UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Somvang Phrachansiry, Petitioner, v. Kristi Noem, *et al.*, Respondents.	Case No. 26-cv-37 (PJS/BEM) **Response to Government Objections to Report and Recommendation**

I. There are not changed circumstances suggesting a significant likelihood of removing Phrachansiry in the reasonably foreseeable future.

For Respondents to revoke supervised release for noncitizens with an order of supervision (OSUP), there must be either a violation of the conditions of release or a "significant likelihood" of removal "in the reasonably foreseeable future." *See* 8 C.F.R. § 241.13(i)(2). The Government has the burden of identifying changed circumstances that demonstrate a significant likelihood of imminent removal. *See Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025).

The determination that there are changed circumstances regarding the likelihood of removal must be made *before* revocation: "§ 241.13(i)(2) requires that this determination is made before the removable alien has had his release revoked." *Tran v. Noem*, No. 3:25-CV-02391-BTM-BLM, 2025 WL 3005347, at *2 (S.D. Cal. Oct. 27, 2025). Courts have repeatedly held that generalized

assertions like those made by Respondents do not constitute changed circumstances sufficient to satisfy 8 C.F.R. § 241.13(i)(2).[1]

The determination must be individualized to the noncitizen and address the "particular obstacles" to removing that individual. *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025). Respondents cannot base their determination on facts about the designated country of removal; rather, they must point to concrete steps taken to secure the petitioner's own travel documents. *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 152 (D. Mass. 2025).

Despite this standard, the Respondents only argument ICE will be able to remove Phrachansiry in the reasonably foreseeable rests on the assertion that "ICE is diligently working to coordinate [Phrachansiry's] removal" and "there has been a significant change in the circumstances that historically prevented ICE from removing [Phrachansiry] to Laos." (Docket Entry (DE) 12 at 3, 10.) These putative changed circumstances are based on Deportation Officer William J. Robinson's declaration that "[w]ithin the last year Laos has resumed issuing travel documents for removals and accepting individuals for

[1] Such inadequate assertions include: first, vague and conclusory statements by Respondents that "ICE is in the process of obtaining a travel document." *Yee S. v. Bondi*, No. 25-CV-02782 (JMB/DLM), 2025 WL 2879479, at *5 (D. Minn. Oct. 9, 2025); *see also Sarail A. v. Bondi*, 803 F.Supp.3d 775, at *4 (D. Minn. Sept. 3, 2025) ("notification 'of the reasons for revocation' requires ICE to do more than state that circumstances have changed"). Second, travel documents that are "pending" but not yet obtained or approved. *Balouch v. Bondi*, No. 9:25-CV-216-MJT, 2025 WL 2871914, at *3 (E.D. Tex. Oct. 9, 2025); *Quan v. Bowen*, No. 5:25-CV-02546-HDV-PVC, 2025 WL 3691858 (C.D. Cal. Nov. 14, 2025). Third, providing evidence of the number of successful removals to the Petitioner's designated country of removal. *See Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)

repatriation." (DE 13 at 2-3.)[2] In support of this assertion, Officer Robinson states that "[s]ince March 2025, ERO [Enforcement and Removal Operations] St. Paul has been able to remove over 20 individuals to Laos." (*Id.*) (It's worth noting that ERO St. Paul is responsible for five states: Iowa, Minnesota, Nebraska, North Dakota, and South Dakota. https://www.ice.gov/field-office/st-paul-field-office (last accessed February 4, 2026).)

Officer Robinson's assertion that Laos has begun to accept deportees only in the last year is mistaken. Laos has been taking deportees nearly the entire time Phrachansiry has been on supervision, starting with the very first year of his supervision in 2001. That year, Laos took 9 deportees. (Ex. 1.) For the years 2001 to 2022,[3] Laos accepted a total of 190 deportees. (Ex. 1, Ex. 2, and Ex. 3.) Only during three of those years did Laos not accept any deportees (2016, 2021, and 2022). So the vast majority of the time that Phrachansiry has been on supervision, Laos has taken deportees. What may have caused some confusion and led to the government's claim that Laos has not been taking deportees until 2025 is that there had not been any removals to Laos of those who were Hmong and had entered as refugees until this year. But since

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[2] Officer Robinson also states that on "December 19, 2025, ERO St. Paul submitted a travel document request to ERO HQ." (DE 13 a 3.) While this falls far short of establishing that there is a significant likelihood of imminently removing Phrachansiry (more on this later), the request to ERO HQ for a travel document was made 9 days after Phrachansiry's OSUP was revoked and thus does nothing to show that Respondent had determined there were changed circumstances before revoking the OSUP.

[3] The data for years 2023 to the present are not yet available.

