

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Saw Tha Gay,

Petitioner,

v.

KRISTI NOEM, in her capacity as Secretary of the United States Department of Homeland Security;

TODD M. LYONS, in his official capacity as Acting Director of the United States Immigration and Customs Enforcement;

PAMELA BONDI, in their official capacity as Attorney General of the United States;

DAVID EASTERWOOD in his official capacity as Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement; **ERIC TOLLEFSON**, in his official capacity as Sheriff of Kandiyohi County;

Respondents.



Case No. 25-cv-4752

**Verified Petition for Writ of Habeas
Corpus Pursuant to 28 U.S.C. §
2241**

INTRODUCTION

1. This case seeks the immediate release of Saw Tha Gay (“Mr. Gay”) from his unlawful detention by the Department of Homeland Security’s (“DHS”) U.S. Immigration and Customs Enforcement (“ICE”). ICE unlawfully detained Mr. Gay on December 11, 2025, in violation of his constitutional, statutory, and regulatory rights. As of this filing Mr. Gay is being detained at Kandiyohi County Jail in Wilmar, Minnesota at the behest of the federal Respondents.

2. Mr. Gay entered the United States on January 31, 2013 as a refugee from Myanmar. Chan Decl. Exhibit 2, I-213 at 2. Mr Gay has no other relationship with any other country, other than his stay in Malaysia as a refugee before his arrival in the United States.

 The Myanmar junta is currently engaged in a civil war with several ethnic minority groups,  Chan Decl. Exhibit 12 Complaint Doe v. Noem, ¶ 52-55.

3. On July 8, 2021 DHS served him a Notice to Appear. Chan Decl. Exhibit 3, NTA at 1. DHS charged Mr. Gay with an aggravated felony relating to sexual abuse of a minor.

4. The charge of removal was based entirely on Mr. Gay’s lone criminal conviction for Attempted Fourth Degree Criminal Sexual Conduct under Minnesota Statute 609. 345 subd.1(f), which involves sexual contact with a person who is at least 16 years old and under the age of 18 and which the actor has a “significant relationship to the complainant.” Chan Decl. Exhibit 3.

5. After Mr. Gay's counsel contested the original charge, arguing that the Supreme Court's decision in *Esquivel Quintana v. Sessions*, 581 U.S. (2017) defined minors for purposes of sexual abuse of a minor aggravated felony ground of removal as minors who are *under* the age of sixteen. DHS contested the Motion and also filed two additional charges based on the same conviction, one involving an "attempt" aggravated felony under 1101(a)(43)(U) and a crime of child abuse under 8 U.S.C. 1227(a)(2)(E). Chan Decl. Exhibit 4.

6. On September 2, 2021, the Immigration Judge sustained all three charges of removability, and set the case for a merits hearing over Mr. Gay's claim for protection under the Convention Against Torture. Chan Decl. Exhibit 5. PH Statement at 1.

7. On September 13, 2021, the Immigration Judge after a hearing gave an oral decision granting Mr. Gay's application for Deferral of Removal under the Convention Against Torture. The Immigration Judge also ordered removal to Myanmar but did not list any alternative countries for removal. The Government waived appeal as did Mr. Gay. Chan Decl. Exhibi 1, Summary of Oral Decision.

8. Since Mr. Gay's release in early 2022, he has complied with all conditions of his Order of Supervision and checked-in as recently as September 22, 2025. He was due for a check in with ICE on December 22, 2025 which he had every intention of complying with. Chan Decl. Exhibit 8 Statement of Saw Tha Gay.

9. On December 11, 2025, ICE agents were waiting for him at or near his residence in St. Paul and after questioning him in English, a language he does not

understand, and failing to provide any translation, they arrested Mr. Gay and transported him to Bishop Wheeler building at Fort Snelling, Minnesota. *Id.*

10. At the Bishop Wheeler Building, Mr. Gay was presented with a document to sign, but again, it was not translated and he did not understand what the document was for, or why he was being detained. Respondents failed to provide him any information in a language he understood, so he refused to sign the document. After being housed with seven or eight other detainees overnight at the Bishop Wheeler holding facility and sleeping on the floor, he was transported to Kandiyohi County Jail where he remains. *Id.*

11. Respondents have neither explained to him the reason for his detention, or provided him any information in his language on what their plans for him.

12. Mr. Gay brings this habeas action, first, for an order that Respondents immediately release him. Respondents' sudden revocation of his Order of Supervision and subsequent arrest violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act ("INA") and implementing regulations, the Administrative Procedure Act ("APA"), and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. ICE's detention of Mr. Gay without giving him notice or an opportunity to be heard, without findings required by law, and in violation of agency rules requires his immediate release, as numerous federal courts across the country (including in the Eighth Circuit) have concluded in similar cases. Chan Decl. Exhibit 13. *e.g.*, *Liban O v. Bondi, et al*, No. 25-4560 (JWB/ECW), *Maimmuna M.M. v. Bondi*, No. 25-4622 (JWB/ECW), *Roble v. Bondi*, No.

25-CV-3196 (LMP/LIB), 2025 WL 2443453 (D. Minn. Aug. 25, 2025). Relief in other jurisdictions have also been granted in similar cases. *See Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025), *Santamaria Orellana, v. Baker*, 25-1788-TDC, 2025 WL 2841886 (D. Maryland October 7, 2025).

13. Mr. Gay also brings this habeas action for injunctive relief against a third country removal without the process required by the U.S. Constitution, the INA and implementing regulations, and the Foreign Affairs Reform Restructuring Act of 1998 (“FARRA”), and its implementing regulations. Those authorities ensure that prior to any removal, Respondents must provide Mr. Gay an opportunity to present a claim of fear of torture or persecution as to any third country. Specifically, pursuant to 8 U.S.C. § 1231(b)(3), Respondents may not remove persons who are more likely than not to face persecution if removed. And pursuant to the Convention Against Torture (“CAT”), which is codified as a statutory note to § 1231, Respondents may not remove persons to a country where they are likely to face torture. Numerous courts across the country have ordered this type of injunctive relief. *See, e.g., Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724 (W.D. Wash. Nov. 17, 2025); *Vu v. Noem*, No. 1:25-CV-01366-KES-SKO (HC), 2025 WL 3114341 (E.D. Cal. Nov. 6, 2025).

