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8
 9 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

10 Sam Khamsaen Phetinta,
 11
 12 Petitioner,
 v.

Case No. 2:25-cv-02564-GMN-BNW
**Federal Respondents' Response to First
 Amended § 2241 Petition (ECF No. 9)**

13 John Mattos, NSDC Warden; Michael
 Bernacke, Field Director, West Valley City
 14 Office of ICE ERO; Todd Lyons, ICE
 Acting Director; Kristi Noem, DHS
 15 Secretary; Pam Bondi, U.S. Attorney
 General,
 16
 17 Respondents.

18 Federal Respondents Michael Bernacke, Todd Lyons, Kristi Noem, and Pamela
 19 Bondi through undersigned counsel, hereby file this response to the First Amended § 2241
 20 Petition (ECF No. 9) filed by Sam Khamsaen Phetinta ("Petitioner").

21 On or about June 24, 2022, an Immigration Judge ordered Petitioner removed to
 22 Laos. Exhibit A (IJ Order). Because he could not be removed to Laos at that time,
 23 Petitioner was released on an Order of Supervision on or about September 20, 2022.
 24 Exhibit B (Order of Supervision). After Petitioner violated his conditions of supervision by
 25 absconding and committing a new crime, Petitioner was re-detained by ICE on or about
 26 December 3, 2025. Exhibit C (Form I-213) at 2.

27 Petitioner's Amended Petition challenges his current detention primarily because,
 28 he believes, removal is not reasonably foreseeable. As an initial matter, Petitioner is still

1 within the six-month period of detention that the Supreme Court declared is
2 “presumptively reasonable.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Even when
3 Petitioner hits the six-month mark on approximately March 3, 2025,¹ his detention will still
4 be lawful because circumstances have changed, and Laos recently indicated that it will
5 issue Petitioner a travel document.

6 The Amended Petition also seeks relief from the possibility that ICE could
7 theoretically remove Petitioner to a country not identified in his removal order. But the
8 possibility that Petitioner may be removed to a country other than Laos is entirely
9 speculative and now exceedingly unlikely in light of Laos’ willingness to provide Petitioner
10 a travel document.

11 Finally, the Amended Petition claims that ICE failed to follow the required
12 procedures when re-detaining Petitioner in December 2025. However, the revocation of
13 Petitioner’s release was justified by his violations of his conditions of supervision – in
14 particular, his absconding from supervision and commission of a new crime – and the
15 change in the likelihood of his removal, and any procedural deficiencies with ICE’s
16 revocation of that release are harmless.

17 I. Factual Background

18 Petitioner is a citizen of Laos. Exhibit D (Notice to Appear). In 2017 and 2018,
19 Petitioner was convicted of three crimes in Utah that led to the initiation of removal
20 proceedings: two separate cases of Theft by Receiving Stolen Property and a third case
21 involving Assault. *Id.* On June 24, 2022, an Immigration Judge ordered Petitioner removed
22 from the United States to Laos. Exhibit A. Petitioner waived his right to appeal that
23 decision, and the order of removal became final. *Id.*

24
25 ¹ The Amended Petition acknowledges that Petitioner has been in custody less than two
26 months after being re-detained, yet claims that *Zadvydas* is triggered when an alien’s
27 cumulative time in custody exceeds six months. But § 241.13 would appear to disagree.
28 That regulation was promulgated in direct response to the *Zadvydas* decision. *See* 66 Fed.
Reg. 56967-01, 2001 WL 1408247, at *56967. And § 241.13(f) expressly authorizes
detention for “an additional six months” when supervision is revoked for a violation of
conditions of release.

1 Following the Order of Removal, Petitioner continued his detention in DHS
2 custody. Following expiration of the mandatory 90-day removal period, because there was
3 no significant likelihood of removal in the reasonably foreseeable future, ICE released
4 Petitioner from custody pursuant to an Order of Supervision. Exhibit B; *see* 8 U.S.C.
5 § 1231(a)(3) (“If the alien does not leave or is not removed within the [90-day] removal
6 period, the alien, pending removal, shall be subject to supervision under regulations
7 prescribed by the Attorney General.”).

