

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

SOMPHASONG SOUKHAVONG,

PETITIONER,

v.

U.S. DEPT. OF HOMELAND SECURITY,  
KRISTI NOEM, in her capacity as Secretary of  
Department of Homeland Security; TODD  
LYONS in his capacity as the Director of ICE;  
MARY DE ANDA-YBARRA, Field Office  
Director of Enforcement and Removal  
Operations, El Paso Field Office; WARDEN of  
ERO El Paso Camp East Montana,

RESPONDENTS.

Civil Case No. 3:25-cv-700

PETITION FOR A WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241, BY A  
PERSON SUBJECT TO INDEFINITE  
IMMIGRATION DETENTION

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS**

1. Petitioner Somphasong Soukhavong files this motion seeking the Court's urgent intervention. On or about October 28, 2025, Respondents abruptly and without justification detained Petitioner when he went to the Immigration & Customs Enforcement ("ICE") Dallas Field Office for his routine check-in. His purpose for being there was the same as it has been for a decade: annually report as required under the order of supervision ("OSUP") he was placed on in 2015. ICE took Petitioner into custody without explanation—other than generally claiming it was to remove him—in spite of him dutifully appearing for his annual check-in and having no OSUP violations.
2. Petitioner is detained under 8 U.S.C. § 1231, which governs the detention of non-citizens with a final order of removal. Petitioner's removal order has been final since January of 2004 and the removal period has long since expired.

3. Petitioner's continued detention violates 8 U.S.C. § 1231(a), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. He cannot be deported to his country of origin—Laos—because he has been granted relief under the Convention Against Torture ("CAT relief"). 8 C.F.R. § 1208.17. Indeed, on information and belief ICE officers have not identified an alternative country to which it will attempt to remove him. Even if they eventually identifies such a country, Petitioner is entitled to notice and the opportunity to seek fear-based protection with respect to that country. However, it is clear that ICE had not identified a country to which it intended to remove Petitioner at the time it re-detained him, rendering his re-detention unreasonable and arbitrary since his removal is not reasonably foreseeable. *Zadvydas*, 533 U.S. at 699,
4. Furthermore, ICE's detention of Petitioner without the opportunity to seek relief from the alternative countries to which it may eventually attempt to remove him violates his due process rights.
5. ICE failed to follow the mandatory procedures and make the required findings as set forth at 8 C.F.R. § 241.13 prior to revoking Mr. Soukhayong's order of supervision. If ICE had followed the § 241.13's required procedures and made the findings required under the regulations, the only conclusion that could have been reached is that there was not and is not a legal basis for this new re-detention now.
6. Given the lack of any legitimate basis for Petitioner's continued detention, where there is neither a risk of flight nor any threat to public safety, it is difficult to discern a rationale for ICE's actions. The most plausible explanation is that ICE is maintaining his detention solely to inflate its statistical enforcement figures in service of meeting the Agency's arbitrarily elevated deportation targets. A basis that is as illegal as it is immoral.

7. There have been several U.S. District Court cases granting the exact relief sought by Petitioner to individuals who have been detained under circumstances similar to those in this habeas petition. Specifically, each of those cases involved individuals who had been placed on an order of supervision (OSUP) when they could not be removed to their native country, but they were nonetheless suddenly re-detained after years of compliance with their OSUPs and no evidence of changed circumstances specific to them as required by 8 C.F.R. § 241.13. Among those cases were *Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187, at \*1 (W.D. Tex. Oct. 24, 2025), *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at \*4–6 (E.D. Cal. July 16, 2025), *Hoac v. Beccerra, et al.*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*3 (E.D. Cal. July 16, 2025), and *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at \*3 (D. Mass. June 20, 2025). Petitioner respectfully asks this Court to follow the reasoning of these decisions and order ICE to immediately release him.
8. This re-detention is a flagrant and ongoing violation of the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the required regulatory procedure for re-detention set forth in 8 C.F.R. § 241.13(f),(i).
9. Every additional day of this lawless detention inflicts new and irreparable injury through the profound loss of liberty and the forced separation from his U.S. citizen family. For these reasons, good cause exists for this Court to grant this Petition for a Writ of Habeas Corpus and immediately enjoin ICE from continuing to detain Petitioner in violation of the constitution and laws of the United States.

