

UNITED STATES DISTRICT COURT
FOR MINNESOTA

XUE LOR,

Petitioner-Plaintiff,

v.

KRISTI NOEM, in her official capacity
as Secretary of the U.S. Department
of Homeland Security;

TODD LYONS, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement;

MICHAEL BOTTJEN, in his official capacity
as Acting Deputy Field Office Director of St.
Paul-Minneapolis Office,
U.S. Immigration and Customs
Enforcement; and

MIKE STASKO, in his official capacity as
Jail Administrator at Freeborn County Adult
Detention Center.

Respondents-Defendants.

Civil Case No.

**COMPLAINT AND PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This case challenges the unlawful detention of Xue Lor (“Petitioner” or “Mr. Lor”), who is currently in the custody of Respondents-Defendants at Freeborn County Adult Detention Center, in Albert Lea, Minnesota. Following a removal order from an Immigration Judge, Petitioner was released on a supervision order and continues to be neither a flight risk nor a danger to the community. Yet, on or about December 16, 2025, Immigration and Customs Enforcement (“ICE”)

detained him without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules.

2. After this removal order, Respondents-Defendants found that Petitioner was neither a flight risk nor a danger to the community when it previously released Petitioner from ICE detention under an order of supervision. Since then, Petitioner has fully abided by the order's terms, including attending regularly scheduled check-ins with ICE.

3. On the morning of December 16, 2025, ICE officers detained Petitioner in the parking lot of his place of employment in St. Paul. Accordingly, Petitioner has been detained at Freeborn County Adult Detention Center since.

4. Respondents-Defendants' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

5. Petitioner brings this action for habeas and declaratory relief ordering Respondents to release him.

PARTIES

6. Petitioner, Mr. Xue Lor, has lived in the United States for over forty-five years. Prior to Petitioner's re-detention on or about December 16, 2025, he was residing in St. Paul, Minnesota. Petitioner is currently detained at Freeborn County Adult Detention Center.

7. Respondent-Defendant Kristi Noem is being sued in her official capacity as Secretary of the Department of Homeland Security. Department of Homeland Security is a federal agency headquartered in Washington, D.C., and the parent agency of ICE. As Respondent-

Defendant Noem is responsible for implementing and enforcing the INA and overseeing ICE, she has ultimate custodial authority over the Petitioner.

8. Respondent-Defendant Todd Lyons is the Acting Director of ICE, the federal agency responsible for implementing and enforcing the Immigration and Nationality Act (“INA”), including the detention and removal of noncitizens, and a component agency of the Department of Homeland Security. He is sued in his official capacity.

9. Respondent-Defendant Sam Olson is being sued in his official capacity as the ICE Director of the Saint Paul Field Office of ICE’s Enforcement and Removal Operations division, a component of the Department of Homeland Security.

10. Respondent-Defendant Mike Stasko is being sued in his official capacity as the Jail Administrator at Freeborn County Adult Detention Center, where Petitioner is currently detained. In his capacity as Jail Administrator, he exercises authority over jail operations and has immediate physical custody of the Petitioner.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, and Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*

12. Venue is furthermore proper in this district as Petitioner is domiciled within this District, Petitioner is currently detained within this District, and there is no real property involved in this action. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973).

STATEMENT OF FACTS

Petitioner’s Fact and Procedural History

13. Petitioner is forty-six years old and was admitted as a legal immigrant from Laos on or about January 31, 1980, at Oklahoma City, Oklahoma. Petitioner has resided in the United States continuously since his admission.

14. Notably, Petitioner identifies ethnically as Hmong and stateless, and he has no meaningful ties to any other country and considers the United States his home.

15. Petitioner was issued Form I-862, Notice to Appear (“NTA”), on May 17, 2005. Following the issuance of his NTA, Petitioner was ordered removed by an Immigration Judge in Chicago, Illinois, on September 6, 2005.

16. Since ICE released Petitioner on an order of supervision on or about February 13, 2006, Petitioner has complied with all conditions of the order, including periodic check-ins with ICE. Respondents have offered no evidence that circumstances have changed to make Petitioner a flight risk or danger to the community.

