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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

LENG THAO,

Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States;
KRISTI NOEM, in her capacity as Secretary of the United States Department of Homeland Security;
MARCO RUBIO, in his capacity as Secretary of State of the United States;
TODD M. LYONS, in his official capacity as Acting Director of the United States Immigration and Customs Enforcement;
PAMELA BONDI, in her official capacity as Attorney General of the United States;

Case No. ___

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

DAVID EASTERWOOD, in his official capacity as Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement;
RYAN SHEA, in his official capacity as Sheriff of Freeborn County, Minnesota;

Respondents.

INTRODUCTION

1. This case seeks the immediate release of Leng Thao ("Mr. Thao") from his unlawful detention by the Department of Homeland Security's ("DHS") U.S. Immigration and Customs Enforcement ("ICE"). ICE has been unlawfully detaining Mr. Thao since December 15, 2025, in violation of his constitutional, statutory, and regulatory rights. ICE is currently detaining Mr. Thao at the Freeborn County Jail in Albert Lea, Minnesota.

2. Mr. Thao initially entered the United States as a refugee in 1992. He was later placed in removal proceedings. An immigration judge ("IJ") ordered him

removed to Laos in September of 2006. Following his order of removal, Mr. Thao remained in ICE detention until he was released on an order of supervision ("OSUP").

3. Since being released on OSUP, Mr. Thao has repeatedly checked in as instructed in his OSUP and has not committed any new crimes, been arrested, or associated with any gangs.

4. But on December 15, 2025—after almost twenty years of supervised release on his OSUP—Mr. Thao's life was suddenly upended when ICE arrested him without notice or opportunity to be heard. After he was processed at Fort Snelling, Minnesota, ICE transferred Mr. Thao to Freeborn County Jail in Albert Lea, MN.

5. Mr. Thao has yet to be given any reason or explanation for why he was suddenly arrested and taken into custody. Mr. Thao has not been given any document revoking his OSUP, has not been given an interview explaining the reasons for his arrest and detention, and has not been afforded an opportunity to contest any purported revocation of the OSUP, as required by law. *See infra.*

6. Mr. Thao brings this habeas action, first, for an order that Respondents immediately release him. Respondents' sudden arrest of Mr. Thao 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. Thao without a lawful reason, 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. *See, e.g.*, *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453 (D. Minn. Aug. 25, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025).

7. Mr. Thao 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. Thao 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).

8. The Due Process Clause of the Fifth Amendment also requires that, prior to a third-country removal, Mr. Thao 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)).

9. Accordingly, Mr. Thao seeks an order that employs existing DHS screening mechanisms and requires Respondents: (1) to inform 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. Thao have a fear of removal to that country; and (3) if the RFI is denied, to provide fifteen days to file a motion to reopen with the immigration court.

PARTIES

10. Petitioner, Mr. Thao, has lived in the United States for over 30 years. Prior to his detention on or about December 15, 2025, he was residing in St Paul, Minnesota. Mr. Thao is currently detained at the Freeborn County Jail in Albert Lea, MN.

11. Respondent Donald J. Trump is named in his official capacity as President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of State and Department of Homeland Security, and as such is Mr. Thao's legal custodian.

12. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. 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 the Mr. Thai and as such is Mr. Thao's legal custodian.

13. Respondent Marco Rubio is named in his official capacity as the Secretary of State of the United States. In this capacity, he has the authority to determine, based on "reasonable" grounds, that the "presence or activities" of a noncitizen "would have serious adverse foreign policy consequences for the United States," and as such is Mr. Thao's legal custodian. 8 U.S.C. § 1227(a)(4)(C)(i).

14. 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. Thao's legal custodian.

15. 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. Thao's legal custodian.

16. 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. As such, Field Office Director Easterwood is Mr. Thao's legal custodian.

17. Respondent Ryan Shea is named in his official capacity as the Sheriff of Freeborn County, Minnesota. He has immediate physical custody of Mr. Thao pursuant to an agreement with ICE to detain noncitizens, and as such, is Mr. Taho's legal custodian.

JURISDICTION AND VENUE

18. 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).

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

20. 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.

21. Venue lies in the U.S. District Court for the District of Minnesota because it is the judicial district in which Mr. Thao 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.