**CUSTODY**

10. Petitioner is currently being detained by and in the physical custody of the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (hereinafter “ICE”) at the ERO El Paso Camp East Montana facility in El Paso, Texas.<sup>1</sup> Petitioner is under the direct control of Respondents and their agents.

**JURISDICTION**

11. This action arises under the Constitution of the United States, 28 U.S.C. §2241(c)(1), and the Immigration and Nationality Act (“INA”), 8 U.S.C. §1101 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §2241, Art. I § 9, cl. 2 of the United States Constitution (“Suspension Clause”); and 28 U.S.C. §1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States.<sup>2</sup>

**VENUE**

12. Pursuant to 28 U.S.C. § 1391, venue is proper in the Western District of Texas, because Petitioner is currently detained in the territorial jurisdiction of this Court, at the ERO El Paso Camp East Montana facility in El Paso, Texas.<sup>3</sup>

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<sup>1</sup>

(Pet’r’s App. Ex. 3.)

<sup>2</sup> See *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.”); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“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.”) *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that *Zadvydas* applies to aliens found inadmissible as well as removable).

<sup>3</sup> (Pet’r’s App. Ex. 3.)

**PARTIES**

13. Petitioner, Somphasong Soukhavong, is a native and citizen of Laos who was granted CAT relief on December 2, 2003.<sup>4</sup> He was placed on an Order of Supervision on April 17, 2015.<sup>5</sup> On October 28, 2025, Petitioner was suddenly detained by ICE at a check-in with no explanation, no violations of the OSUP, no changed circumstances, and no chance of removal to Laos.<sup>6</sup> As of the time this petition is being filed, Petitioner remains re-detained in ICE custody at the ERO El Paso Camp East Montana detention facility.<sup>7</sup>
14. Respondent Kristi Noem is the Secretary of Department of Homeland Security. She is responsible for the administration of ICE and the implementation and enforcement of the INA. As such Ms. Noem is the legal custodian of Petitioner.
15. Respondent Todd Lyons is the ICE Director and in this position he is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Naturalization Act (INA). As such, Mr. Lyons has ultimate custodial authority over Petitioner in his capacity as Director of ICE.
16. Mary De Anda-Ybarra is the ICE Field Office Director of the El Paso Field Office and is Petitioner's immediate legal custodian.<sup>8</sup>

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<sup>4</sup> (Pet'r's App. Ex. 1 and 2.)

<sup>5</sup> (Pet'r's App. Ex. 2.)

<sup>6</sup> (Pet'r's App. Ex. 1, 2, and 3.)

<sup>7</sup> (Pet'r's App. Ex. 3.)

<sup>8</sup> See *Vásquez v. Reno*, 233 F.3d 688, 690 (1<sup>st</sup> Cir. 2000), *cert. denied*, 122 S. Ct. 43 (2001).

17. Respondent Warden is in charge of the ERO El Paso Camp East Montana detention facility.<sup>9</sup> He or she is in physical control of the Petitioner and is Petitioner's immediate physical custodian.

**EXHAUSTION OF REMEDIES**

18. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. Furthermore, no statutory exhaustion requirements apply to Petitioner's claim of unlawful detention.

