
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Somboune Virachak,

Petitioner,

v.

JUAN BALTASAR, Warden, GEO Group ICE
Processing Center;

ROBERT HAGAN, Director of the Denver Field
Office for U.S. Immigration and Customs
Enforcement;

TODD LYONS, Acting Director of U.S.
Immigration and Customs Enforcement;

KRISTI NOEM, Secretary, U.S. Department of
Homeland Security; and

PAMELA BONDI, U.S. Attorney General,

in their official capacities,

Respondents.

Case No.: 26-cv-391

**EXPEDITED
CONSIDERATION
UNDER 28 USC § 1657(a)
REQUESTED**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Somboune Virachak arrived in the United States as an infant and entered with his family as a refugee. He was ordered removed by an immigration judge on July 12, 2016. Following his order of removal, he was held in Immigration and Customs Enforcement (ICE) custody until about October 11, 2016. He was then released on an order of supervision. At no time was Petitioner informed that he was not compliant with terms of the order of supervision. Notwithstanding his near decade of compliance with his order of supervision, ICE arrested him on about January 7, 2026. ICE did not tell him that his order of supervision was revoked, did not articulate a reason for any revocation, and did not give him any opportunity to respond to any allegation of noncompliance. Petitioner was transported to the Aurora ICE Processing Center, where he remains in custody.
2. Because his detention violates Petitioner's constitutional, statutory, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus and order release.

CUSTODY

3. Petitioner is in the physical custody of Respondents, imprisoned at the Aurora ICE Processing Center, an immigration detention center in Aurora, Colorado. Petitioner is under direct control of Respondents.

JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1331 (federal question) 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.*
6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

7. Venue is proper in this judicial district under 28 U.S.C. § 2241 because Petitioner is detained at the GEO Group's ICE Processing Center in Aurora, Colorado, which is within the jurisdiction of this District. Petitioner is in the immediate custody of Respondent Juan Baltasar, who resides in this district for purposes of this action. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1005-06 (2025) (per curiam) ("For core habeas petitions, jurisdiction lies in only one district: the district of confinement" (internal quotation marks and citations omitted.)).

EXPEDITED TREATMENT OF HABEAS CLAIMS

8. Federal law provides that each court of the United States shall determine the order in which civil actions are heard and determined, except that the court

shall expedite consideration of certain actions including any action brought under chapter 153 of Title 18 (habeas corpus cases). 28 U.S.C. § 1657(a).

9. Congress has directed courts to grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
10. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

11. Petitioner Somboune Virachak is a 41-year-old man who has lived in the U.S. since he was an infant. On July 7, 2016, an immigration judge ordered him removed. Prior to his current detention, he resided in Wyoming. He is being detained at the GEO Group’s ICE Processing Center in Aurora, Colorado. He is in custody, and under the direct control, of Respondents and their agents.
12. Respondent Baltasar is sued in his official capacity as the Warden of the GEO Group’s ICE Processing Center in Aurora, Colorado. He has immediate

physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain non-citizens. Respondent Baltasar is a legal custodian of Petitioner.

13. Respondent Hagan is sued in his official capacity as Field Office Director of the Denver Office of U.S. Immigration and Customs Enforcement (ICE). Respondent Hagan is a legal custodian of Petitioner and is responsible for detaining him.

14. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement (ICE). Respondent Lyons is responsible for Petitioner's detention.

15. Respondent Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem has ultimate custodial authority over Petitioner.

16. Respondent Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals. Respondent Bondi is a legal custodian of Petitioner.

LEGAL FRAMEWORK

Detention During the Removal Period

17. The government's authority to detain noncitizens, including those who are subject to final orders of removal, is subject to constitutional limits. "It is well established that [t]he Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *2 (Apr. 7, 2025) (per curiam) ("[t]he Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings.").
18. For noncitizens as well as citizens "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).
19. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the [incarcerated] individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal citation omitted). Civil immigration detention is therefore constitutional only in "certain special and 'narrow' nonpunitive 'circumstances.'" *Id.* at 690 (quoting *Foucha*, 504 U.S. at 80). The Supreme Court identified those limited circumstances as mitigating the risk of danger to the community and preventing flight. *Id.* at 690–91; *see also Demore v. Kim*, 538 U.S. 510, 527–28 (2003).