17. Petitioner’s detention has caused severe hardship for his family, particularly as he resides with his elderly mother, who depends on his constant presence and care. His sudden removal from the household has disrupted the household’s stability and placed significant emotional and logistical strain on his partner and children.

Petitioner’s Recent Re-Detention by ICE

18. On the morning of December 16, 2025, ICE showed up at Petitioner’s work of employment and detained Petitioner without a warrant or notice.

19. After being in Respondent’s custody, Petitioner was served a Notice of Revocation of Release in Freeborn County Adult Detention Center, signed by Acting Deputy Field Office Director Michael Bottjen, dated December 16, 2025. The Proof of Service provides that Petitioner was served the Notice of Revocation of Release while in ICE custody on December 17, 2025.

20. Upon information and belief, the official responsible for revoking Petitioner's order of supervision did not first refer the case to the ICE Executive Associate Director, and did not make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director, nor had they been delegated authority to revoke an order of supervision.

21. Respondents have also failed to show that at the time of Petitioner's arrest by ICE, the agency had secured travel documents necessary for foreseeable removal from the United States, and they continue to lack such travel documents to date.

22. Petitioner remains in Respondents' custody at the Freeborn County Adult Detention Center.

History of Repatriation to Laos

23. No repatriation agreement exists between Laos and the United States.

24. Historically, Laos has refused to accept deportees from the United States.

25. Until this year, Laos had accepted very few people for repatriation from the United States. Laos did not accept anyone for deportation between October 2023 and September 2024.

26. Upon information and belief, Laos will not accept a person for repatriation from the United States without first processing a request from ICE and issuing a travel document.

27. There are an estimated 5,000 individuals in the United States considered by ICE to be nationals of Laos with removal orders that the U.S. government has been unable to execute.

Punitive Banishment to Third Countries

28. Since January 2025, Respondents have developed and implemented a policy and practice of removing individuals to third countries, without first following the procedures in the

INA for designation and removal to a third country and without providing fair notice and an opportunity to contest the removal in immigration court.

29. Punishment and deterrence appear to be the point of the Administration's third-country removal scheme. The Administration has reportedly negotiated with countries to have deportees imprisoned in prisons, camps, or other facilities.

LEGAL FRAMEWORK

Due Process Governs Decisions to Revoke an Order of Supervision

30. "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 v. Davis*, 533 U.S. 678, 693 (2001) (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 (2001).

31. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen'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 v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).

32. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a non-citizen'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).

Statute and Regulation Govern Procedures for Revoking an Order of Supervision

33. A non-citizen with a final order of removal “who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day period”).

34. A non-citizen may only be detained past the 90-day removal period following a removal order if found to be “a risk to the community or unlikely to comply with the order of removal” or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).

35. But even where initial detention past the 90-day removal period is authorized, if “removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances” *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

36. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen 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 alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen “violates any of the conditions of release”). Because “[r]egulations cannot circumvent the plain text of the statute[,]” courts question 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).

37. It is clear, however, that regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official “delegated the function or authority . . . for a particular geographic district, region, or area.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intends to revoke an order of supervision, they must first make findings that “revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not include the power to revoke release” insufficient to grant authority to revoke an order of supervision).

38. Upon revocation of an order of supervision, ICE must give a non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

The APA Sets Minimum Standards for Final Agency Action

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

40. 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).

41. ICE's revocation of an order of supervision is a final agency action subject to this Court's review.

42. The revocation here marked the consummation of ICE's decisionmaking process regarding Petitioner's custody.

43. The revocation was also an action by which rights or obligations had been determined or from which legal consequences flowed because it led ICE to detain Petitioner in violation of his rights under the Constitution, statute, and regulation.

The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

44. 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.").

45. *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); *U.S. 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).

46. Where a release notification issued alongside an order of supervision instructs that a non-citizen with a final order of removal will be given an opportunity to prepare for an "orderly

departure,” ICE’s failure to follow that instruction is an *Accardi* violation. See *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

CLAIMS FOR RELIEF

Count One

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

47. Petitioner realleges all paragraphs above as if fully set forth here.

48. When ICE issued Petitioner an order of supervision, it found that he is neither a danger to the community nor a flight risk.

49. When Respondents revoked the order of supervision, Petitioner had complied with every condition of the order, and ICE had not secured necessary travel documents for removal. No change in circumstances warranted the order’s revocation.