8 That Order of Supervision required that Petitioner comply with conditions,
9 including, among others, “[t]hat you appear in person at the time and place specified, upon
10 each and every request of the agency, for identification and for deportation or removal”
11 (Exhibit B at 1) and “[t]hat you do not commit any crimes while on this Order of
12 Supervision” (*id.* at 3). That Order of Supervision notified Petitioner that “[a]ny violation
13 of these conditions may result in you being taken into Service custody and you being
14 criminally prosecuted.” *Id.*

15 Petitioner absconded from ICE supervision almost immediately: “On October 31,
16 2022, PHETINTA failed to make his appointment for ordered supervision.” Exhibit C at 3.
17 Petitioner was found by ICE on September 9, 2025, after he had been arrested by Las
18 Vegas Metropolitan Police Department on charges involving a forgery lab. *Id.* at 2. On
19 October 6, 2025, Petitioner pled guilty to one count of conspiracy to commit forgery in
20 Nevada state court and was sentenced to 120 days of custody in Clark County Detention
21 Center. Exhibit E (Judgment of Conviction). On December 3, 2025, CCDC released
22 Petitioner to ICE custody. Exhibit C at 3.

23 According to ICE, on or about December 5, 2025, ICE initiated a request for travel
24 documents for Petitioner, and on or about January 23, 2026, Laos indicated it would issue
25 the Petitioner a travel document.

26 II. Procedural Background

27 On December 22, 2025, Petitioner filed a pro se Petition for Writ of Habeas Corpus.
28 *See* ECF No. 1-1. On December 29, 2025, the Court issued an order appointing the Federal

1 Public Defender as counsel for Petitioner. ECF No. 3. On January 12, 2026, Petitioner
2 filed a First Amended § 2241 Petition. ECF No. 9. Pursuant to a stipulation, the Court
3 extended the deadline for the Federal Respondents to respond to the Amended Petition to
4 January 27, 2026. ECF No. 12. This response follows.

5 **III. Relevant Statutory and Regulatory Background**

6 **A. Removal and Detention Under 8 U.S.C. § 1231(a)**

7 Where, as here, an alien is subject to a final order of removal, there is a 90-day
8 “removal period,” during which the government “shall” remove the alien. 8 U.S.C. §
9 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2). And the
10 mandatory removal period begins on the latest of three possible dates: (1) the date an order
11 of removal becomes “administratively final,” (2) the date of the final order of any court that
12 entered a stay of removal, or (3) the date the alien is released from non-immigration
13 detention. 8 U.S.C. § 1231(a)(1)(B).

14 There are at least three potential outcomes in the event the government does not
15 remove an alien during the 90-day mandatory removal period. First, the government may
16 release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3).
17 Second, the government may extend the removal period if the alien “fails or refuses to make
18 timely application in good faith for travel or other documents necessary to the alien’s
19 departure or conspires or acts to prevent the alien’s removal subject to an order of removal.”
20 8 U.S.C. § 1231(a)(1)(C). And finally, the government may further detain certain categories
21 of aliens, including those “inadmissible” under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6).
22 Continued detention under this latter category is often referred to as the “post removal
23 period.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

24 The INA does not place an explicit time limit on how long detention during the “post-
25 removal-period” can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the
26 Supreme Court has held that the government may only detain aliens in the post-removal-
27 period for the time “reasonably necessary to bring about that alien’s removal from the
28 United States.” *Zadvydas*, 533 U.S. at 689. And the Supreme Court further clarified that a

1 six-month period of detention is “presumptively reasonable.” *Id.* at 701. “After this 6-month
2 period, once the alien provides good reason to believe that there is no significant likelihood
3 of removal in the reasonably foreseeable future, the Government must respond with
4 evidence sufficient to rebut that showing.” *Id.*

5 **B. Orders of Supervision**

6 In the event the government does not further detain and instead releases the alien at
7 the end of the 90-day mandatory removal period, the government must do so under
8 conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3) (providing that an alien who
9 “does not leave or is not removed within the removal period ... shall be subject to
10 supervision”). Regulations at 8 C.F.R. § 241.4 govern aliens where “release will not pose a
11 danger to the community or to the safety of other persons or to property or a significant risk
12 of flight pending such alien's removal from the United States.” *Id.* § 241.4(d)(1). Aliens, such
13 as Petitioner, who are released because ICE determined “there is no significant likelihood of
14 removal in the reasonably foreseeable future,” are governed by the regulations at § 241.13.

15 If the alien violates a condition of release, the government can revoke the order of
16 supervision and return the alien to custody. *See* 8 C.F.R. § 241.13(i)(1). In addition, the
17 government can revoke an alien’s release “if, on account of changed circumstances, the
18 Service determines that there is a significant likelihood that the alien may be removed in the
19 reasonably foreseeable future.” *Id.* § 241.13(i)(2). In either scenario, the government must
20 notify the alien of “the reasons for revocation,” and “conduct an initial informal interview
21 promptly” to give the alien “an opportunity to respond to the reasons for revocation stated
22 in the notification.” *See id.* § 241.13(i)(3).