Phrachansiry is not of Hmong ethnicity, this changed circumstance does not apply to him.

Given that the government continued to deport individuals to Laos nearly the entire time Phrachansiry has been on supervision; given that the government knew where Phrachansiry worked and lived (indeed, Phrachansiry was arrested at his work (DE 14-4 at 2)); and given that Phrachansiry continued to check-in regularly under the terms of his supervision—all these facts strongly imply that something continued to be more difficult about removing Phrachansiry as opposed to some other individuals from Laos. This implication is entirely consistent with the original government determination in 2001 there was not "a significant likelihood of removal in the reasonably foreseeable future." *See* 8 C.F.R. § 241.13(i)(2).

That the government has continued to deport to Laos throughout Phrachansiry's supervision undercuts the government's sole evidence of "changed circumstances"—namely, that Laos has "resumed issuing travel documents for removals." (DE 13 at 2-3.) And again, that Phrachansiry was not deported during this time of more than two decades strongly suggests that it is the circumstances of his case specifically that prevent there being a "significant likelihood of remov[ing him] in the reasonably foreseeable future." Even though the "over 20 individuals" removed to Laos from ERO St. Paul since March 2025 is likely a large increase from previous years, the Respondents show no reason why these additional deportations change the circumstances relevant to the unique characteristics of Phrachansiry's case.

Besides, another reason to discount that the recent uptick in deportations to Laos generally is significant for Phrachansiry's case is that one component of that recent uptick is that we are now deporting Hmong refugees to Laos, and Phrachansiry is not Hmong.

There are myriad reasons why Laos may not have accepted Phrachansiry back at any point during his supervision despite receiving other individuals. Perhaps it was the fact that he entered the United States as a statutory refugee in 1979 (DE 14-4 at 1-2). Or maybe the nature of his two criminal convictions caused Laos to refuse to take him.

Likely one reason why Laos has not taken him back is that he has lost his Lao citizenship and nationality. This either occurred in 2004 or 2011. In 2004, the Lao government changed its nationality law, stripping anyone who had lived abroad more than 7 years without permission of their citizenship and nationality under Article 20. (Ex. 4 at 7.) Since Phrachansiry had resided in the U.S. since 1979 without authorization from Laos, he lost his Lao citizenship under this article in 2004 or 2011. Another section of Article 20 strips individuals of their citizenship and nationality if they reside in another country and do not maintain any legal connection with the Lao People's Democratic Republic for more than 10 years. Since Phrachansiry has never maintained legal status with the LPDR and has resided in the United States since 1979, he has lost his Lao citizenship under this provision too.

Not only has he lost his citizenship and nationality, but if he were to be returned to Laos, then under Lao law he would be considered an "apatrid": "an

individual residing in the territory of the Lao People's Democratic Republic who is not a Lao citizen and who is unable to certify his nationality." (*Id.* at 14-15.) (As an apatrid, Phrachansiry would be unable to move in and out of Laos, which would deeply impact his American family and permanently sever his community ties. Upon information and belief, under such status Phrachansiry would also be prohibited from owning property.)

Despite the U.S. government considering him a citizen of Laos (DE 14-4 at 1),[4] Laos does not consider him to be one, which casts significant doubt as to the ability of the Respondents to remove him to Laos.

A. No facts demonstrate changed circumstances individualized *to Phrachansiry's likelihood of removal that justify revoking his release.*

As noted above, Respondents cannot identify any changed circumstances that would indicate a significant likelihood that *Phrachansiry* himself can be removed to Laos or another country. Here, the Respondent's best attempt to show any changed circumstances specifically related to Phrachansiry's case is a stretch: from the mere act of submitting a "traveling document request to ERO HQ," they "anticipate"—more accurately, *speculate*—that "Laos will issue travel documents and Phrachansiry will be able to travel to Laos in the reasonably foreseeable future." (DE 13 at 3.) Simply put, the mere fact that a request for travel papers was sent to ERO HQ tells us virtually nothing.

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[4] Although it does assert on the I-831 Form provided by the Respondent that Phrachansiry is a "citizen of Laos," the form (as discussed below) is riddled with errors.

In *Nguyen v. Hyde,* the Court held that a documented increase in removals to the Petitioner's designated country of removal was not enough to demonstrate changed circumstances. 788 F. Supp. 3d, at 151. Although the government had removed over 300 individuals to Vietnam since 2024, the court reasoned that that was not "pertinent" to the individual likelihood of successfully removing the Petitioner to Vietnam. *Id.* Because the government did not disclose the total number of travel document requests submitted to Vietnam, the Court could not assess the ratio of requests that were actually approved. *Id.* (For example, say that there had been 1,000 requests for travel documents. Then the 300 individuals removed would show that a particular request for travel documents on average would have just a 30% chance of success.)