**STATEMENT OF THE FACTS**

19. Petitioner is a native and citizen of Laos.<sup>10</sup>
20. Petitioner was granted deferral of removal as relief under the Convention Against Torture on December 2, 2003.<sup>11</sup>
21. Petitioner was placed on an Order of Supervision on April 17, 2015 and has spent the last ten years dutifully reporting to ICE on said order.<sup>12</sup>
22. On or about October 28, 2025, Petitioner presented himself at the ICE office for his scheduled annual check-in.<sup>13</sup> Without warning or explanation from ICE, ICE detained him. ICE did so without any process whatsoever, much less the process required by its own regulations found at 8 C.F.R. § 241.13.

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<sup>9</sup> (Pet'r's App. Ex. 3.)

<sup>10</sup> (Pet'r's App. Ex. 1 and 2.)

<sup>11</sup> (Pet'r's App. Ex. 1 and 2.)

<sup>12</sup> (Pet'r's App. Ex. 2.)

<sup>13</sup> (Pet'r's App. Ex. 2.)

23. To be clear, ICE provided no notice to Petitioner of its intentions to take him into custody prior to when he reported on October 28, 2025. He had not violated any provisions of the OSUP; again, he was detained when reporting as required. Likewise, ICE did not identify any changed circumstances which would make Petitioner's removal more likely on October 28, 2025, than it was every other day over the past twenty-two years since his deferral of removal was entered.
24. Since his abrupt and unjustified detention, Petitioner has been detained by ICE. ICE had made no effort to communicate with him regarding the reason for his detention now. While ICE has generally indicated they are "detaining him for removal," it has also made statements and taken actions which indicate they still have not obtained travel documents for him to any third country.
25. Said differently, ICE still does not even know if it will be able to remove Petitioner to a third country. But it does know that it cannot remove him at the time of this filing. Nor has it been able to at any point since it arbitrarily detained him at an annual check in on October 28, 2025.
26. As of the date of this filing, Petitioner remains unlawfully detained without any indication that his removal is reasonably foreseeable. His current detention is therefore in direct violation of the principles set forth by the Supreme Court in *Zadvydas v. Davis*, constituting an unlawful restraint on his liberty.
27. This abrupt and unforeseen detention occurred despite there being no material change in Petitioner's circumstances. There is no indication that his removal in the reasonably foreseeable future is any more likely now than it has been at any point in the last twenty years.<sup>14</sup>

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<sup>14</sup> Cf. *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at \*3 (D. Mass. June 20, 2025)(when pressed on evidence specific to changed circumstances of the pre-95 immigrant petitioner in that case, the government only came up with a declaration which the government itself acknowledged was not specific to the petitioner, stating "No doubt the declaration is general and it just says the United States has been successful in removing individuals to Laos.").

28. Petitioner's detention is in direct violation of the principles set forth by the Supreme Court in *Zadvydas*. More importantly, for the purposes of this action, ICE failed to adhere to its own mandatory regulations when it re-detained Petitioner without the process required by the regulations or the existence of changed circumstances specific to Petitioner of such significance that his removal has suddenly become reasonably foreseeable.
29. The reward for years of reporting as required: ICE detained him at a routine check-in he scheduled a year earlier. His continued confinement is punitive, not administrative, and is therefore unconstitutional.

**Irreparable Harm of Continued ICE Detention**

30. Everyday Petitioner is detained in ICE custody in direct contravention of the statute and U.S. constitution he suffers irreparable harm. From the physical, emotional, and mental toll the complete sudden loss of one's freedom and liberty takes on anyone in the same circumstances, to the loss of income every day he remains in custody. Moreover, Petitioner remains separated from his U.S. citizen wife of over 25 years, his three adult U.S. citizen children, his siblings, and his community.
31. Irreparable harm (alarmingly) is also found in the very real possibility of Petitioner, dying in ICE custody.<sup>15</sup> In late June, Mr. Phan, a 55-year old man from Laos, died in ICE custody.<sup>16</sup> According to reports on it, Mr. Phan was ordered removed more than 13-years ago and, it appears, was re-detained seven weeks prior to his death.<sup>17</sup> While Petitioner does not have access to the facts or circumstances of the re-detention in that case, it has all the same hallmarks

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<sup>15</sup> (See Pet'r's App. Ex. 5 & 6.)

