

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Bouakham PHAKOUSONH,
Petitioner,

v.

Kristi NOEM, et. al.,
Respondents.

Case No. CIV-25-1398-JD

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE
IN OPPOSITION TO PETITIONER'S PETITION
FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner submits this reply to Respondent's Response in Opposition to his Petition for Writ of Habeas Corpus. Respondents attempt to recast this case as a challenge to post-order prolonged detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001). That framing is incorrect. While Petitioner argues some of the law in *Zadvydas* regarding civil detention, Petitioner does not currently seek release because the length of his present detention has exceeded six months. He seeks relief because ICE unlawfully revoked a long-standing Order of Supervision (“OOS”) -- issued over 14 years ago -- without complying with the regulations that govern revocation, thereby rendering his re-detention unlawful.

This Court recently granted habeas relief on materially indistinguishable facts, holding that ICE violated its own regulations when it revoked an OOS without establishing changed circumstances and without providing the required notice and opportunity to respond. *See Pham v. Bondi*, No. CIV-25-1157-SLP (W.D. Okla. Nov. 20, 2025). The same result is compelled here.

II. THIS COURT HAS JURISDICTION UNDER § 2241

Respondents argue that 8 U.S.C. §§ 1252(g) and 1252(b)(9) strip this Court of jurisdiction because Petitioner's detention arises from the “execution” of a removal order and Respondents' action of said removal order. The Supreme Court has repeatedly held that § 1252's jurisdictional bars do not preclude review of detention authority. *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Demore v. Kim*, 538 U.S. 510 (2003).

Petitioner does not challenge the validity of his removal order, the decision to remove, or the manner of removal. He challenges only whether ICE is holding him in

violation of the Constitution and laws of the United States—specifically, in violation of ICE’s own detention regulations. Such claims fall squarely within § 2241. If § 1252(g) barred review of unlawful detention resulting from defective revocation of supervision, *Pham* and other cases across the country could not have been decided as they were. This Court should reject Respondents’ jurisdictional argument for the same reasons.

III. THIS CASE CURRENTLY CONCERNS UNLAWFUL REVOCATION OF SUPERVISION, NOT PROLONGED DETENTION

Respondents emphasize that Petitioner has been detained for only a short period and argue that his claim is therefore “premature.” That argument presumes the detention was lawful at its inception. It was not.

When ICE releases a noncitizen on supervision after being unable to effectuate removal or for another reason, ICE may not later revoke that release unless it satisfies the regulatory prerequisites for revocation. 8 CFR § 241.13(i)(3) and 8 CFR § 241.4(l). Where revocation is unlawful, Petitioner argues that detention that follows is unlawful from the moment it begins—regardless of duration.

Thus, the question before the Court is narrow:

Did ICE satisfy the regulatory prerequisites for revocation of Petitioner’s Order of Supervision?

The answer is no.

IV. PETITIONER’S ORIGINAL RELEASE COULD ONLY HAVE BEEN BASED ON NON-REMOVABILITY TO LAOS, TRIGGERING § 241.13

Respondents argue that Petitioner was released in 2011 under 8 C.F.R. § 241.4 (Doc. 8-1 ¶ 6). But, Petitioner is a citizen of Laos. It is a well known fact in the immigration

context that Laos has a long history of not allowing repatriation of its citizens. Thus, he must have been released in 2011 under 8 C.F.R. § 241.13 due to "no significant likelihood of removal" because the United States and Laos lack of a Memorandum of Understanding (MOU) and a repatriation agreement between the two countries.

A. Historical inability to remove Laotian nationals explains Petitioner's 2011 release.

The United States has lacked a functioning repatriation arrangement with Laos for decades due to the absence of a Memorandum of Understanding. *See Asian Law Caucus.*¹ Until recently, removals were rare or nonexistent, which resulted in travel bans to force Laos' cooperation in providing travel documents for removal. Some of the bans have been lifted due to some recent cooperation, but some bans remain pending future cooperation. *See Department of State - US Embassy, Laos.*² As a practical matter, ICE has routinely released Laotian nationals on Orders of Supervision after post-order detention because removal was not significantly likely in the reasonably foreseeable future. It is reported that there are over 4,800 such individuals in the United States. *See Asian Law Caucus.*³

¹ <https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation> ("Laos does not have a formal repatriation agreement with the U.S. Historically, Laos rarely issued travel documents for deportation. In June 2025, the U.S. placed a partial travel ban on Laos and cut off visas for certain Lao individuals citing visa overstays and failure to cooperate with U.S. deportation policy.")

² <https://la.usembassy.gov/the-secretary-of-state-has-authorized-the-lifting-of-most-sanctions-on-u-s-visa-issuance-to-lao-citizens/> ("Sanctions remain in place for certain senior officials of the Lao PDR government, pending further cooperation with the United States with respect to accepting Lao PDR nationals designated for removal from the United States.")

³ <https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation> ("There are over 4,800 people considered by ICE to be nationals of Laos who have removal orders and are living in the U.S. This number includes Hmong, Mien, and other ethnic minority groups.")

Petitioner's own history reflects that reality. After entry of his final order of removal in 2011, ICE was unable to remove him and released him on an OOS. He has since lived in the community for more than a decade, checking in as required by ICE. That prolonged liberty is not accidental; it reflects ICE's determination at the time that removal could not be effectuated. Where ICE releases a person after prolonged inability to remove him to a country that historically does not accept repatriation, the release necessarily rests on a determination of non-removability.