23 **C. Removal to Third Country**

24 As a general matter, aliens ordered removed “may designate one country to which
25 [he or she] wants to be removed,” and DHS “shall remove the alien to [that] country[.]” 8
26 U.S.C. § 1231(b)(2)(A). In certain cases, however, DHS will not remove the alien to his or
27 her designated country, including if “the government of the country is not willing to accept
28 the alien into the country.” *Id.* § 1231(b)(2)(C)(iii). In that scenario, the alien “shall” be

1 removed to his or her country of nationality or citizenship, unless the country “is not willing
2 to accept” the alien.” *Id.* § 1231(b)(2)(D). If, however, the alien cannot be removed to a
3 country of designation or the country of nationality or citizenship, then the government may
4 consider other options, including “[t]he country from which the alien was admitted to the
5 United States,” “[t]he country in which the alien was born,” or “[t]he country in which the
6 alien last resided[.]” *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries
7 listed in subparagraph (E) is “impracticable, inadvisable, or impossible,” then the alien may
8 be removed to any “country whose government will accept the alien into that country.”
9 *Id.* § 1231(b)(2)(E)(vii); see *Jama v. Immigr. & Customs Enft.*, 543 U.S. 335, 341 (2005).

10 In addition, DHS “may not remove an alien to a country if the Attorney General
11 decides that the alien’s life or freedom would be threatened in that country because of [his or
12 her] race, religion, nationality, membership in a particular social group, or political
13 opinion,” 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(a)-(b), 1208.16(a)-(b), or if it is more
14 likely than not that the alien would be tortured, 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c),
15 1208.17.

16 IV. Argument

17 A. Petitioner’s Detention Does Not Violate *Zadvydas* (Grounds 1 and 2).

18 ICE can lawfully detain Petitioner because he is subject to a final order of removal
19 and there is a significant likelihood of removal in the reasonably foreseeable future. In fact,
20 under *Zadvydas*, there is a presumption that Petitioner’s detention is reasonable for at least
21 another month.

22 ICE’s detention authority stems from 8 U.S.C. § 1231 which provides for the
23 detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs
24 immigration authorities to remove an individual with a final order of removal within a
25 period of 90 days, which is known as the “removal period.” During the removal period,
26 ICE must detain the alien. 8 U.S.C. § 1231(a)(2) (“shall detain”). If the removal period
27 expires, ICE can either release an individual pursuant to an Order of Supervision as
28 directed by § 1231(a)(3) or may continue detention under § 1231(a)(6).

1 ICE may continue detention beyond the removal period for three categories of
2 individuals: (i) those who are inadmissible to the United States pursuant to section 212 of
3 the INA (8 U.S.C. § 1182); (ii) those who are subject to certain grounds of removability
4 from the United States pursuant to section 237 of the INA (8 U.S.C. § 1227), including, as
5 relevant here, subsection (a)(2); or (iii) those whom immigration authorities have
6 determined to be a risk to the community or “unlikely to comply with the order of
7 removal.” 8 U.S.C. § 1231(a)(6)(A).

8 Petitioner is outside the initial 90-day mandatory removal period which commenced
9 following his order of removal on June 24, 2022 and would have expired on September 22,
10 2022, around the time he was released on an Order of Supervision. However, he is still
11 eligible for ICE detention beyond the initial ninety days as he is subject to removal under
12 section 237(a)(2) of the INA. (8 U.S.C. § 1227(a)(2)). Specifically, Petitioner was subject to
13 removal / deportation under section 237(a)(2)(A)(iii) (“convicted of an aggravated felony
14 at any time after admission”) and (a)(2)(E)(i) (“convicted of a crime of domestic violence”).
15 See Exhibit A (IJ Order). This order is now final.

16 Because Petitioner has been ordered removed pursuant to section 237(a)(2)(A)(iii)
17 and (a)(2)(E)(i) of the INA, ICE has statutory authority to detain Petitioner to effectuate his
18 removal order from the United States and he is not entitled to a bond hearing or release as
19 § 1231(a)(6) does not require such process. See *Johnson v. Arteaga-Martinez*, 596 U.S. 573,
20 574, 581 (2022) (holding § 1231(a)(6)’s plain text “says nothing about bond hearings before
21 immigration judges or burdens of proof”).