20. In addition to Constitutional requirements, for detention to be lawful the government must comply with both the applicable statutory provisions and its agency regulations. *See United States v. Caceres*, 440 U.S. 741, 759-60 (1979).
21. Pursuant to 8 U.S.C. § 1231(a), ICE has authority to detain noncitizens with a final order of removal for 90 days after the removal order becomes final—a time frame known as the “removal period.” *See* 8 U.S.C. § 1231(a)(1)(A). When the 90-day period expires the non-citizen may be released under supervision or the government may continue detention if the non-citizen is 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)(2); (a)(6).
22. To extend detention after the removal period, DHS must follow regulations outlining post custody review procedures intended to provide due process. 8 U.S.C. § 1231(a)(6), 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i) § 241.4(k)(2)(ii). 241.4(j)(2).
23. In addition to these regulatory requirements, the Constitution further “limits a [noncitizen]’s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. As the Court explained, post-removal detention “has two regulatory goals: ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community.” *Id.* at 690 (internal quotation marks and citation omitted). Neither purpose, the Court determined, provided grounds sufficient to authorize indefinite detention. *Id.* “[B]y

definition the first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best . . . [because] where detention’s goal is no longer practically attainable, detention no longer ‘bear[s] [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* at 690 (quotations and ellipses in original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Thus, the Court concluded “once the flight risk justification evaporates, the only special circumstance present is the alien’s removal status itself, which bears no relationship to a detainee’s dangerousness.” *Id.* at 691 (citations omitted).

24. After *Zadvydas*, DHS added new regulations creating “special review procedures” to determine whether detained noncitizens are likely to be removed in the reasonably foreseeable future. See Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on “special circumstances,” it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)–(d), or by demonstrating by clear and convincing evidence before an immigration judge that the noncitizen is “specially dangerous.”

Third Country Removal

25. Under certain circumstances, noncitizens can be removed to a “third country” that is not their country of citizenship or nationality, provided the foreign

government will accept them. 8 U.S.C. § 1231(b)(1)-(3). 8 U.S.C. § 1231(b)(2)(E)(vii). However, “the Attorney General may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A).

26. To remove a foreign national to a third country, the INA requires that the Attorney General—by and through a delegate, such as an immigration judge—first determine that it is “impracticable, inadvisable, or impossible” to remove the noncitizen to the country designated in the removal order and that the designated third country “will accept [Petitioner] into that country.” 8 U.S.C. § 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. § 1231(b)(E)(vii) “indisputably requires the Attorney General to prove that the proposed country of removal is willing to accept the alien”); *see also Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 344 (2005).

27. The statute delegates the authority to the Attorney General, not DHS. 8 U.S.C. § 1231(b)(2)(E)(vii) (“the Attorney General shall remove the alien to. . .”); *see also* 8 C.F.R. § 1240.10(f) (in removal proceedings the immigration judge “shall... identify for the record a country, or countries in the alternative, to which the alien’s removal may be made”).

28. To remove a foreign national to a third country, the Attorney General would need to move to reopen removal proceedings to designate a third country for

removal under the statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) (unpublished) (holding that should a new country of removal be designated, "the agency must provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from" the third country); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings "shall be reopened and a hearing shall be held before the immigration judge so that petitioner may apply for relief from removal" as to a country not designated in prior proceedings).

29. Adherence to that process is necessary to ensure the foreign national has a statutory right to claim protection in immigration court against removal to a third country where he may be persecuted or tortured, a form of protection known as withholding of removal, 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of removal under CAT. *See* 28 C.F.R. § 200.1 ("A removal order. . . shall not be executed in circumstances that would violate [the CAT]"); 8 C.F.R. §§ 208.17-18, 1208.17-1208.18.

30. Due process requires the government to "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with

§ 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said].”
Aden, 409 F. Supp. 3d at 1019.

31. Any unannounced attempt at a third country removal would violate these statutory and constitutional procedural protections.

Due Process and Decisions to Revoke and Order of Supervision

32. “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 (2001).

33. Under substantive due process doctrine, revocation of a noncitizen’s order of supervision is a restraint on liberty that 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).

34. “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).

Procedure for Revoking an Order of Supervision

35. A noncitizen 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”).
36. A noncitizen 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).
37. 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, release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances” *Zadvyas*, 533 U.S. at 699-700.
38. Regulations provide the following additional circumstances, beyond those listed at § 1231(a)(6), which allow for the revocation of an order of supervision and re-detention of a noncitizen: “(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”). Discretion to revoke for one of the foregoing reasons under 8 C.F.R. § 241.4(l)(2) must be exercised by the Executive Associate Commissioner or a district director. *Id.*

39. Where an order of supervision is revoked for a violation of the conditions of release, the noncitizen must be notified of the reasons for revocation and promptly afforded an informal interview to give the noncitizen “an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1).