14. The Due Process Clause of the Fifth Amendment also requires that, prior to a third-country removal, Mr. Gay must receive meaningful notice and opportunity to access these mandatory statutory protections. As the Supreme Court recently held in *A.A.R.P. v. Trump*, this means a person “must receive notice” that “they are subject to removal” (here,

to a third country), and such notice must be provided “within a reasonable time and in such a manner as will allow the[] [noncitizen] to actually seek . . . relief.” 605 U.S. 91, 95 (2025) (per curiam) (quoting *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025)).

15. Mr. Gay seeks an order that not only employs existing DHS screening mechanisms and but provides additional protections such as: (1) proper notice to him and counsel in writing of any planned removal to any other third country at least ten days prior to removal; (2) to provide a reasonable fear interview (“RFI”) should Mr. Gay have a fear of removal to that country; and (3) to provide at least fifteen days to file a motion to reopen with the immigration court and allow for its adjudication.

PARTIES

16. Petitioner, Mr. Gay, has lived in the United States since January 30, 2013. Chan Decl. Ex. 2; Ex. 8. Prior to his detention on or about December 11, 2025, he was residing in St. Paul, Minnesota. Mr. Gay is currently detained at the Kandiyohi County Jail in Wilmar Minnesota. Chan Decl. Ex. 8..

17. Respondent Kristi Noem is named in her official capacity as the Secretary of the Department of Homeland Security (“DHS”). DHS is a department of the executive branch of the U.S. government that is tasked with administering and enforcing the federal immigration laws. Secretary Noem is ultimately responsible for ICE’s actions; specifically, she is responsible for the administration and enforcement of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Noem is legally responsible for any effort to detain and remove Mr. Gay and as such is Mr. Gay’s legal custodian.

18. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of the United States Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States, and as such Acting Director Lyons is Mr. Gay's legal custodian.

19. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General. Attorney General Bondi is responsible for continuing a custody case against a noncitizen and as such is Mr. Gay's legal custodian.

20. Respondent David Easterwood is named in his official capacity as the Acting Director for the ICE St. Paul Field Office. Director Easterwood is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures.

21. Respondent Eric Tollefson is named in his official capacity as the Sheriff of Kandiyohi County and thus as Mr. Gay's immediate custodian as the Kandiyohi County Jail in under the control of Sheriff Tollefson.

JURISDICTION AND VENUE

22. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

23. Nothing in 8 U.S.C. § 1252 or FARRA deprives this Court of jurisdiction.

24. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court's inherent equitable powers.

25. Venue lies in the U.S. District Court for the District of Minnesota because it is the judicial district in which Mr. Gay is currently detained. Venue is also proper in this Court under 28 U.S.C. § 1391(e)(1) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this district.

REQUIREMENTS OF 28 U.S.C. § 2243

26. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Mr. Gay is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* Moreover, a hearing is to be set within five days of the return on writ, and "[u]nless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained." *Id.*

27. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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) (citation omitted). "The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the

trial courts do not act within a reasonable time.” *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978).

28. Due to the nature of this proceeding, Mr. Gay asks this Court to expedite proceedings in this case as necessary and practicable for justice. Mr. Gay also seeks as part of this Court’s Show Cause Order an order to prevent (1) transfer out of the district (or his return to the district) and (2) his removal from the United States while these proceedings are ongoing. Mr. Gay’s case is similar to two other cases in which the District Court in Minnesota ordered release on an expedited basis. *See infra*.

LEGAL FRAMEWORK

Removal Proceedings

29. Deportation of non-citizens can be accomplished through various procedural mechanisms that are dependent on both the status of the non-citizen, the basis for deportation and whether the non-citizen is seeking entry or admission into the United States. For lawful permanent residents, the process is governed by 8 U.S.C. § 1229a. In these removal proceedings, an Immigration Judge (“IJ”) who is an executive hearing officer, determines both whether the individual may be removed from the United States and also the country to which they will be removed. *Id.*; 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). The federal statute sets out a multi-tiered process for determining the country of removal.

30. As relevant here, the INA “provides four consecutive removal commands” about where to remove a noncitizen. *Jama v. ICE*, 543 U.S. 335, 341 (2005).

31. First, in most cases, the noncitizen must be provided the opportunity to “designate one country to which the [noncitizen] wants to be removed.” 8 U.S.C. § 1231(b)(2)(A)(i). The designation of a country occurs during the removal process and occurs during a master calendar hearing, and usually at the same time that a non-citizen is asked to plead to a Notice to Appear.

32. Second, if the noncitizen declines to designate a country—which often occurs where the noncitizen fears return to their country of origin—DHS then designates the “country of which the [noncitizen] is a subject, national, or citizen” for removal, as required by statute. *Id.* § 1231(B)(2)(D). The IJ will decide what country to designate for removal *prior* to deciding either removability or relief from removal. The statute requires DHS to attempt removal to the country that the IJ had designated before seeking alternatives. *See id.* § 1231(b)(1), (b)(2)(A), (D) (repeatedly instructing where DHS “shall” remove someone by order of priority). The designation process plays an important role in providing those subject to deportation with notice.

33. Third, if DHS is unable to remove the individual to either the country of their designation or the country of which they are a subject, national, or citizen, then the government is required to remove them to any of the following options: (1) “[t]he country from which the [noncitizen] was admitted to the United States;” (2) “[t]he country in which is located the foreign port from which the [noncitizen] left for the United States or for a foreign territory contiguous to the United States;” (3) “[a] country in which the [noncitizen] resided before [they] entered the country from which [they] entered the United States;” (4)

“[t]he country in which the [noncitizen] was born;” (5) “[t]he country that had sovereignty over the [noncitizen’s] birthplace when the [noncitizen] was born;” or (6) “the country in which the [noncitizen’s] birthplace is located when the [noncitizen] is ordered removed.” *Id.* § 1231(b)(2)(E).