22 Under *Zadvydas*, the Supreme Court established that detention for up to six months
23 after a final order of removal is “presumptively reasonable.” 533 U.S. at 701. As the Court
24 explained in *Zadvydas*, detention beyond the 90-day removal period is justified when it is
25 “reasonably necessary” to effectuate removal. *Id.* After six months, the burden shifts to the
26 petitioner to show “good reason to believe that there is no significant likelihood of removal
27 in the reasonably foreseeable future” before the burden reverts to the government to rebut
28 that showing *Id.* at 701. The Supreme Court has recognized that “detention during

1 deportation proceedings [is] a constitutionally valid aspect of the deportation process.”
2 *Demore v. Kim*, 538 U.S. 510, 523 (2003). When evaluating “reasonableness” of detention,
3 the touchstone is whether an alien’s detention continues to serve “the statute’s basic
4 purpose, namely, assuring the alien’s presence at the moment of removal.” *Zadvydas*, 533
5 U.S. at 699. To set forth a Constitutional violation for § 1231 detention, an individual must
6 satisfy the *Zadvydas* test. *See Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining
7 that “*Zadvydas*, largely, if not entirely forecloses due process challenges to § 1231 detention
8 apart from the framework it established.”).

9 Here, Petitioner’s final Order of Removal was entered on June 24, 2022 (Exhibit A),
10 and he was released on an Order of Supervision on or about September 20, 2022 (Exhibit
11 B.)² He was re-detained on December 3, 2025 (Exhibit E), meaning that he has been in ICE
12 custody for less than five months after his order of removal became final. As a result,
13 Petitioner’s current period of post-removal-order detention is still within the six-month
14 timeframe that *Zadvydas* identifies as *presumptively reasonable*. And his detention will remain
15 presumptively reasonable until at least March 3.

16 Even after the six-month mark, Petitioner’s detention is permissible unless there is
17 no significant likelihood of removal in the reasonably foreseeable future. The Amended
18 Petition claims that Petitioner “cannot be removed to Laos” and “Respondents have no
19 reason to believe that they will now be able to remove” Petitioner. (ECF 9 at 2.) While that
20 may have been true in 2022, that is no longer the case, as aliens have been removed to Laos
21 as least as early as August 2025.³ But it is also incorrect with respect to Petitioner
22 specifically. According to ICE, on or about January 23, 2026, Laos indicated it will provide
23 Petitioner a travel document.

24
25
26 ² Petitioner’s Amended Petition claims that “[h]e was released on an order of supervision in
27 December 2022” (ECF 9 at 2), but that is not correct, as demonstrated by Exhibits B and E.

28 ³ See, for example, a DHS press release announcing the removal of 12 Laotian aliens to
Laos in August 2025, available at <https://www.dhs.gov/news/2025/08/13/ice-deports-heinous-criminal-illegal-aliens-including-gang-member-pedophiles-and/>

1 **C. Any Procedural Issues with the Revocation of Petitioner's Supervision Are**
2 **Harmless or Can Be Cured (Ground 3).**

3 The Amended Petition claims Petitioner's release was improperly revoked. Yet, the
4 applicable regulations are clear that Petitioner's supervision is revocable. Because he was
5 released in 2022 based on the lack of a foreseeable removal, § 241.13 applies. *See generally* 8
6 C.F.R. § 241.13; *see also* 8 C.F.R. § 241.4(i)(7); ECF 9 at 15 (agreeing that Petitioner was
7 released for this reason). Under § 241.13(i), Petitioner's supervision could be revoked for
8 violating a condition of release or if there is a significant likelihood that he may be removed
9 in the reasonably foreseeable future. Both apply here. Petitioner violated his conditions of
10 supervision by failing to check in with ICE the month after his release. *See* Exhibit C. He
11 further violated his conditions by committing an additional crime, as demonstrated by his
12 state conviction for conspiracy to commit forgery. Exhibit E.

13 Moreover, the likelihood of Petitioner's removal has changed, which independently
14 justifies revocation under § 241.13(i)(2). Since at least this summer, Laos has accepted some
15 removable aliens. Most importantly, as of January 23, 2026, Laos indicated it will accept
16 Petitioner.

17 From the documentation available at the time of this filing, it is not clear whether
18 ICE followed the procedures set forth in § 241.13(i)(3), which requires that (a) Petitioner be
19 notified of the reasons for revocation of his release; and (b) Petitioner receive an initial
20 informal interview promptly after his return to custody to afford him an opportunity to
21 respond to the reasons for revocation stated in the notification. There is no written
22 notification in the records available to undersigned counsel, though the regulation does not
23 necessarily require the notice to be written. The Form I-213 (Record of Deportable /
24 Inadmissible Alien) completed upon Petitioner's re-entry into ICE custody appears to show
25 that Petitioner was interviewed, but it does not mention Petitioner's revocation of
26 supervision. Exhibit C at 4.⁴

