminated. 408 U.S. 471 (1972). The Court found that “the liberty of a parolee, although indeterminate, includes many of the core values

of unqualified liberty and its termination inflicts a grievous loss on the parolee and often on others.” *Id.* at 482 (citation and quotation omitted). In its ruling, the Court examined the “nature of the interest of the parolee in his continued liberty,” finding that this interest included the ability “to do a wide range of things open to persons who have never been convicted of any crime,” to seek gainful employment, and “to be with family and friends and to form the other enduring attachments to normal life.” *Id.* 481–82.

52. Given these factors, the Court held that the parolee’s liberty came “within the protection of the Fourteenth Amendment.” *Id.* at 489. He was therefore entitled to the minimum due process protections of: “(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.” *Id.*

53. Federal courts have since held that several types of government-created liberty interests are entitled due process protection. *E.g.*, *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973) (revocation of probation without due process is a deprivation of a protected liberty interest); *Young v. Harper*, 520 U.S. 143 (1997) (revocation of pre-parole conditional supervision program is a deprivation of a protectable liberty interest); *U.S. v. Sanchez*, 225 F.3d 172, 175 (2d. Cir. 2000) (revocation of supervised release is a liberty interest entitled due process); *United States v. Higgs*, 731 F.2d 167 (3d Cir. 1984) (denial of bail following jury verdict is a deprivation of protected liberty interest); *Chhoen v. Marin*, 306 F.Supp.3d 1147 (C.D.Cal. 2018) (issuing a preliminary

injunction prohibiting the government from removing people it re-detained after originally releasing them years earlier without providing procedural remedies to seek release and relief from removal).

54. Here, “[g]iven the civil context, [Mr. Vang’s] liberty interest is arguably greater than the interest of the parolees in *Morrissey*.” *Guillermo M.R.*, 2025 WL 1983677, at *4 (citation omitted). Moreover, ICE jails Mr. Vang in a facility that every court in this District has determined is akin to a penal institution. *E.g.*, *Daley v. Choate*, 22-cv-03034 (RM), 2023 WL 2336052 at *4 (D. Colo. 2023). This factor therefore weighs heavily in Mr. Vang’s favor.

55. Second, the risk of erroneous deprivation of Mr. Vang’s liberty interest is significant because ICE’s decision to re-jail Mr. Vang lacked *any procedures* at all, and ICE has not provided Mr. Vang with *any process* since his reincarceration. *E.g.*, *Lopez*, 2018 WL 2932726, at *11 (finding that the petitioner’s “re-detention, in the absence of any procedure or evidentiary findings, establishes the risk of erroneous deprivation of a liberty interest”). Moreover, there is “no statutory or regulatory entitlement to a bond hearing” for individuals like Mr. Vang who ICE jails pursuant to § 1231(a). *Guillermo M.R.*, 2025 WL 1983677, at *5. This factor therefore weighs heavily in his favor because at no point was there any notice, any process, or any independent adjudicator to consider whether stripping Mr. Vang of his liberty was necessary to prevent flight or danger to the community.

56. Third, Government’s interest is not served by the process it gave Mr. Vang because, once again, it gave him no process. The Supreme Court recognized that the government’s interest in civil immigration detention is limited to “certain special and narrow nonpunitive circumstances.” *Zadvydas*, 533 U.S. at 690 (quotation omitted). Those limited interests are mitigation of flight and danger to the community. *Id.*; *Demore v. Kim*, 538 U.S. 510, 515, 527–28 (2018). The non-existent

process to jail Mr. Vang without notice, without cause, and without an interview after having released him almost thirteen years ago does not address the government's purported interest and reeks of arbitrariness. *Lopez*, 2018 WL 2932726 at *12. This is especially true where—as here—the noncitizen “was released pursuant to a process that involved a determination that he was neither a danger to himself or others and” then re-detained “without prior notice, a showing of changed circumstances, or any meaningful opportunity to respond” *Id.* This factor therefore also weighs in his favor.

57. Courts have repeatedly found that ICE's failure to provide noncitizens with notice and the opportunity to be heard prior to reincarceration violates procedural due process. *E.g.*, *Cifuentes Rivera v. Arnott, et al.*, 4:25-cv-00570-RK (W.D.Mo Oct. 7, 2025) (attached as Ex. 9); *Grigorian v. Bondi*, 25-cv-22914-RAR, 2025 WL 2604573, at *6–10 (S.D.Fla. Sept. 9, 2025); *K.E.O. v. Woosley*, No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *3 (W.D.Ky. Sept. 4, 2025); *Zhu v. Genalo*, 1:25-cv-06523 (JLR), 2025 WL 2452352, at *5–9 (S.D.N.Y. Aug. 26, 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at *5 (D. Mass. June 20, 2025); *Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137, 163–64 (W.D.N.Y. 2025). This Court should do the same.