34. Finally, only where it is “impracticable, inadvisable, or impossible to remove the [noncitizen] to each country described” above may DHS seek removal to some other alternative country. *See id.* § 1231(b)(2)(E)(vii).

Protection from Removal

35. U.S. immigration law affords noncitizens in the United States three forms of protection from persecution and/or torture: asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). While some of these protections are discretionary, others must be awarded if the conditions are met.

36. Asylum typically provides full protection against deportation to any country. *See* 8 U.S.C. § 1158(c). This means the person cannot be deported not only to their country of origin, but also any other country. Asylum also provide a host of other benefits, including a pathway to citizenship.

37. Individuals who are not eligible for asylum, *e.g.*, because they did not apply within one year of entering the country, *see id.* § 1158(a)(2)(B), may qualify for withholding of removal under the INA, *id.* § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a “mandatory” protection that prohibits removal to a designated country where a noncitizen establishes that they are more likely than not to face persecution.

INS. v. Aguirre-Aguirre, 526 U.S. 415, 419 (1999). Withholding of removal also contains exceptions for, inter alia, individuals who have committed certain serious crimes. *See* 8 U.S.C. § 1231(b)(3)(B).

38. Pursuant to FARRA, Congress instructed that the U.S. government may not “expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture.” Pub. L. 105-277 Div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1999) (codified as statutory note to 8 U.S.C. § 1231). This mandate applies to all persons and contains no exceptions.

39. DHS has implemented withholding and CAT protections via regulation. *See generally* 8 C.F.R. §§ 208.16–208.18, 1208.16–1208.18.

40. Termination of Deferral of Removal may occur through a process that involves an Immigration Court under 8 C.F.R. 208.17(d). The government must motion the Immigration Court with relevant evidence of the possibility of torture that was not presented in the removal hearing. If the motion is granted, the Immigration Court must provide notice to the protectee, of both time and place, and also must provide at least 10 days for the person to provide evidence of the possibility of torture. A *de novo* hearing is then provided for in which the Immigration Court may decide if torture is more likely than not should the person be deported to the designated country.

41. Under 8 C.F.R. 208.18, the Immigration Court may not be involved if the Department of State obtains diplomatic assurances that the person will not be tortured and

this is shared with the Attorney General and the Attorney General believes the assurance is sufficiently reliable. 8 C.F.R. 208.18(c). Moreover, the Attorney General may only delegate this authority to the Deputy Attorney General or to the Commissioner of the Immigration and Naturalization Service and cannot delegate to anyone else. *Id.*

42. Individuals can appeal the denial of an application for withholding of removal or CAT protection to the BIA and later to the federal courts of appeals. *See* 8 U.S.C. § 1252(a); 8 C.F.R. §§ 208.31(e), 1208.31(e), (g)(2)(ii), 1240.15; *Nasrallah v. Barr*, 590 U.S. 573, 575 (2020).

43. No matter where DHS seeks to remove a person, the INA's protections against removal to a country where a person may face persecution and FARRA's protections against removal to a country where a person may face torture apply. Removals pursuant to § 1231(b) are "subject to paragraph (3)," which, as noted, provides the framework for withholding of removal. *See* 8 U.S.C. § 1231(b); *see also, e.g., Jama*, 543 U.S. at 348. Similarly, FARRA and the regulations implementing CAT prohibit deportation to a country where the noncitizen will face torture. *See* FARRA § 2242(b); 8 C.F.R. §§ 208.16(c)-208.18, 1208.16(c)-1208.18.

Release on Supervision After an Order of Removal

44. When the government issues a final order of removal against a noncitizen, DHS has a 90-day "removal period" to remove that noncitizen. 8 U.S.C. § 1231(a)(1)(A). During that time, the DHS detains the noncitizen. *Id.* § 1231(a)(2)(A).

45. But not all noncitizens ordered removed from the United States can actually be removed from the United States. For instance, if a noncitizen is ordered removed but granted withholding of removal to a particular country, the government is precluded from removing the noncitizen to that country. 8 U.S.C. § 1231(b)(3)(A).

46. Unless it can *lawfully* remove the noncitizen in that circumstance to a “third country,” ICE cannot detain such noncitizen indefinitely. *See Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001). If a noncitizen cannot be removed within the “removal period,” they must be released on an “order of supervision”—colloquially known as an “OSUP.” 8 U.S.C. §§ 1231(a)(3); 1231(a)(6).

47. “Once ICE releases a noncitizen on an Order of Supervision, ICE’s ability to re-detain that noncitizen is constrained by its own regulations.” *Roble*, 2025 WL 2443453, at *3 (granting the writ for habeas corpus after concluded ICE violated the OSUP regulations).

48. For instance, 8 C.F.R. § 241.13(i)(2) provides that ICE may re-detain a noncitizen released on an Order of Supervision if the noncitizen “violates any of the conditions of release,” 8 C.F.R. § 241.13(i)(1), or “if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future,” *id.* § 241.13(i)(2); *see also Roble*, 2025 WL 2443453, at *4 (citations omitted). These regulations require that, “upon revocation of supervised release, it is the [ICE’s] burden to show a significant likelihood that the [noncitizen] may be

removed.” *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025).

49. Under 8 C.F.R. § 241.13(i), the noncitizen must “be notified of the reasons for revocation of his or her release,” and ICE must “conduct an initial informal interview promptly after [the noncitizen’s] return to [ICE] custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3). At that interview, the noncitizen “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.” *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)). While the regulations do not mention translation, in order to effectively “notify” any notice must be made such that the noncitizen can understand the grounds listed.