<sup>16</sup> (Pet'r's App. Ex. 5.)

<sup>17</sup> (*Id.*)

of ICE's recent policy of detaining pre-95 Laos immigrants at their annual check-ins—despite removal not being anywhere close to reasonably likely in the near future.

32. On May 14, 2025, in an oversight hearing before the House Appropriations Committee, Todd Lyons, then acting director of Immigration and Customs Enforcement, testified that nine people have died in ICE custody since January 20, 2025.<sup>18</sup> A month after this testimony, on June 23, 2025, a 49-year old Canadian citizen died in ICE custody.<sup>19</sup> Reports of overcrowding, individuals being detained at facilities that are meant for processing and not set up for detention beyond a few hours are increasing, and other inhumane detention practices continue to rise. Moreover, if ever there was an agency who had demonstrated it could not be trusted to abide by the law and treat individuals humanely, it has been ICE over the past few months.<sup>20</sup>
33. Petitioner is at risk of physical harm, emotional trauma, and lasting negative consequences if he remains in custody. Meanwhile, there will be ZERO harm to Respondents if Petitioner is immediately released from ICE custody. There is no reason to consider Petitioner a danger. He has been faithfully following the rules of his release over the past decade. There's no basis to claim he is a flight risk. Moreover, the Supreme Court already dismissed the notion that immigrants whose removal has been difficult in the past can constitute a flight risk, stating: “[B]y definition the first justification [for detention] preventing flight—is weak or nonexistent where removal seems a remote possibility.”<sup>21</sup>

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<sup>18</sup> This testimony can be found at the following link: <https://www.youtube.com/watch?v=QvoURiAxBmA>.

<sup>19</sup> The ICE press release on this death can be found at the following link: <https://www.ice.gov/news/releases/canadian-national-ice-custody-passes-away>

<sup>20</sup> (*See* Pet'r's App. Ex. 6 (documenting in detail the many stories of deplorable deteriorating conditions in ICE detention facilities as well as facilities not meant to detain individuals overnight being used to detain noncitizens for days at a time)).

<sup>21</sup> *Zadvydas*, 533 U.S. at

**LEGAL BASIS FOR RELIEF SOUGHT**

34. The Immigration & Nationality Act provides that a noncitizen who is “ordered removed” “shall” be removed “from the United States within a period of 90-days.”<sup>22</sup> The same subparagraph goes on to state that this 90-day period is “referred to as the ‘removal period’” in § 1231.<sup>23</sup>
35. The 90-day “removal period begins on the latest of the following: (i) The date the order of removal becomes administratively final; (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order; (iii) If the alien is detained or confined (except under an immigration process); the date the alien is released from detention or confinement.”<sup>24</sup>
36. As interpreted by *Zadvydas*, § 1231 allows for detention beyond the 90-day removal period in limited circumstances, the government should—and previously has—released those non-citizens for whom there is “no reasonable likelihood of . . . removal in the foreseeable future.”<sup>25</sup> That being said, when the statute is “read in light of the Constitution’s demands, [it] limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States.”
37. This is not exclusively a *Zadvydas* case. This case is not about the initial authority to detain a noncitizen following a final order of removal. Rather, it concerns the authority of Immigration

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<sup>22</sup> 8 U.S.C. § 1231(a)(1)(A).

<sup>23</sup> *Id.*

<sup>24</sup> § 1231(a)(1)(B).

<sup>25</sup> *Zadvydas v. Davis*, 533 U.S. 678, 690, (2001)

and Customs Enforcement (ICE) to re-arrest and indefinitely<sup>26</sup> detain a man who, after a prior period of detention, was released on an Order of Supervision (OSUP) for years precisely because his removal was not significantly likely in the reasonably foreseeable future.