C. ICE's Reincarceration of Mr. Vang Violates Respondents' Binding Regulations.

58. A noncitizen with a final order of removal “who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3).

59. The statute only permits ICE to jail the noncitizen past the 90-day removal period following a removal order if found to be a “risk to the community or unlikely to comply with the order of removal” or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).

60. Even where the initial detention past the 90-day removal period is authorized, if “removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the [noncitizen’s] release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances” *Zadvydas*, 533 U.S. at 699–700.

61. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-jailed past the removal period: “(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen “violates any of the conditions of release”).⁵

62. Because “[r]egulations cannot circumvent the plain text of the statute[.]” courts question whether these regulations are ultra vires of statutory authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

63. The regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official “delegated the function or authority . . . for a particular geographic district, region, or area.” *Cesay v. Kurzdorfer*, 781 F.Supp.3d. at 161 (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security

⁵ Whether Respondents rely on these additional reasons is unknown as they did not provide Mr. Vang with notice or reason for his reincarceration.

Act of 2002 renamed the position titles listed in § 241.4); *Orellana v. Baker et al.*, 1:25-cv-01788-TDC (D.Md. Oct. 7, 2025) (attached as Ex. 10). If the field office director or a delegated official intend to revoke an order of supervision, they must first make findings that “revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. § 241.4(l)(2). For a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F.Supp.3d at 161 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not include the power to revoke release” insufficient to grant authority to revoke an order of supervision). In other words, ICE’s revocation of an OSUP is unlawful unless the proper official either conducts or explicitly approves the revocation. Courts have repeatedly held that ICE’s failure to adhere to this requirement violates due process and mandates release. *E.g., M.S.L. v. Bostock*, No. 25-cv-01204-AA, 2025 WL 2430267, at *9–10 (D. Or. Aug. 21, 2025); *Cordon-Salguero v. Noem*, No. 25-1626-GLR, Mot. Hr’g Tr. at 35–37 (D. Md. June 23, 2025) (attached as Ex. 11); *Rombot v. Souza*, 296 F.Supp.3d 383, 385, 387–88 (D. Mass. 2017).

64. The regulations also require that ICE give noncitizens notice of the reasons for an OSUP revocation and a prompt interview to respond to those reasons. 8 C.F.R. § 241.4(l)(1); 8 C.F.R. § 241.13(i); *Perez-Escobar v. Muniz*, --- F.Supp.3d ---, 2025 WL 2084102, * 1–2 (D.Mass. July 24, 2025) (discussing regulatory requirements for OSUP revocation); *Hoac v. Becerra*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at * 3–4 (E.D.Ca. July 16, 2025) (same). Once jailed after the removal period, ICE must frequently consider whether continued incarceration is necessary, provide opportunities to the noncitizen to argue that it is not, and explain its reasoning to the noncitizen why continued incarceration is necessary. *See generally* 8 C.F.R. § 241.4.

65. “Government agencies are required to follow their own regulations.” *Hoac*, 2025 WL 1993771, at *4. (citing *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). “[W]here an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, like the opportunity to be heard, and [ICE] fails to adhere to it, the challenged [action] is invalid” *Waldron v. I.N.S.*, 17 F.3d 551, 518 (2d Cir. 1993) (alterations in original). “[F]ailure to give [a noncitizen] meaningful notice of the basis for its revocation of his release violate[s] the regulation and due process.” *Perez-Escobar*, 2025 WL 2084102, at *2 (citation omitted).

66. Failing to provide an interview after revocation violates the same. *Wing Nuen Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D.Kan. Jun. 17, 2025) (finding “that officials did not properly revoke petitioner’s release pursuant to § 241.13” because “and most obviously . . . petitioner was not granted the required interview upon the revocation of his release”); *Ceesay*, 781 F.Supp.3d. at 166 (finding petition was not afforded even minimal due process protections when ICE failed to provide petitioner an informal interview upon reincarceration); *Santamaria Orellana v. Baker*, 25-1788-TDC, 2025 WL 2444087, at * 8 (D.Md. Aug. 25, 2025) (granting habeas petition for ICE’s failure to, *inter alia*, oblige by regulations to revoke OSUP); *Cf. Noem v. Abrego Garcia*, 604 U.S. ---, 145 S. Ct. 1017, 1019 (2025) (statement of Sotomayor, J.) (quoting 8 C.F.R. § 241.4(l), “in order to revoke conditional release the Government must provide adequate notice and promptly arrange an initial informal interview . . . to afford the [noncitizen] an opportunity to respond to the reasons for the revocation stated in the notification”).