50. 8 C.F.R. § 241.4(l) also establishes a process by which supervision orders may be revoked and, consequently, by which a released noncitizen may be re-detained. This regulation gives additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a noncitizen may be re-detained 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 [noncitizen], or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2). Because “[r]egulations cannot circumvent the plain text of the statute[.]” courts have questioned 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). Moreover given the vague aspect of (4) it is unclear if such a condition could itself violate due process as it provides little to no notice of prohibited conduct.

51. 8 C.F.R. § 241.4(l), entitled “Revocation of release,” also sets out a process by which ICE may revoke an order of supervision. Subsection (l)(1) mandates that “[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release or parole.” *Id.* It goes on to guarantee that “[t]he alien will be afforded an initial informal interview promptly after his or her return to [DHS] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” *Id.*; *see also id.* § 241.13(i)(3) (requiring notification and an interview when release is revoked).

52. 8 C.F.R. § 241.4(l)(2) makes clear that “[t]he Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to [ICE] custody [a noncitizen] previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director’s opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner.”

53. This regulation was written before the Homeland Security Act. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. May 2, 2025). Since 2002, the Code of

Federal Regulations has redefined certain terms like “Executive Associate Commissioner” and “district director” to reflect the transfer of authority from the Immigration and Nationality Service to DHS. *See id;* *see also* 6 U.S.C. § 557; 8 C.F.R. § 1.2. “So under 241.4(l)(2), the officials with the power to revoke release after making certain findings include field office directors and any other official ‘delegated the function or authority . . . for a particular geographic district, region, or area.’” *Ceesay*, 781 F. Supp. 3d at 161.

Due Process Limits on Detention and Decisions to Revoke an Order of Supervision

54. “The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693 (citation modified). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.* at 690.

55. Under substantive due process doctrine, a restraint on liberty like revocation of a noncitizen’s order of supervision is only permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

56. “Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty,” like the decision to revoke a noncitizen’s order of supervision. *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).

57. Protections against the arbitrary revocation of orders of supervision are tantamount to protect against arbitrary deprivation of a protected liberty interest. *See Morrissey v. Brewer*, 408 U.S. 471 (1972)(requiring pre-deprivation hearings before the revocation of criminal parole), *see also*, *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before a neutral arbiter prior to revocation of the order of supervision). By not allowing any means to contest revocation of release before a neutral arbiter, the potential for erroneous deprivation of a significant liberty interest is high. *Matthews*, 424 U.S. at 335.

58. Any interpretation of the regulations under 8 C.F.R. § 241.4(l) must protect against erroneous deprivation of the liberty interest provided by an Order of Supervision, especially when release has created a reliance interest. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally protected interest); *see also Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S. Ct. 2271 (2016).

The APA Invalidates Final Agency Actions That Do Not Comport with Law

59. The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704.

60. Final agency actions are those (1) that “mark the consummation of the agency’s decisionmaking process” and (2) “by which rights or obligations have been

determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

61. ICE’s decision to re-detain Mr. Gay is a final agency action subject to this Court’s review because it marked the consummation of ICE’s decisionmaking process from which legal consequences flowed.

The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

62. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

63. *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *See Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *United States v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

FACTUAL ALLEGATIONS

Federal Respondents' Operation Metro Surge

64. In early December 2025, Federal Respondents began to plan targeted enforcement actions for the Twin Cities.

65. In official statements about an operation titled "Metro Surge" Respondents describe the operation on December 5, 2025 with headlines such as "ICE Continues Arresting Worst of the Worst in Sanctuary Minneapolis Including Pedophiles, Gang Members and Drug Traffickers."¹ And on December 12, 2025 the day after arresting the petitioner, "ICE arrests the Worst of the Worst Criminal Aliens Including Pedophiles, Rapists, and Violent Thugs in Tim Walz's Sanctuary Minnesota."² These announcements involved pictures of non-citizens with a brief description of their crimes. Despite mentioning the arrests, no information was shared about removals or whether or not the individuals could be removed from the country. The announcements appeared to justify the detention based on public safety grounds, arguing "Tim Walz and Jacob Frey failed to protect the people of Minnesota. They let these monsters and child predators roam free. Thanks to our brave law enforcement, Minnesota is safer with these thugs off their streets. Instead of thanking our law enforcement for removing criminals from their communities, Tim Walz and Jacob Frey continue to demonize our brave law enforcement." *Id.*


Mr. Gay's Individual Factual Allegations

¹ <https://www.dhs.gov/news/2025/12/05/ice-continues-arresting-worst-worst-sanctuary-minneapolis-including-pedophiles-gang>

² <https://www.dhs.gov/news/2025/12/12/ice-arrests-worst-worst-criminal-illegal-aliens-including-pedophiles-rapists-and>

66. Mr. Gay is fifty-five years old and came to the United States as a refugee from Burma fleeing persecution and violence inflicted against his ethnic group the Karen. Chan Decl. Ex.2, Ex.8. He arrived in the United States alone. Chan Decl. Ex. 8 .

67. DHS served him a Notice to Appear on June 29, 2021 charging him as an aggravated felon for having been convicted of a crime of sexual abuse of a minor. Chan Decl. Exhibit 3. This ground of removability and all subsequent grounds of removal alleged was based on a 2019 conviction for Attempted Criminal Sexual Conduct in the Fourth Degree under Minn. Stat. 609.345 Subd. 1(f). Chan Declaration Exhibit 3, 4.

68. Mr. Gay's conviction as detailed in the complaint, involved him drunk and in his underwear, propositioning a  of the man he was staying with. Chan Decl. Exhibit 7. Minnesota law criminalizes any sexual conduct between a person who is 16 or 17, if the perpetrator is in a "significant relationship" with the person. Consent and lack of knowledge as to age are not defenses to this crime. Minn. Stat. 609.345 subd.1(f). Minnesota statute defines "significant relationship" as including, "(3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.." Minn. Stat. 609.341 Subd. 15 (3). Mr. Gay received an 18 month that was suspended for five years and was required to register as a sex offender. Chan Decl. Exhibit 7.