38. Respondents' authority to detain Petitioner is not boundless. The controlling authority for this scenario is not exclusively *Zadvydas*, but the specific federal regulation governing the revocation of release: 8 C.F.R. § 241.13(i).<sup>27</sup>

39. While 8 U.S.C. § 1231(a) provides the general statutory framework for post-removal-order detention and supervised release, “[t]he revocation of that release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release for purposes of removal. Specifically, a noncitizen's release may be revoked ‘if, on account of changed circumstances,’ it is determined that ‘there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.’”<sup>28</sup> Furthermore, the regulations go on to proscribe the process for revocation based on a determination of changed circumstances as follows:

[T]he alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for

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<sup>26</sup> The words “indefinite” or “indefinitely” when used in this petition are meant to describe the length of his detention as “unknown” or an “unspecified period of time.” When given their ordinary meaning Respondents cannot truly claim that Petitioner’s detention is anything but indefinite as they have provided no time frame whatsoever for even making the request for travel documents to a third country, much less when it believes it will get them.

<sup>27</sup> *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at \*3 (D. Mass. June 20, 2025) (“This case is not about ICE's authority to detain in the first place... This case is about ICE's authority to re-detain Petitioner after he was issued a final order of removal, detained, and subsequently released on an OSUP. The DHS regulation, 8 C.F.R. § 241.13(i), applies to non-citizens in Petitioner's situation.”); *See also Escalante, v. Noem, et. al.*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at \*3 (E.D. Tex. Aug. 2, 2025) (“[T]his is not your typical first round detention of an alien awaiting removal. Petitioner was previously detained, then released on supervised release for several years, and his 90-day removal period expired. *Zadvydas*, relied upon by Respondents, dealt with the initial detention of an alien awaiting removal.”).

<sup>28</sup> *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at \*3 (E.D. Cal. July 16, 2025) (quoting 8 C.F.R. § 241.13(i)(2)).

revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.<sup>29</sup>

40. These regulations, not exclusively *Zadvydas* or 8 U.S.C. § 1231, govern ICE's re-detention of individuals who have been released after a determination was made that they could not be removed. The first step in this process is necessarily a determination of changed circumstances. Then, once that determination is made, ICE is required to follow the interview and notice requirements of § 241.13(i)(3).
41. ICE's failure to do either of these things properly provide two independent bases for granting this Petition. Assuming *arguendo* (but not in no way conceding) that the regulations allow ICE to re-detain noncitizens for whom there has previously been a determination that removal is not reasonably foreseeable, ICE must follow its own regulations setting forth the process to be followed before re-detention.<sup>30</sup> Specifically, "ICE's decision to re-detain a noncitizen like [Petitioner] who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."<sup>31</sup>

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<sup>29</sup> 8 C.F.R. § 241.13(i)(3).

<sup>30</sup> See *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at \*4–6 (E.D. Cal. July 16, 2025)(discussing the regulatory requirements for re-detention in the context of a habeas petition and request for a TRO seeking the immediate release of a "re-detained" immigrant); see also *Hoac v. Beccerra, et al.*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*3 (E.D. Cal. July 16, 2025)(same); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at \*3 (D. Mass. June 20, 2025)(same).

<sup>31</sup> *Id.*; see also *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2)).