67. ICE’s regulatory violations here are numerous. First, based on information and belief, Mr. Vang’s OSUP was not revoked by the ICE Executive Associate Director and the officer that did revoke his OSUP did not make findings that revocation was in the public interest and that

circumstances did not reasonably permit referral to the Executive Associate Director. *See* Ex. 6. Second, ICE has not provided Mr. Vang with the reasons for its revocation. Third, ICE has yet to provide Mr. Vang with an opportunity to respond to the purported reasons for its OSUP revocation in an interview. Fourth, ICE has not provided Mr. Vang with any custody reviews since his reincarceration. Fifth, ICE has not provided Mr. Vang with an opportunity to prepare for the non-existent custody reviews.

68. ICE's decision to re-jail Mr. Vang is therefore invalid and this Court must order his release.

D. ICE's Revocation of Mr. Vang's OSUP Violated the Administrative Procedures Act

69. Under the Administrative Procedures Act ("APA"), a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

70. Respondents' revocation of Petitioner's OSUP was arbitrary and capricious because it violated statute, regulation, and the Constitution.

71. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

72. Respondents' decision to revoke Mr. Vang's OSUP ran counter to the evidence before the agency that Mr. Vang would comply with a demand to appear for removal without detention. Mr. Vang always appeared for his OSUP appointments and there are no new facts to suggest he would start failing to comply.

73. The revocation also "failed to consider important aspects of the problem" before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

74. First, Respondents failed to consider the serious constitutional, statutory, and regulatory concerns raised by revoking Mr. Vang's OSUP without notice and opportunity to respond.

75. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking Mr. Vang's OSUP, who is neither a flight risk nor a danger to the community and for whom it does not have a travel document. Indeed, prolonged incarceration for someone who is neither a risk to the community nor a risk of flight provides no benefit to the government. *Velasco Lopez v. Decker*, 978 F.3d 842, 856 (2d Cir. 2020) (noting that the Government prevails when it releases noncitizens like Mr. Vang because "it has no interest in the continued detention of an individual who it cannot show to be either a flight risk or a danger to [the] community").

76. Third, Respondents failed to consider reasonable alternatives to revoking Mr. Vang's OSUP that were before the agency, like continuing release under the OSUP and scheduling a future time and date to appear for removal. This alternative would vindicate the government's interest in effectuating a removal order and save it the expense of detention not needed to guarantee Mr. Vang's appearance.

77. Fourth, Respondents failed to consider Mr. Vang's substantial reliance interest, created by its instruction on his release notification, that the agency would give Mr. Vang an opportunity to arrange for an orderly departure once it obtained travel documents. Ex. 5.

78. ICE's reincarceration of Mr. Vang violates the APA.

VIII. CLAIMS FOR RELIEF

COUNT I

Respondents' Continued Incarceration of Mr. Vang is Impermissibly Indefinite, Contravening Supreme Court Precedent in *Zadvydas*

79. Mr. Vang incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

80. Mr. Vang's continued incarceration is unlawful and fails to follow 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 700–01. Mr. Vang's order of removal became final on June 14, 2012. Ex. 2.

4870 days later and after 190 days of aggregate imprisonment, Mr. Vang remains without his liberty and ICE still does not have a travel document. Ex. 6.

81. Even though Mr. Vang has cooperated with ICE's attempts to obtain a travel document, ICE is unable to deport him within a constitutionally compliant timeframe. Respondents cannot show that his removal is significantly likely in the reasonably foreseeable future. Mr. Vang's continued incarceration is unreasonable and violates 8 U.S.C. § 1231(a). *Zadvydas*, 533 U.S. at 701; *Clark v. Martinez*, 543 U.S. 371, 386 (2005).

COUNT II
Violation of the Fifth Amendment of the U.S. Constitution
Substantive Due Process

82. Mr. Vang incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

83. When ICE issued Mr. Vang's an order of supervision, it found that he is neither a danger to the community nor a flight risk.