69. After his arrest in June of 2021 by ICE, he would stay in detention during the pendency of his removal hearing and for at least 90 days after the removal order was finalized on September 13, 2021. Chan Decl. Exhibit 1, 6.

70. Mr. Gay was released on December 13, 2021. He was ordered to check in on January 13, 2022 and then March of 2022 before being moved to every six months. By March of 2023, he was given a year before his next check in. Mr. Gay never missed a check in, and in fact on several occasions, checked in earlier than was required. Chan Decl. Exhibit 6.

71. On March 24, 2025 at his ICE scheduled check in, he was given until September 22, 2025, but was also instructed to fill out paperwork on applying for a travel document. With assistance he filed the paperwork. His next check in was on December 22, 2025. He was never given the chance to make this check-in. Id.

72. On December 11, 2025, Mr. Saw Tha Gay arrived home from work at about 4 pm only to find ICE officers waiting for him at his residence. No one spoke Burmese and the officers only spoke to him in english. They arrested him and drove him to the Bishop Wheeler Building. Chan Decl. Exhibit 8.

73. After arriving at the Bishop Wheeler building, the officers provided Mr. Gay a piece of paper written in english, but again without any translation and without any opportunity for Mr. Gay to understand what was on the paper. He refused to sign the piece of paper and Mr. Gay was detained with several other people at the Bishop Wheeler facility overnight. He was given a pillow and slept on the floor. Id.

74. The next morning Mr. Gay was transported to the Kandiyohi County Jail. He has not since been contacted by ICE or been given any paperwork that explains why his

Order of Supervision was revoked or whether ICE is seeking to deport him to any other country. Id.

Burmese State of Civil War

75. Myanmar or Burma has been in a state of civil war for several years, including in 2021 when the military junta took over in a coup. However, the Karen people in Burma have engaged in a decades long civil war with the central government starting in 1949. In the current civil war conflict dating from 2021 after the junta's military coup, the Karen National Liberation Army has been involved with ongoing conflicts including earlier this year.³ The situation in Burma remains dire with reports of atrocities committed by the central government. The U.S. State department has issued a travel advisory since May 12, 2025 making it clear that travel to Burma is unsafe, declaring, "Do not travel to Burma due to armed conflict, the potential for civil unrest, arbitrary enforcement of local laws, poor health infrastructure, land mines and unexploded ordnance, crime, and wrongful detentions."⁴ Other Federal agencies continued to express concern for the stability and safety of travelling or residing in Burma. Chan Decl. Exhibit 12, ¶ 60.

Respondents' Policy as to Third-Country Removals

³ <https://www.nytimes.com/interactive/2024/04/20/world/asia/myanmar-civil-war.html>

⁴ https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Burma.html?gad_source=1&gad_campaignid=44031958015&gbraid=0AAAAAqBk5uMPOaMdOV2cARFH-Ab0jgi-&gclid=CjwKCAiA9aPKBhBhEiwAyz82J-At1R70b3Pk5gVRiDaohvGsXVDkGrnuir4xmuwQ1aOk7R1eWzX8qRoCJnQQAvD_BwE (accessed December 22, 2025).

76. On March 30, 2025, DHS issued a new memo entitled “Guidance Regarding Third Country Removals.” See *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, Dkt. 43-1 (D. Mass. Mar. 30, 2025); see also Chan Decl. Exhibit 10.

77. Pursuant to the memo, Respondents do not need to provide any notice or process whatsoever to a noncitizen prior to their removal if the United States has received “diplomatic assurances [from the country of removal] that [noncitizens] removed from the United States will not be persecuted or tortured.” Ex. 10 at 1.

78. If the United States has not received such assurances, then the memo simply provides that a deportation officer must “inform the [noncitizen] of removal to [the third] country.” *Id.* at 2. “Immigration officers will not affirmatively ask whether the [noncitizen] is afraid of being removed to that country.” *Id.*

79. If a noncitizen states a fear, then U.S. Citizenship and Immigration Services (“USCIS”) must screen the noncitizen “within 24 hours of referral from the immigration officer.” *Id.* At the screening, the noncitizen must prove that it is “more likely than not” they will be persecuted or tortured upon removal. *Id.*

80. This process differs dramatically from the typical RFI process, where USCIS assesses only if there is a “reasonable possibility” the noncitizen could establish they are likely to face persecution or torture if provided the opportunity to present their full case to an immigration judge. See 8 C.F.R. § 208.31(c) (outlining reasonable fear interview procedure for other persons with final removal orders, like those with reinstatement orders or administrative removal orders).

81. A “reasonable possibility” is a lower standard of proof than the “more likely than not” standard required to win a grant of withholding of removal or CAT protection. *Dominguez Ojeda v. Garland*, 112 F.4th 1241, 1245 n.1 (9th Cir. 2024) (explaining that the “reasonable possibility” standard “has been defined to require a ten percent chance” of persecution or torture (citation omitted)).

82. On July 9, 2025, ICE issued guidance regarding how to implement DHS’s now-operative March 30 Memo. *See D.V.D.*, No. 1:25-CV-10676-BEM, Dkt. No. 190-1 (D. Mass. July 15, 2025); *see also* Chan Decl. Ex. 11. The July 9 Guidance is identical to the March 30 Memo except that, in cases where diplomatic assurances do not exist, it provides that an officer will serve a “Notice of Removal” with interpretation. Ex. 11 at 1.

83. DHS may effectuate removal 24 hours after serving notice; however, “[i]n exigent circumstances,” with approval from chief counsel of DHS or ICE, DHS may execute removal to the third country with a mere six hours’ notice if ICE provides the noncitizen “means and opportunity to speak with an attorney.” *Id.*

84. Federal Respondents’ March 30 memo, July 9 guidance, and their practice as to other third-country removals demonstrate that DHS’s policy permits the government to provide a slip of paper listing the country of removal mere hours before a planned third country of removal. *See* Exs. 10, 11.