LEGAL FRAMEWORK

Removal Proceedings

22. Typically, when the government seeks to remove a noncitizen, it does so through removal proceedings involving an evidentiary hearing before an IJ. Most noncitizens facing removal are placed into removal proceedings under 8 U.S.C. § 1229a. In removal proceedings, the IJ 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 INA sets out a multi-tiered process for determining the country of removal.

23. 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).

24. 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).

25. 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 statute requires DHS to attempt removal to these countries before seeking alternatives. *See id.* § 1231(b)(1), (b)(2)(A), (D) (repeatedly instructing where DHS "shall" remove someone by order of priority).

26. 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).

27. 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

28. 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.

29. 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.

30. 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).

31. Finally, 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.

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

33. 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).

34. 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

35. 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, DHS is required to detain the noncitizen. *Id.* § 1231(a)(2)(A).

36. 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).

37. 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).

38. "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).

39. 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).

40. If ICE elects to revoke a noncitizen's release 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)).

41. 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 purports to give 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).

42. 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).

43. 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."

44. 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

45. "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.

46. 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).

47. "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).

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

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

49. 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).

50. ICE's decision to re-detain Mr. Thao 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

51. 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.").

52. *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"

53. On information and belief, in early December 2025, Federal Respondents began to carry out an enforcement operation in the Twin Cities called "Operation Metro Surge," wherein Respondents detained at least twelve of the purported "worst of the worst criminal illegal aliens."

Mr. Thao's Individual Factual Allegations

54. Mr. Thao is 39-years old and came to the United States as a refugee in 1992, over 30 years ago. Mr. Thao has resided in the United States continuously since then.

55. Upon informaiton and belief, Mr. Thao was convicted of an aggravated felony while he was present in the United States as a permanent resident and placed

in removal proceedings. Following removal proceedings, Mr. Thao received a final order of removal on September 19, 2006. Mr. Thao remained in ICE custody until he was released from detention with an order of supervision ("OSUP").

56. Upon information and believe, after being released from ICE custody, Mr. Thao was subjected to the following conditions: (1) Mr. Thao must appear at a to-be-specified time and place for deportation or removal; (2) Mr. Thao must submit to medical or psychiatric examination at the Government's expense; (3) Mr. Thao must provide certain personal information and submit to a consular interview, surrender travel documents, and submit any correspondence to any embassy or consulate; (4) Mr. Thao may not travel outside of Minnesota without prior approval; (5) Mr. Thao must notify ICE of any change of address; (6) Mr. Thao must report, in person, the ICE office in Bloomington, Minnesota every three months; (7) Mr. Thao must assist the Government in obtaining travel documents; and (8) Mr. Thao must not commit any crimes.

57. Since his release Mr. Thao has complied with the terms and conditions of his order of supervision, including attending all of his scheduled ICE check-ins. No circumstances have changed that make Mr. Thao a flight risk or danger to the community.

58. On December 15, 2025, during Operation Metro Surge, ICE suddenly, and without any justification, arrested Mr. Thao.

59. Despite Mr. Thao's repeated requests for an explanation and information regarding his arrest both at the time of his arrest and while he has been detained, he has not received any such information. Upon information and belief, at no time following before, during or after Mr. Thao's arrest did ICE explain whether or why Mr. Thao's order of supervision was revoked, provide him with an interview or otherwise give him an opportunity to respond.

60. Further upon information and belief, the government has not so much as sought to designate an alternative country for removal, much less initiate removal (or fear claim) proceedings regarding an alternative country. The only country designated for removal has been Laos. Furthermore, ICE has not requested that Mr. Thao complete any paperwork or meet with consular officials from any alternative country.

Respondents' Policy as to Third-Country Removals

61. 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).

62. 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." *Id.*

63. 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.*

64. 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.*

65. 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).

66. 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)).

67. 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* 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.

68. 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.*

69. 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.

70. 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).

71. 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).

72. 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.

73. These examples reflect that Respondents seek to remove individuals to third countries with only hours' notice of removal.

74. 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).

75. 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.

76. 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.)*

77. 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.).

78. 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.

79. 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).

80. 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.

81. 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

82. Mr. Thao realleges all paragraphs above as if fully set forth here.

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

84. Mr. Thao'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).

85. Because Respondents had no legitimate, non-punitive objective in re-arresting Mr. Thao, 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

86. Mr. Thao realleges all paragraphs above as if fully set forth here.

87. *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.