42. There is no evidence ICE followed its own regulations in this case. Petitioner was not interviewed by ICE before being detained. There is no evidence ICE has even started the process for requesting travel documents for Petitioner from any third country—much less that it has obtained such documents.
43. Simply put, ICE did not follow its own regulations for re-detention set forth in § 241.13(f),(i) and, even if it claims it did, there is no evidence of changed circumstances specific to Petitioner that would make his removal reasonably foreseeable—which is necessary for re-detention under § 241.13(i)(2).<sup>32</sup> Accordingly, the instant petition is being filed seeking the Court to Order Petitioner’s immediate release from ICE custody.
44. While *Zadvydas* does not exclusively control, its core reasoning illuminates the central question here: what constitutes a *reasonable* period of detention? The answer to that question, and the constitutional permissibility of the detention itself, depends entirely on the circumstances. Common sense dictates a profound difference between the six-month period immediately following a removal order and the re-detention of an individual decades later, after years of perfect compliance with supervision, and who voluntarily appears for a routine check-in. In other words, the analysis for individuals like Petitioner who report to ICE after years of compliance on OSUP is much different than for noncitizens who have just been ordered removed and are still clearly within the statutory removal period.
45. The “historic purpose of the writ,” as *Zadvydas* reminds us, is “to relieve detention by executive authorities without judicial trial.”<sup>33</sup> To that end, this Court must ask whether

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<sup>32</sup> See *Phan*, 2025 WL 1993735, at \*4–6; *Hoac*, 2025 WL 1993771, at \*3; *Nguyen*, 2025 WL 1725791, at \*3.

<sup>33</sup> 533 U.S. at 699.

Petitioner's detention "exceeds a period reasonably necessary to secure removal," measuring reasonableness "primarily in terms of the statute's basic purpose, namely, *assuring the alien's presence at the moment of removal.*"<sup>34</sup>

46. To achieve its sole legitimate purpose—assuring his presence at the moment of removal—ICE should not need to have Petitioner's detained for any more than 72 hours before a scheduled departure. He does not need to be detained for months on end while ICE may or may not begin the process of seeking third country removal.

**PETITIONER'S FIRST CLAIM FOR RELIEF: ICE'S VIOLATION OF ITS OWN REGULATIONS & STATUTORY VIOLATION**

47. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

48. Petitioner's continued re-detention by Respondents without following the process set forth by its own regulations at 8 C.F.R. § 241.13(f),(i) is unlawful as ICE failed to adhere to the revocation procedures set forth at 8 C.F.R. § 241.13(i).<sup>35</sup> As here, "where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute . . . and [ICE] fails to adhere to it, the challenged [action] is invalid."<sup>36</sup> Based on ICE's violations of its own regulations, Petitioner's detention is unlawful and his immediate release is appropriate, particularly given that his removal is not reasonably foreseeable.<sup>37</sup>

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<sup>34</sup> *Id.* (emphasis added).

<sup>35</sup> *Id.*

<sup>36</sup> *Nguyen v. Hyde*, 2025 WL 1725791, at \*5 (quoting *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)); see also *Zadvydas*, 533 U.S. at 690 ("The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person ... of ... liberty ... without due process of law.' Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.").

<sup>37</sup> See *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017) (allowing petitioner's motion for release upon a finding that ICE violated its regulations that implicated a fundamental constitutional right).

**PETITIONER'S SECOND CLAIM FOR RELIEF: DUE PROCESS VIOLATION**

49. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.
50. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.<sup>38</sup>
51. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite re-detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. The U.S. Supreme Court in *Zadvydas* thus interpreted 8 U.S.C. §1231(a) to allow continued detention only for a period reasonably necessary to secure the alien's removal, because any other reading would go beyond the government's articulated interest – to effect the alien's removal.<sup>39</sup> Re-detention under the regulations requires removal to be reasonably foreseeable under the same standard, and therefore, ICE's re-detention of Petitioner over two decades after release because removal was not reasonably foreseeable is unlawful absent a changed circumstances specific to him significant enough to make his removal reasonably foreseeable in the immediate future.

**PETITIONER'S THIRD CLAIM FOR RELIEF: DETENTION BEYOND THE STATUTORY PERIOD**

52. Under 8 U.S.C. § 1231(a), the government may detain a noncitizen for removal only during the 90-day "removal period," which begins upon the occurrence of any of the three events

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<sup>38</sup> See e.g., *Tam v. INS*, 14 F.Supp.2d 1184 (E.D. Cal 1998) (aliens retain substantive due process rights).