B. Where release is based on non-removability, § 241.13—not § 241.4—governs revocation

Respondents insist that Petitioner's supervision and revocation fall under 8 C.F.R. § 241.4, which they characterize as affording broad discretion and minimal process. That argument elevates form over substance. Section 241.13 governs the release of individuals who cannot be removed in the reasonably foreseeable future. Where ICE has already made that determination—as it necessarily did here given the history—ICE may revoke supervision *only* if it demonstrates changed circumstances and complies with § 241.13(i)'s procedural protections. *Pham*, R&R at 8–13. ICE cannot avoid § 241.13 by relabeling the revocation as a § 241.4 decision years later. Courts look to why the person was released, not how the government now wishes to characterize it.

V. ICE VIOLATED § 241.13(i) WHEN IT RE-DETAINED PETITIONER

A. ICE failed to establish “changed circumstances” at the time of revocation

Section 241.13(i)(2) permits revocation only if, on account of changed circumstances, ICE determines that removal has become significantly likely in the

reasonably foreseeable future. Notably, Respondent reported pursuant to his yearly reporting requirements on his OOS on October 29, 2025 and was sent home with a new report date of February 26, 2025.⁴ Yet, he was taken into custody the next day and presented with a Warrant for Removal but no changed circumstances explained or notice requirements followed.

Here, ICE has identified no such contemporaneous change. General assertions that Laos is “now issuing travel documents,” or that removals have occurred in some cases, do not establish that Petitioner’s removal had become significantly likely at the time he was re-detained. In fact, ICE even confirmed that Petitioner was not on the manifest for the December 15, 2025 flight. (Doc. 8-2 ¶9). Courts have repeatedly rejected such boilerplate assertions. *Pham*, at *5 (citing *Sang Nguyen v. Bondi*, No. EP-25-CV-323-KC, 2025 WL 3120516 at *7, *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151-52)

Respondents argue that another case in this district, *Bahadorani v. Bondi*, No. CIV-25-1091-PRW (W.D. Okla. Oct. 31 2025), stating their failure to provide notice of revocation is harmless error that has been cured with the opportunity to contest his detention before this Court. They fail to point out that the Petitioner in that case underwent an interview process and a formal notice. Here, Petitioner was only presented with a Warrant of Removal and Respondents submitted a statement that he will likely be removed in the future. They fail to show changed circumstances from his report date the day before his detention when they told him to return for review in February. As in *Pham*, Respondents

⁴ See Exh. 1 OSUPP History and New Report Date.

rely on post-hoc declarations and generalized country statements, not on evidence of individualized progress toward Petitioner's removal before revocation. That is insufficient as a matter of law.

B. ICE failed to provide the written notice and opportunity to respond required by § 241.13(i)(3).

Section 241.13(i)(3) mandates that, upon revocation, the noncitizen "will be notified of the reasons for revocation" and afforded a prompt opportunity to respond. Written notice is required. While Respondents insist that §241.4 applies, they state that Petitioner was given notice - a copy of his arrest warrant, Form I-205. This is hardly "notice" of revocation of an order of supervision -- especially when the day before he was told to return in February 2026 for a review. As the *Pham* court held, failure to provide written notice of revocation reasons violates ICE's own regulations and constitutes a due process violation warranting habeas relief. *Pham* at *3 (citing *Roble v. Bondi*, 2025 WL 2443453 at *3-4 9 (D. Minn. Aug. 25, 2025); *K.E.O. v. Woosley*, No. 25-CV-74-RGJ, 2025 WL 2553394 at *5-6 (W.D. Ky. Sept. 4, 2025), *Santamaria Orellana v. Baker*, No. 25-CV-1788-TDC, 2025 WL 2444087 at *7 (D. Md. Aug.25, 2025)).

IV. EVEN IF § 241.4 APPLIED, ICE STILL VIOLATED REVOCATION NOTICE REQUIREMENTS

Even assuming, that Petitioner's supervision was governed by § 241.4, Respondents' position still fails because § 241.4 independently requires written notice of detention decisions. ICE's own regulation provides: "A copy of *any* decision by the district director ... to release or to detain an alien shall be provided to the detained alien."

8 C.F.R. § 241.4(d) (emphasis added). Respondents have not shown compliance with § 241.4(d) here.

As stated in *Pham*, "such regulatory defects amount to due process violations that entitle a petitioner to habeas relief." *Pham* at *3 (citing *Zhu v. Genalo*, No. 25-CV-6523, 2025 WL 2452352, at *8 (S.D.N.Y. Aug. 26, 2025) (finding notice is required under 8 C.F.R. §241.4 and failure to abide by the regulations is a due process violation). Petitioner reasonably relied on the supervision regime that allowed him to live in the community for over a decade. ICE cannot lawfully revoke that liberty interest without adhering to its own notice requirements.

VIII. CONCLUSION

ICE detained Petitioner after unlawfully revoking a long-standing Order of Supervision—without establishing changed circumstances and without providing the notice required by its own regulations. This occurred one day after his annual report date to Respondents where he was told to report back in February. His detention violates the laws and regulations of the United States.

Accordingly, Petitioner respectfully requests that the Court:

1. Grant the Petition for Writ of Habeas Corpus;
2. Declare ICE's revocation of Petitioner's Order of Supervision unlawful and ineffective; and
3. Order Petitioner's immediate release subject to the terms of his prior Order of Supervision.

DATED this 18th of December, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on December 18, 2025, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a notice of electronic filing to counsel of record

/s/ Kelli J. Stump
Kelli J. Stump