85. In fact, in ongoing class-wide litigation challenging these policies, *see D.V.D. v. DHS*, No. CV 25-10676-BEM (D. Mass. 2025), DHS has taken the position that the law does not require them to provide any notice whatsoever:

THE COURT: In this posture, where it is the discretionary decision of the department that's changing the [country] designation, does the person who's going to be deported have a right to be informed and be given an opportunity to be heard as to the dangerousness of that third country designation?

[DHS COUNSEL]: DHS's position is no.

THE COURT: They don't have to be told anything and given no opportunity to be heard?

[DHS COUNSEL]: DHS's position is no.

Tr. at 10-11, *D.V.D.*, No. 1:25-CV 25-10676-BEM, Dkt. No. 44 (D. Mass. Mar. 28, 2025).

86. Respondents' extreme position has been born out in several instances. First, on May 7, 2025, DHS attempted to remove several class members to Libya—a country torn apart by active armed conflict—after providing them at most only hours' notice of removal. *See* Decls. of Johnny Sinodis and Tin Thanh Nguyen, *D.V.D.*, No. 1:25- CV-10676-BEM, Dkt. Nos. 99-2 & 99-3 (D. Mass. May 14, 2025).

87. Second, less than two weeks later “several class members were [placed on a plane] to South Sudan after having received less than 24 hours' notice of their impending deportations.” *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2157 (2025) (Sotomayor, J., dissenting). South Sudan, like Libya, is the subject of grave U.S. Department of State warnings against travel and is similarly on the verge of open armed conflict.

88. One such person deported to South Sudan was a Burmese national, who also was a Karen minority. He was part of the group of men who the Government attempted to deport to South Sudan in May of 2025, but after the Supreme Court vacated the order in

D.V.D. he was summarily removed to South Sudan. His attorney Jacqueline Brown has reported in an affidavit dated November 12, 2025 that he remains detained. She reports:

He has stated that he and the other men he was deported with are being held in some kind of building, with an armed guard watching them, in poor conditions. He has described intense heat and relentless mosquitoes, as well as debilitating boredom. His mental health has deteriorated, and he has had suicidal thoughts. He feels helpless, especially since nobody has provided any information about how long he will be held in that facility. He has not met with any officials of the South Sudanese or the Burmese government about his repatriation or his release, at least as of November 5, 2025, which was the last time he called his relative.

Chan Decl. Exhibit.9.

89. What happened to Ms. Brown's client is a violation of due process, the immigration statutes, and the regulations.

90. Other examples also reflect the Respondents' extreme position. For example, recently, five members of the class were removed to Ghana, notwithstanding the fact that all five had won withholding of removal as to their countries of origin. *See D.A. v. Noem*, - -- F.Supp.3d ---- (D.D.C. Sept. 15, 2025). They were put on a U.S. military plane to Ghana without any notice or opportunity to challenge removal to that country. *Id.* at *4 (citation omitted). Upon arrival there, one class member was removed almost immediately to their country of origin, notwithstanding the withholding order from a U.S. immigration judge. *Id.* at *2 (citation omitted). The examples of these class members show how Federal Respondents are also using third country removals to facilitate the return of people like Mr. Gay to their country of origin, in direct violation of the withholding orders such people have received.

91. Even where notice is provided, DHS's policy is to provide not more than 24 hours following referral to USCIS for a person to prepare their entire defense against removal to that third country.

92. In typical withholding and CAT cases, individuals have months to prepare and often submit applications with hundreds of pages of supporting evidence, including testimony, expert witness declarations, and country conditions evidence to explain why a person fears persecution or torture.

The Litigation in *D.V.D. v. Department of Homeland Security (D. Mass.)*

93. Until June 23, 2025, individuals whom ICE seeks to remove to a "third country" were entitled to receive notice and an opportunity to apply for CAT relief prior to removal due to a temporary restraining order, and later, a preliminary injunction, in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-10676-BEM (D. Mass.).

94. The *D.V.D.* litigation challenges, inter alia, DHS's failure to provide certain noncitizens with final orders of removal the statutory and constitutional process they are entitled to receive pursuant to 8 U.S.C. § 1231(b)(3), FARRA, and the Due Process Clause.

95. On April 18, 2025, the district court in *D.V.D.* certified a nationwide class of noncitizens with final removal orders entered in removal proceedings under 8 U.S.C. § 1229a and certain other administrative removal processes. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 378, 394 (D. Mass. 2025).

96. At the same time, the court issued a classwide injunction that required the government to undertake certain procedures before removing a person to a third country.

Id. at 392-93. Specifically, the court ordered that prior to any third-country removal, noncitizens and their counsel, if any, must receive written notice of the country of removal in a language the noncitizen understands and a meaningful opportunity to assert a claim for CAT protection related to that third country. *Id.* at 392. The court's framework adopted DHS's existing process of scheduling RFIs to screen people for a fear and then provided those did not pass the interview a window of fifteen days to move to reopen their removal cases. *Id.* at 392-93.

97. On May 21, 2025, after the government violated the preliminary injunction order, the district court clarified that noncitizens must receive at least ten days' notice prior to removal to a third country. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025). The *D.V.D.* defendants subsequently sought a stay of the preliminary injunction with the U.S. Supreme Court. Their application for a stay emphasized, inter alia, that the district court lacked jurisdiction to provide classwide injunctive relief because of 8 U.S.C. § 1252(f)(1). *See App. for a Stay, U.S. Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153, at 19-22 (U.S. May 27, 2025). On June 23, 2025, the Court granted the stay application without providing any reasoning. *See U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025).

CLAIMS FOR RELIEF

COUNT ONE

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

98. Mr. Gay realleges all paragraphs above as if fully set forth here.

99. When Respondents re-arrested Mr. Gay, he had complied with the requirements of the OSUP, including attending every check-in. Additionally, ICE had not secured necessary travel documents for removal. No change in circumstances warranted Mr. Gay's re-arrest and re-detention.