88. The first factor, the private interest at issue, favors Mr. Thao. "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.

89. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Mr. Thao. 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. Thao, who is neither dangerous nor a flight risk.

90. The third factor, the government's interest, also favors Mr. Thao. 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.

91. For these reasons, revoking Mr. Thao'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)

92. Mr. Thao realleges all paragraphs above as if fully set forth here.

93. 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).

94. 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).

95. Respondents' re-detention of Mr. Thao 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.

96. 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.

97. ICE did not—and could not—make findings that Mr. Thao's OSUP should be revoked because Mr. Thao has not violated any condition of release. *See* 8 C.F.R. § 241.4(l)(1); *id.* § 241.13(i)(1). Nor could ICE find that the purposes of release had been served, or that it was appropriate to enforce a removal order, or that Mr. Thao's conduct or other circumstances supported re-detention, or that Mr. Thao can be removed in the reasonably foreseeable future. 8 C.F.R. § 241.4(l)(1); *id.* § 241.13(i)(2). Nor did the Respondents give (nor have they given) Mr. Thao 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). Moreover, in order to properly revoke Mr. Thao'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).

98. 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

99. 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. Thao ran counter to the evidence before the agency that Mr. Thao would comply with a demand to appear for removal without detention. Mr. Thao has attended each and every ICE check-in since his release in 2006 and has never violated a condition of his order of supervision. No new facts or changed circumstances suggest he would.

100. Accordingly, because ICE failed to comply with its own regulations, Mr. Thao'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).

COUNT FOUR
Violation of the *Accardi* Doctrine

101. Mr. Thao realleges all paragraphs above as if fully set forth here.

102. Under the *Accardi* doctrine, Mr. Thao 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").

103. 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).

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

COUNT FIVE
Violation of the INA – Third Country Removal

105. Mr. Thao realleges all paragraphs above as if fully set forth here.

106. 8 U.S.C. § 1231(b)(3) prevents removal to a country where a noncitizen is more likely than not to face persecution.

107. Notwithstanding this statutory mandate, Respondents have purportedly threatened to seek to remove Mr. Thao to a third country without providing Mr. Thao the opportunity to access the protections required pursuant to 8 U.S.C. § 1231(b)(3) and its implementing regulations.

108. The withholding statute, 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.

109. The regulations concerning withholding of removal do not even permit diplomatic assurances at all to satisfy the mandatory withholding protections in the INA. 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").

110. 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.

111. 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.

112. Accordingly, Mr. Thao's threatened third country removal is unlawful.

COUNT SIX
Violation of FARRA – Third Country Removal

113. Mr. Thao realleges all paragraphs above as if fully set forth here.

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

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

116. Accordingly, Mr. Thao's planned third country removal is unlawful.

COUNT SEVEN
Violation of the Due Process Clause – Third Country Removal

117. Mr. Thao realleges all paragraphs above as if fully set forth here.

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

119. 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").

120. 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.

121. Respondents threatened to seek to remove Mr. Thao 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.

122. Accordingly, Mr. Thao's threatened 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. Thao requests that this Court:

a. Exercise jurisdiction over this matter;

b. Enjoin Mr. Thao's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

c. Declare that Mr. Thao'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. Thao's immediate release;

e. Enjoin Mr. Thoa'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 Somalia), Respondents must provide written notice of

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

ii. If, after inquiring whether Mr. Thao has a fear of removal to that third country, Mr. Thao express such a fear, then Respondents must provide a reasonable fear interview to screen for Mr. Thao's fear of persecution and torture, consistent with 8 C.F.R. § 208.31;

iii. If Mr. Thao is found to have a reasonable fear of removal, then Respondents must move to reopen Mr. Thao's removal proceedings to allow Mr. Thao to present a full claim for relief under 8 U.S.C. § 1231(b)(3) and FARRA;

iv. If Mr. Thao is not found to have such a fear, then Respondents must allow a further fifteen days for Mr. Thao to file a motion to reopen with the immigration court or Board of Immigration Appeals, as appropriate;

f. Award Mr. Thao 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.

DATED: December 22, 2025

Respectfully submitted,

/s/ Maria Miller
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VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Executed this 23 day of December, 2025

/s/Leng Thao
Leng Thao