<sup>39</sup> See *Kay v. Reno*, 94 F.Supp.2d. 546, 551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner's substantive due process rights were violated, and noting that "If deportation can never occur, the government's primary legitimate purpose in detention – executing removal – is nonsensical.").

provided by statute. 8 U.S.C. § 1231(a)(1)(A)-(B)(iii). This period may be extended under circumstances inapplicable here.

53. The Supreme Court has recognized a constitutional limitation on post-removal- period detention: such detention is permissible only when there is a “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

54. Petitioner’s removal order became final long before his current detention and his 90-day removal period has unquestionably expired as it is linked to the finality of his removal order and not when he is detained. His 180-day *Zadvydas* presumptively reasonable period shortly after the statutory removal period.

55. Petitioner has established far more than a “good reason to believe” that there is no significant likelihood of his removal in the reasonably foreseeable future as (1) he cannot legally be removed to Laos; (2) no other country has agreed to accept him; and (3) even if such a country were identified, Petitioner would be entitled to apply for protection from removal to that country, including on the basis that the country would send him to Cameroon, a process that would take many months if not years to complete.

56. Under *Zadvydas*, Respondents cannot detain Petitioner indefinitely while they search for a country that might accept him or while they pursue lengthy legal proceedings to try to overcome his withholding protection. Such detention violates both the statutory limitations of 8 U.S.C. § 1231(a)(6) and his constitutional due process rights.

**PETITIONER’S FOURTH CLAIM FOR RELIEF: THIRD COUNTRY REMOVAL  
WITHOUT THE OPPORTUNITY TO SEEK PROTECTION**

57. The Convention Against Torture, as implemented in U.S. law, prohibits Respondents from removing an individual to any country where such individual is more likely than not to face

torture by or at the acquiescence of the government. *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note); 8 C.F.R. §§ 1208.16(c), 1208.18. This prohibition extends to chain refoulement—the practice of deporting someone to a country which will in turn deport that person to be tortured elsewhere. *See* 8 C.F.R. § 1208.18(a)(1).

58. For an individual with an order of withholding or deferral of removal to a particular country, like Petitioner, Respondents can only remove him to another country if he first receives notice and an opportunity to apply for protection from removal to that third country. *See* 8 U.S.C. § 1231(b)(3)(A).
59. Petitioner has no claim to citizenship or permanent residence in any country other than Laos. Accordingly, any third country to which he might be deported would, in turn, likely deport him to Laos, where it has already been held that he faces a substantial risk of torture.
60. Respondents have not communicated with Petitioner regarding which third countries to which they may seek to remove him.
61. Petitioner could face persecution or torture if removed directly to various other countries, including but not limited to countries with notorious human rights abuses like Libya, South Sudan, and Eritrea. Without knowing which country Respondents intend to try to remove him to, Petitioner cannot prepare or file an application for protection.
62. As relief, Petitioner request an order from this Court that Respondents may not remove Petitioner from the continental United States without first providing him and his counsel with written notice of the specific country they intend to remove him to, and a reasonable period of time—which Petitioner respectfully suggests is at least fifteen days—to file an application for relief under, among other things, the withholding of removal statute and the Convention

Against Torture with respect to such country.

63. Additionally, as access to counsel is critical to preparing any potential application for relief, Petitioner asks that such order be further narrowed to prohibiting Respondents from removing him or relocating him to a detention facility outside the jurisdiction of this Court.

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus and direct the Respondents to immediately release Petitioner from custody under reasonable conditions of supervision;
- 3) Immediately Order Respondents not to transfer the Petitioner out of the jurisdiction of this Court while the Petitioner remains in Respondents' custody during the pendency of these proceedings;
- 4) Order Respondents not to remove Petitioner to any third country, without notice and the opportunity to be heard and seek protection;
- 5) Award Petitioner 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
- 6) Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED,

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\*Pending admission Pro Hac Vice