84. When ICE revoked the order of supervision, Mr. Vang had meaningfully complied with the conditions of the order and ICE had not secured necessary travel documents for removal. No change in circumstances warranted the order's revocation.

85. Mr. Vang's detention therefore does not bear a reasonable relationship to the two lawful purposes of immigration detention: preventing danger to the community or flight prior to removal.

86. Because Respondents had no legitimate, non-punitive objective in revoking Mr. Vang's OSUP, Mr. Vang's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

COUNT III
Violation of the Fifth Amendment of the U.S. Constitution
Procedural Due Process

87. Mr. Vang incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

88. ICE has yet to provide Mr. Vang with any process related to its decision to revoke his OSUP and re-jail him. The person who revoked his OSUP was not authorized to do so. It did not provide him with notice prior to its revocation. It did not provide him with the reasons for its revocation that did not exist when it originally released him; i.e., he had a final order of removal. It did not provide him with an interview after re-jailing him to respond to the purported reasons for re-jailing him. It has not provided him with any interview since his imprisonment.

89. Respondents' revocation of Mr. Vang's OSUP without providing notice and a meaningful opportunity to be heard violates procedural due process under the Fifth Amendment to the U.S. Constitution.

COUNT IV
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
Arbitrary and Capricious

90. Mr. Vang incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

91. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

92. Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious because it violated the statute, regulation, and the Constitution.

COUNT V
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)
In Excess of Statutory Authority

93. Mr. Vang incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

94. Under the APA, a court shall “hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

95. “An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute.” *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).

96. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal “is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the [noncitizen’s] release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances” *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

97. Regulations that purport to give Respondents authority to revoke an order of supervision on grounds other than those listed § 1231(a)(6) are ultra vires and in excess of statutory authority because “[r]egulations cannot circumvent the plain text of the statute.” *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018)

98. Respondents’ revocation of Mr. Vang’s OSUP was based on ultra vires regulations. So it was in excess of statutory authority; it should be held unlawful and set aside.

COUNT VI
Ultra Vires Action

99. Mr. Vang incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

100. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Mr. Vang.

101. Mr. Vang has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires action.

COUNT VII
Violation of the *Accardi* Doctrine

102. Mr. Vang incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

103. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *Accardi*, 347 U.S. 260 (“If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing”).

104. Respondents violated agency regulations governing who and upon what findings it may revoke an order of supervision when revoking Mr. Vang's OSUP. “As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release” and Mr. Vang “is entitled to release on that basis alone.” *Ceesay*, 781 F.Supp.3d at 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

105. Respondents also violated agency instructions in Mr. Vang's release notification to give him the opportunity to prepare for an orderly departure when Respondents revoked Mr. Vang's order without advance notice.

106. Respondents' failure to provide Mr. Vang with notice of its revocation, the reasons for the revocation, an opportunity to respond to those alleged reasons, and a custody review after his reincarceration also violated agency regulations.

107. Under *Accardi*, Respondents' revocation of the OSUP and decision to ignore instructions in the release notification should be set aside for violating agency procedures, rules, or instructions.

PRAYER FOR RELIEF

Mr. Vang respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

1. Enjoin Respondents from transferring Mr. Vang outside of the jurisdiction of the District of Colorado pending the resolution of this case;
2. Declare that Mr. Vang's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;
3. Issue a writ of habeas corpus directing Respondents to immediately release Mr. Vang from ICE custody on his own recognizance or under reasonable conditions of supervision;
4. Award Mr. Vang attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
5. Grant any other and further relief that this Court deems just and proper.

Dated: October 14 2025.

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/s/ Hans Meyer
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VERIFICATION

I, Ana Loera, declare as follows:

1. I am a paralegal employed at The Meyer Law Office, PC
2. I am the paralegal working with attorneys Hans Meyer and Conor Gleason, both of whom represent Mr. Veng Vang.
3. I have read the foregoing Petition for Writ of *Habeas Corpus* and know the contents thereof to be true to my knowledge, information, and belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 14, 2025

/s/ Ana Loera
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CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on October 14, 2025 I filed the foregoing with the Clerk of Court using the CM/ECF system. I also emailed Kevin Traskos at Kevin.Traskos@usdoj.gov and Bill Scarpato at victor.scarpato@usdoj.gov a copy of the foregoing and will serve via certified mail within 48 hours or earlier pursuant to any forthcoming Court order to Respondents and their Representatives.

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