The *Nguyen* Court also held that ICE's assertion of "currently processing a travel document for Nguyen failed to identify" what "concrete steps" ICE had taken to secure such documentation. *Id.* at 152. In Phrachansiry's case, just as in *Ngyen,* the mere request for travel documents to ERO HQ is insufficient: the Respondents have not identified the number of total requests submitted to Laos, thereby allowing you to assess the relative chance of a request resulting in actual travel documents being issued; the number of pending requests; and the average amount of time requests remain pending. You don't even know that the request has been submitted to Laos. All the government says is that the request was submitted to ERO headquarters. And even if the request were to have been submitted to Laos—something that almost certainly hasn't

happened given the careful wording of the government's declaration—there is no indication that Laos has even acknowledged receiving the request, let alone when Laos will answer, or the chance that it will issue the travel documents.

In addition, the shoddy recordkeeping by the government with respect to Phrachansiry provides grounds to doubt the efficacy and accuracy of these travel-document requests and the government's representations about the likelihood of removing Phrachansiry. There are clear and serious factual errors in the government's own recordkeeping regarding Phrachansiry's immigration case and re-detention, suggesting that the whole operation has been hastily conceived and lacks knowledge of the particularities of Phrachansiry's case. First, the I-831 Form (DE 14-4) indicates that Phrachansiry is "unemployed or retired," despite on the very next page declaring that Phrachansiry was "arrested at his place of employment." (DE 14-4 at 1-2.) Furthermore, that same Form states that Phrachansiry "does not have children or dependents" on page 1; but on page 3 it states that he has 1 child who is a United States citizen. (*Id.* at 1, 3.) In actuality, Phrachansiry has four children, all of whom are U.S. citizens. The I-831 Form tells us that he is single. (*Id.* at 3.) But that's wrong too. He has a partner, Gloria Bronola, whom he has been with for 20 years and with whom he has two children. (Gloria Bronola is the person who filed his original habeas petition that started this litigation.)

Finally, and most egregiously, the I-831 Form states that "On November 21, 2016, Phrachansiry was convicted by the Sherburne County District Court, for the offense of Assault 2nd Degree Dangerous Weapon . . . for which he was

sentenced to a term of 7 years." (*Id.* at 1.). Although this conviction did occur, Phrachansiry received a stayed sentence of 2.25 years—not even half of the 7 claimed by the government—and he had to serve just 120 days in prison as part of this stayed sentence. (Ex. 5.) The stay of execution was for 7 years, during which time he was on probation on conditions. (*Id.*) Seven years later in 2023 the court discharged him from probation, finding that he had complied with his conditions. (Ex. 6.) Phrachansiry's case and his sentence is a matter of public record. The I-831 Form lists the correct case number and the correct court of conviction. That is all the information you need to look up his case and examine the Warrant and Commitment (akin to a federal Judgment and Commitment). Given all this, immigration authorities overstating his sentence by this magnitude—there is a big difference between a 7-year prison sentence and a stayed sentence of 2.25 years where the person serves less than 1/3 of a year in prison—is surprising. And revealing too, because the error makes Phrachansiry look much worse and more dangerous.

Taken together, these factual inaccuracies suggest an unreliable operation and throw into question the speed and accuracy at which the ICE and the ERO Headquarters will be able to obtain the necessary travel documents from Laos.

As a result, despite the Respondents asserting otherwise, they have not identified circumstances particular to Phrachansiry justifying revoking his release under 8 C.F.R. § 241.13(i) and they certainly have not given notice of them. Allowing Respondents to do an end-round of the regulations by merely

pointing to an increase of deportations to a country without providing individualized evidence of changed circumstances for Phrachansiry would render the requirements of 8 C.F.R. § 241.13(i)(l) a nullity. That's problematic. If Respondents want their governing regulations to make deportations easier, then they have to undertake the rulemaking steps required under the Administrative Procedures Act. Until they change the law, they must follow it.

The Respondents heavily rely on both *Saengnakhone S v. Noem* and *Vue v. McHenry*, which held that a recent increase in removals to Laos could satisfy the change in circumstances requirement of 8 C.F.R. 241.13(i). No. 25-cv-4775 (ECT/LIB), 2026 WL 34132 (Dist. Minn. 2026); No. 25-2827 (PAM/DLM) (D. Minn. Filed July 11, 2025). But these holdings are in the overwhelming minority nationwide. (Ex. 7.) Furthermore, both cases rely on the inaccurate assertion by the parties that Laos had not taken *any* deportees until recently. *Saengnakhone* 2026 WL 34132 at *4. In those cases, the Court went out of its way to point out that Saengnakhone and Vue were not refugees, while Phrachansiry has clearly entered as a refugee. (DE 14-4 at 1-2.) Finally, those courts did not address the particular circumstances facing Phrachansiry, including his likely stateless status in Laos.