50. Petitioner’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.

51. Because Respondents had no legitimate, non-punitive objective in revoking Petitioner’s order of supervision, Petitioner’s 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

52. Plaintiffs reallege all paragraphs above as if fully set forth here.

53. *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.

54. The first factor, the private interest at issue, favors Petitioner. "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 v. Davis*, 533 U.S. 678, 690.

55. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that an order of supervision can be revoked. 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. 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 prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.

56. The third factor, the government's interest, also favors Petitioner. When the government ignores the 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 prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

57. For these reasons, revoking Petitioner'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)
Contrary to Law and Constitutional Right

58. Plaintiffs reallege all paragraphs above as if fully set forth here.

59. 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).

60. 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).

61. Respondents' revocation of Petitioner's order of supervision was contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

62. The revocation was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances, as cited and discussed in the Statutory Framework section above.

63. The ICE Executive Associate Director did not revoke Petitioner's order of supervision. The Acting Deputy Director who revoked Petitioner's order did not first make findings that revocation was in public interest and that circumstances did not reasonably permit referral to the Executive Associate Director.

64. Before revoking the order, Respondents did not make findings that Petitioner is dangerous or unlikely to comply with a removal order, as required by statute.

65. Even assuming that regulations purporting to offer additional justifications for revocation of an order of supervision are not ultra vires, respondents did not comply with them. Respondents could not make findings that Petitioner's conduct indicated release would no longer be appropriate or that Petitioner violated any condition of release, because he had not. Nor could Respondents make findings that the purposes of release had been served or that it was appropriate to enforce a removal order, because it had yet to make final arrangements for Petitioner's removal.

66. The revocation should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

Count Four
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
Arbitrary and Capricious

67. Petitioner realleges all paragraphs above as if fully set forth here.

68. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

69. Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

70. An agency decision that “runs counter to the evidence before the agency” is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

71. Respondents’ decision to revoke Petitioner’s order of supervision ran counter to the evidence before the agency that Petitioner would comply with a demand to appear for removal without detention. Petitioner has never violated a condition of his order of supervision and no new facts or changed circumstances suggest he would.

72. The revocation also “failed to consider important aspects of the problem” before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

73. First, Respondents failed to consider the serious constitutional concerns raised by revoking Petitioner’s order of supervision without notice and opportunity to respond.

74. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner, who is neither a flight risk nor a danger to the community, and for whom the agency does not have travel documents needed to effectuate removal, including financial and administrative costs incurred by the agency due to unnecessary detention.

75. Third, Respondents failed to consider reasonable alternatives to revoking Petitioner’s order of supervision that were before the agency, like simply continuing release under the order of supervision and scheduling a future time and date to appear for removal. This alternative would vindicate the government’s interests in effectuating a removal order and save it the expense of detention not needed to guarantee Petitioner’s appearance.

76. For these and other reasons, Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious and should be held unlawful and set aside.

Count Five
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)
In Excess of Statutory Authority

77. Petitioner realleges all paragraphs above as if fully set forth here.

78. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

79. "An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).

80. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . ." *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

81. Regulations that purport to give Respondents authority to revoke an order of supervision on grounds other than those listed § 1231(a)(6) are ultra vires and in excess of statutory authority because "[r]egulations cannot circumvent the plain text of the statute." *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018)

82. Respondents' revocation of Petitioner's order of supervision was based on ultra vires regulations. So it exceeded statutory authority and should be held unlawful and set aside.

Count Six
Ultra Vires Action

83. Plaintiffs reallege all paragraphs above as if fully set forth here.

84. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner.

85. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

Count Seven
Violation of the *Accardi* Doctrine

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

87. Under the *Accardi* doctrine, Petitioner 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 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

88. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Petitioner's order. "As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release" and Petitioner "is entitled to release on that basis alone." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *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).

VERIFICATION STATEMENT

On this 23rd day of December 2025, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I make this verification in lieu of Petitioner Xue Lor, as the Petitioner is currently detained and the relief requested is urgent. I am authorized to make this verification as a member of the legal team representing Petitioner, Xue Lor.

Dated: 12/23/2025

/s/ Mai Neng Moua

Minneapolis, Minnesota

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