100. Mr. Gay's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal. *See Zadvydas*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

101. Because Respondents had no legitimate, non-punitive objective in re-arresting Mr. Gay, his detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

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

102. Mr. Gay realleges all paragraphs above as if fully set forth here.

103. *Mathews v. Eldridge*, 424 U.S. 319, 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

104. The first factor, the private interest at issue, favors Mr. Gay. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690.

105. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Mr. Gay. To safeguard against erroneous deprivations of liberty, the statute specifies the limited number of reasons that an order of supervision can be revoked. 8 U.S.C. § 1231(a)(3), (6). Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. 8 C.F.R. §§ 241.4, 241.13 Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond upon revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Mr. Gay, who is neither dangerous nor a flight risk.

106. The third factor, the government’s interest, also favors Mr. Gay. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus

petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond upon revoking an order of supervision reduces fiscal and administrative burdens on the government.

107. For these reasons, revoking Mr. Gay's order of supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

COUNT THREE

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B), & (D)

108. Mr. Gay realleges all paragraphs above as if fully set forth here.

109. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B). The APA also requires a court to set aside and hold unlawful agency action that is "without observance of procedure required by law." *Id.* § 706(2)(D).

110. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, *any* law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

111. Respondents' re-detention of Mr. Gay while he was on an order of supervision was contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

112. His re-detention was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances. *See* 8 C.F.R. § 241.4(l); *see also id.* § 241.13(i). Even assuming that regulations purporting to offer additional justifications for revocation of an order of supervision are not ultra vires, the government did not comply with them.

113. ICE did not make findings that Mr. Gay's OSUP were violated. *See* 8 C.F.R. § 241.4(l)(1). Nor has ICE found that the purposes of release had been served, or that it was appropriate to enforce a removal order, or that Mr. Gay's conduct or other circumstances supported re-detention, or that Mr. Gay can be removed in the reasonably foreseeable future. 8 C.F.R. § 241.4(l)(1); *id.* § 241.13(i)(2). Any such determination must be made with reference to specific facts or information, and not just parroting the regulatory language. *See Roble v. Bondi, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453 (D. Minn. Aug. 25, 2025)*(D. Minn. 2025)(finding that the parroting of regulatory language did not establish a finding that removal was reasonably foreseeable.). Nor did the Respondents give (nor have they given) Mr. Gay notice of the reasons for revocation or an opportunity to be heard. 8 C.F.R. § 241.4(l)(2); *id.* § 241.13(i)(3). This is especially so, given that the Respondents had yet to provide any information in a language that the Petitioner could understand.

114. Moreover, in order to properly revoke Mr. Gay's order of supervision, the modern equivalents of the Executive Associate Commissioner or a district director would have had to authorize the revocation by citing one of the permissible reasons listed in 8 C.F.R. § 241.4(l)(2). *See Santamaria Orellana v. Baker, CV 25-1788-TDC, 2025 WL*

2841886,(D.Maryland October 7, 2025) *3-4 explaining how the Executive Associate Director authority to revoke release is not delegated to ordinary deportation officers.

115. Federal district courts across jurisdictions have granted noncitizens habeas relief under similar circumstances. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163-64 (W.D.N.Y. May 2, 2025) (collecting cases and rejecting the government’s argument that an initial informal interview is only required if supervision is revoked based on a violation of conditions of release); *K.E.O. v. Woosley*, No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *4-6 (finding due process violation where ICE failed to provide notice and interview as required under 8 C.F.R. § 241.13); *Roble*, 2025 WL 2443453, at *5. Courts in this district have granted such relief as recently as last week, see Chan Decl. Exhibit 12, Orders in *Liban O v. Bondi, et al*, No. 25-4560 (JWB/ECW)(D.Minn December 17, 2025), *Maimmuna M.M. v. Bondi*, No. 25-4622 (JWB/ECW)(D.Minn December 19, 2025).

116. An agency decision that “runs counter to the evidence before the agency” is arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). Respondents’ decision to re-detain Mr. Gay’s ran counter to the evidence before the agency that Mr. Gay would comply with a demand to appear for removal without detention. Mr. Gay has attended each and every ICE check-in since his release in 2021.

117. Accordingly, because ICE failed to comply with its own regulations, Mr. Gay’s detention should be held unlawful and set aside because it was (1) arbitrary, capricious, and not otherwise in accordance with law, *see* 5 U.S.C. § 706(2)(A); (2) contrary to the agency’s constitutional authority, *see id.* § 706(2)(B); and (3) not in accordance with

the INA and implementing regulations, *see id.* § 706(2)(D). Moreover, the failure to comply with regulations governing redetention require release. *See Yee S.*, 2025 WL 2879479, at *3–4; *Mahamed R.*, 2025 WL 2443453, at *3; *Sarail A.*, 2025 WL 2533673, at *4–6.

COUNT FOUR
Violation of the *Accardi* Doctrine

118. Mr. Gay realleges all paragraphs above as if fully set forth here.

119. Under the *Accardi* doctrine, Mr. Gay has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (“If Petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing”).

120. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision. *See, e.g., Ceesay*, 781 F. Supp. at 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89 (D. Mass. 2017)); *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).

121. Under *Accardi*, Respondents’ actions should be set aside for violating agency procedures, rules, or instructions.

COUNT FIVE
Violation of the INA – Third Country Removal

122. Mr. Gay realleges all paragraphs above as if fully set forth here.

123. 8 U.S.C. § 1231(b)(3) prevents removal to a country where a noncitizen is more likely than not to face persecution.

124. Notwithstanding this statutory mandate, Respondents by detaining Mr. Gay without seeking to reconsider the granting of his Deferral of Removal to Myanmar under 8 C.F.R. 208.17 or 208.18. The Respondents have not given any indication that they will provide Mr. Gay with the opportunity to access the protections required pursuant to 8 C.F.R. 208.17 or that it intends or has obtained any diplomatic assurances from the country of Myanmar.