27 _____
28 ⁴ Undersigned counsel has requested that an ICE attorney arrange an opportunity to speak
with the Deportation Officer who appears to have prepared this form, but has not yet been

1 However, even assuming ICE did not follow the procedures in § 241.13, the failure
2 to do so would be harmless. *See, e.g., Ladak v. Noem*, 2025 WL 3764016, at *5 (N.D. Tex.
3 Dec. 30, 2025). The government has identified here several bases for revocation, and
4 Petitioner will have an opportunity to reply (*see* ECF 3 at 3 (“Petitioner will then have 7
5 days to file a reply.”)). As contemplated by § 241.13(i)(3), Petitioner can “submit any
6 evidence or information that he . . . believes shows there is no significant likelihood he . . .
7 be removed in the reasonably foreseeable future, or that he . . . has not violated the order of
8 supervision.” *See also Ladak*, 2025 WL 3764016, at *5 (“Because Ladak has received more
9 than full notice and an opportunity to be heard, even if the respondents failed to conform to
10 the regulations set forth in Section 241.4(l)(1) and the factors for consideration in re-
11 detention in Section 241.13(f), any error is now harmless in light of the procedures in this
12 case.”). Absent some evidence from Petitioner that the revocation decision was
13 substantively incorrect, there is simply no prejudice to any procedural deficiencies.

14 Alternatively, the Court could order that ICE provide Petitioner with the notice and
15 interview required by § 241.13. In *Rustami v. Noem*, the government did not dispute that the
16 petitioner did not receive the required interview. 2025 WL 3760744, at *4 (D. Kan. Dec. 30,
17 2025). The *Rustami* court found that substitute process was the appropriate remedy, *id.*, and
18 ordered ICE to provide the required interview within 17 days of the issued order, *id.* at *5.

19 Such an outcome would make sense here. Petitioner asks that the Court order him
20 released and further “[p]rohibit Respondents from re-detaining Petitioner in the future
21 absent proof of changed circumstance[es] making his removal reasonably foreseeable”
22 (ECF 9 at 19.)⁵ As an initial matter, changed circumstances already exist, as described
23
24

25 able to do so. If the government receives additional information showing that the
requirements of § 241.13 were met, it will promptly supplement this filing.

26 ⁵ The Petitioner in *Bunnell* made this same request, which the Court granted. ECF 25 at 17
27 in *Bunnell*. However, as far as undersigned counsel can tell, the government did not address
28 this issue in its response in *Bunnell*. Nevertheless, this Petitioner’s history of absconding and
committing a new crime, as well as the changed likelihood of removal, distinguish his case
from *Bunnell*.

1 above. It would make little sense to order Petitioner's release when ICE could simply re-
2 revoke his release immediately on that basis.

3 And even if there were not changed circumstances, § 241.13(i)(1) authorizes
4 revocation when an alien violates the conditions of his release. Petitioner provides no reason
5 why the Court should eliminate this potential basis for revocation of his supervision. And
6 it's especially important here, as Petitioner already absconded once three years ago and was
7 not found until he committed a new crime. An order that Petitioner cannot be re-detained
8 for violating his conditions of release would only incentivize him to abscond again as there
9 could be no consequences for doing so.

10 V. Conclusion

11 For the reasons set forth above, Petitioner's continued detention is lawful.

12 Petitioner has been in custody less than five months and *Zadvydas* presumes that his
13 detention is reasonable for at least another month and, according to § 241.13(f), another
14 four months. If the Court has concerns about the likelihood of removal in the future, it
15 should set a status conference or require supplemental briefing on that issue closer to
16 March 3, 2026.

17 Moreover, there is no need for ICE to remove Petitioner to a third party country
18 because Laos has indicated it will accept him.

19 Finally, in light of Petitioner's absconding from supervision and commission of a
20 new crime, both of which justify revocation of his supervision, as well as the change in the
21 likelihood of his removal, which also justifies his detention, any procedural failure to
22 comply with 8 C.F.R. § 241.13(i)(3) is harmless or could be cured by the Court ordering
23 that ICE provide the required notice and interview.

24 Respectfully submitted this 27th day of January 2026.

25 TODD BLANCHE
26 Deputy Attorney General

27 /s/ Richard Anthony Lopez
28 RICHARD ANTHONY LOPEZ
Assistant United States Attorney

Exhibit Index

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- Exhibit A – Immigration Judge Order (June 24, 2022)
- Exhibit B – Order of Supervision (Sept. 20, 2022)
- Exhibit C – Form I-213 (Dec. 3, 2025)
- Exhibit D – Notice to Appear (July 1, 2014)
- Exhibit E – Judgment of Conviction (Oct. 15, 2025)