II. Even overlooking the substantive problems with revoking Phrachansiry's supervision, Respondents failed to address ICE's lack of compliance with the procedural requirements for revoking release under the *Accardi* Doctrine.

Even if ICE could establish a substantive basis for re-detention—which it has not—the regulations impose mandatory procedural requirements governing

revoking a noncitizen's release. Those requirements are not optional. The government must follow them as promulgated. *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).

Under 8 C.F.R. § 241.13(i)(3), ICE must notify the citizen of the reasons for revoking release and conduct an initial informal interview promptly after the noncitizen's return to custody. These requirements are not empty formalisms, but rather serve a real and important purpose. By notifying the noncitizen why their release was revoked and then interviewing them about it, the noncitizen has the opportunity to respond to and potentially rebut those stated reasons, including the government's assertion that removal is now significantly likely to occur in the reasonably foreseeable future. *Id.* As the amended petition suggests, these requirements were not met here.

A. ICE failed to provide a notice identifying the reasons for revocation.

Phrachansiry did not receive a notice identifying the reasons for revocation of his release prior to re-detention. Serving a revocation notice after Phrachansiry had already been taken into custody does not satisfy the regulation's notice requirement. *See* 8 C.F.R. § 241.13(i)(3) (requiring notification "[u]pon revocation"); *Yee S. v. Bondi*, 2025 WL 2879479, at *6 n.9. Even setting aside this timing problem, the notice Phrachansiry received after his re-detention cannot satisfy the regulations' notice requirements.

This Court has consistently held that notification of "of the reasons for evocation" means more than providing a conclusory statement that circumstances have changed or that removal is being pursued. It requires an explanation of what has changed and why those changes alter the prior determination that removal was not reasonably foreseeable. *See id*, at *5; *Roble v. Bondi*, 803 F.Supp.3d 766, 772 (D. Minn. Aug. 25, 2025) ("Providing a notice that simply recites the language of the regulation does not satisfy the Government's obligation to provide the 'reasons' why [the petitioner's] Order of Supervision was revoked."). No such explanation was provided. The notice informs Phrachansiry that his supervision has been revoked "based on a review of your official alien file and a determination that there are changed circumstances in your case." (DE 14-3 at 1.) The letter never identifies what the changed circumstances are. The only other reference to the "changes" is so cryptic and short that it's Kafkaesque: "Due to changes ICE will pursue new efforts to remove you to Laos." (*Id.*) That doesn't tell Phrachansiry anything and, as a result, there is no meaningful way for him to respond and rebut the "changed circumstances." This deficiency in turn deprives the initial interview of substance; it's like taking the meat and spices out of a sausage link. All that's left is an unsatisfying form.

B. ICE failed to provide a meaningful initial interview.

The lack of an adequate and non-conclusory explanation of the changed circumstances before revoking Phrachansiry's OSUP denied him the chance to have a meaningful initial informal interview. While a meeting labeled "Informal

Interview" occurred on the day of his arrest (DE 13-3 at 3), because Phrachansiry wasn't informed what circumstances had changed, he couldn't effectively respond to the asserted basis for revoking his supervision and detaining him. This Court has concluded that

> Simply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough. Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3). Thus, while an informal interview apparently occurred, Petitioner could not have responded to the reasons for revocation, because they were not given.

Sarail A, 803 F.Supp.3d, at 779-780. Under 8 C.F.R. § 241.13(i), there is a distinction between the "*reasons* for revocation" mentioned in § 241.13(i)(3) and the *categories* of revocation listed in § 241.13(i)(1) and (2). *Id.* Here, ICE identified the category of "changed circumstances," but failed to notify Phrachansiryof the reason—the circumstances that changed and created a significant likelihood of removal in the reasonably foreseeable future, and as a result ICE failed to follow its own regulations.

The Supreme Court has been clear that where the government fails to comply with the procedural requirements governing re-detention, continued custody is not authorized. *Accardi*, 347 U.S., at 268. Decisions applying 8 C.F.R. § 241.13 to similar procedural records have treated the absence of a notice or a meaningful initial interview as dispositive and have ordered release. *Yee S. v. Bondi*, 2025 WL 2879479, at *3-4; *Sarail A*, 803 F.Supp.3d, at 777.

CONCLUSION

For the above reasons, Phrachansiry urges the Court to reject the government's objections to the R&R, adopt the R&R, and order ICE to release him.

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Respectfully submitted,

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