125. The FARRA, and their implementing regulations envision *individualized* consideration of feared persecution or torture. *See* 8 U.S.C. § 1231(b)(3); *id.* (note); 8 C.F.R. §§ 208.31, 1208.16-1208.18. Yet Respondents' policy authorizes the agency to deem all claims invalid simply if a country provides a categorical diplomatic assurance to the United States that no persecution or torture will occur as to all noncitizens removed to it.

126. As for CAT claims, the regulations allow diplomatic assurances, but only in *individual* cases. *See* 8 C.F.R. § 1208.18(c)(1); *see also* Regulations Concerning the Convention Against Torture, 64 Fed. Reg. 8478, 8484 (Feb. 19, 1999) (noting that cases of assurances are meant to be "rare").

127. In addition, Respondents' diplomatic assurances do not protect against chain refoulment, which ultimately results in the removal of a noncitizen to their country of origin, despite an immigration judge order that the person not be returned to their country of origin. Similarly, Respondents' policy does nothing to safeguard against persecution or torture by

non-state actors. By definition, diplomatic assurances are meaningless where there are non-state actors responsible.

128. Finally, requiring a person to demonstrate full entitlement to withholding or CAT protection in a screening hours after receiving the initial notice about removal to a third country does not provide a meaningful opportunity to be heard. As noted above, in standard 8 U.S.C. § 1229a proceedings or in “withholding-only” proceedings before the immigration court, the evidence often includes hundreds of pages of documentation that detail the noncitizen’s own testimony, the testimony of witnesses, expert reports, and other country conditions. Expecting a noncitizen to produce such an application mere hours or a day or two after finding out about the new country to which DHS plans to remove them does not provide a person with “sufficient time and information to reasonably be able to contact counsel, file . . . , and pursue appropriate relief.” *A.A.R.P.*, 605 U.S. at 95.

129. Accordingly, by basing his detention on the possibility of a third country removal that is unlawful, the detention itself is unlawful.

COUNT SIX
Violation of FARRA – Third Country Removal

130. Mr. Gay realleges all paragraphs above as if fully set forth here.

131. FARRA prevents removal to a country where a noncitizen is more likely than not to face torture.

132. Notwithstanding this statutory mandate, Respondents seek to remove Mr. Gay to a third country without providing Mr. Gay the opportunity to access the protections required pursuant to FARRA and CAT.

133. Accordingly, Mr. Gay's planned third country removal is unlawful.

COUNT SEVEN

Violation of the Due Process Clause – Third Country Removal

134. Mr. Gay realleges all paragraphs above as if fully set forth here.

135. The Due Process Clause requires Respondents to provide Mr. Gay meaningful notice and a meaningful opportunity to be heard regarding the statutory protections to which Mr. Gay is entitled.

136. For the INA's and FARRA's statutory protections against persecution and torture to be meaningful, there must be a means of accessing those procedures. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). Thus, "no person shall be removed from the United States without opportunity, at some time, to be heard." *A.A.R.P.*, 605 U.S. at 94 (citation modified). The Supreme Court has long applied this principle to people facing removal. *See Yamataya v. Fisher*, 189 U.S. 86, 99-101 (1903) (holding that, even though what Congress provided as to exclusion was "due process of law," the statute must be interpreted to provide "notice and . . . an opportunity to be heard" as to whether a person is in the United States "in violation of law").

137. Just earlier this year, the Supreme Court explained that for these due process rights to be meaningful, a person must actually receive notice of their planned removal with sufficient time before it occurs so that the person has a genuine chance to seek relief from that removal. *A.A.R.P.*, 605 U.S. at 94-95. "[N]otice roughly 24 hours before removal,

devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster.” *Id.* at 95.

138. Respondents by detaining Mr. Gay despite his Deferral of Removal to Myanmar, seek to remove Mr. Gay to a third country without providing meaningful notice or a meaningful opportunity to seek protection under the mandatory provisions of 8 U.S.C. § 1231(b)(3) and FARRA’s provisions with respect to CAT.

139. Accordingly, Mr. Gay’s detention to effectuate an illegal third country removal is unlawful. Indeed, numerous courts have held that ICE’s third country removal policy violates due process. *See, e.g., Kumar*, 2025 WL 3204724, at *6 (collecting cases).

PRAYER FOR RELIEF

WHEREFORE, Mr. Gay requests that this Court:

- a. Exercise jurisdiction over this matter;
- b. Enjoin Mr. Gay’s removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;
- c. Declare that Mr. Gay’s detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;
- d. Order Mr. Gay’s immediate release;
- e. Enjoin Mr. Gay’s removal from the United States until Respondents provide him access to his statutory rights to protection and due process of law:
 - i. With respect to removal to any other third country (any country other than Burma), Respondents must provide written notice of removal to

that country at least ten days prior to the removal, and notice to Mr. Gay must be in a language Mr. Gay understands;

- ii. If, after inquiring whether Mr. Gay has a fear of removal to that third country, Mr. Gay express such a fear, then Respondents must provide a reasonable fear interview to screen for Mr. Gay's fear of persecution and torture, consistent with 8 C.F.R. § 208.31;
 - iii. If Mr. Gay is found to have a reasonable fear of removal, then Respondents must move to reopen Mr. Gay's removal proceedings to allow Mr. Gay to present a full claim for relief under 8 U.S.C. § 1231(b)(3) and FARRA;
 - iv. If Mr. Gay is not found to have such a fear, then Respondents must allow a further fifteen days for Mr. Gay to file a motion to reopen with the immigration court or Board of Immigration Appeals, as appropriate;
- f. Award Mr. Gay attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

DATED: December 22, 2025

/s/ R. Linus Chan
R. Linus Chan

Bar No. MN # 0403311
University of Minnesota Law School
James H. Binger Center for New
Americans
Detainee Rights Clinic
229 19th Avenue South
Minneapolis, MN 55455
(612) 301-1156
rlchan@umn.edu
Pro Bono Attorneys for Mr. Gay