40. These regulations are intended to provide noncitizens released on an Order of Supervision with due process protections. *Minh Nhat Phan v. Noem*, 3:25-cv-02422-RBM-MSB, 2025 U.S. Dist. LEXIS 201411, *8-9 (S.D. Cal. Oct. 10, 2025).

41. The detention of a noncitizen in violation of the regulations is unlawful. *Id.* at 8-9 (citing cases).

The APA Sets Minimum Standards for Final Agency Action

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

43. Final agency actions are those (1) that “mark the consummation of the agency’s decision making 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).

44. ICE’s decision to detain Petitioner, without prior revocation of his Order of Supervision or without written notice, is a final agency action subject to this Court’s review.

45. Here, Petitioner’s detention marked the consummation of ICE’s decision-making process regarding his custody.

46. Petitioner’s detention was an action by which rights or obligations have been determined, or from which legal consequences flowed, as ICE detained Petitioner in violation of his rights under the Constitution, statute, and regulations.

Agencies Must Follow Lawful Rules and Policy

47. 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.”).

STATEMENT OF FACTS

48. Mr. Virachak is a 41-year-old who has resided in the United States since he was an infant. After being born to Laotian parents in a refugee camp in Thailand, he entered the U.S. lawfully as a refugee before his first birthday.

49. In 2013, Petitioner pled guilty charges related to controlled substances in Wyoming. Following his sentence, he was taken into ICE custody in 2016.

50. An immigration judge ordered him removed from the United States on July 12, 2016. Following the order of removal, he remained in ICE custody during the 90-day removal period at 8 U.S.C. § 1231(a). He was released from ICE custody on an order of supervision on or about October 11, 2016.

51. Under the order of supervision, he was required to check in with ICE once per year, typically in September. He attended each check-in as required and was never alleged to have been in violation of the order of supervision.

52. In September of 2025, he traveled his yearly check-in only to find a sign on the office door indicating the ICE Wyoming office no longer did check-ins at that location.

53. On October 27, 2025, an official signing "M. Nunez" issued an ICE "Call-in Letter." According to the digital signature, the letter was signed at 4:00 p.m. It is not clear whether the Call-in Letter went out with the outgoing mail that same afternoon. It is not clear whether the Call-in Letter was sent from Wyoming, from the ICE office in Centennial, Colorado, or from another location. The Call-In Letter, mailed to Petitioner at his Wyoming address, instructed Petitioner to appear at the ICE Office in Centennial Colorado on

November 1, 2025, for an in-person check-in. This letter, unlike his regular appointments associated with his order of supervision, made no reference to an order of supervision. Petitioner did not receive the letter dated October 27, 2025, in the mail until *after* the November 1, 2025, date that he had been instructed to go.

54. On or about January 7, 2026, ICE arrested Petitioner as he was leaving his home for work.

55. During the arrest, ICE did not inform Petitioner that his order of supervision was being revoked. No ICE officer indicated that he had violated his order of supervision. No ICE officer provided an informal interview affording him to respond to any allegation that he had violated his order of supervision or any other reason the order of supervision was being revoked.

56. Petitioner was transported to the ICE detention facility in Aurora, Colorado. Since being moved to the Aurora ICE detention center, he has not had further interactions with ICE officers. To date, since his arrest, no officer has asserted that the order of supervision has been revoked, that there was any violation of a condition of supervision, or that there was any other applicable justification specified in the regulations for the revocation of his order of supervision. He has not been afforded an interview.

57. Petitioner has no criminal history in the decade he has been out of custody complying with his order of supervision.

58. During his arrest and his ongoing detention, no ICE officer has provided any information regarding the revocation of an order of supervision. No ICE officer has indicated that he is a threat to public safety. There has been no indication that ICE has arranged for his removal to Laos, Thailand, or any other country.
59. Petitioner is subject to a final order from an immigration judge. As such, he is not scheduled for any future immigration court hearings at this time.

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. § 1231 and Fifth Amendment Right to Due Process (Unlawful Indefinite Detention)

60. Petitioner incorporates by reference the above paragraphs of this petition.
61. The Due Process Clause of the Fifth Amendment to the U.S. Constitution forbids the government from depriving any person of liberty “without due process of law.” *Zadyvdas* authorizes detention only for “a period reasonably necessary to bring about the [noncitizen’s] removal from the United States.” 533 U.S. at 689, 701. Petitioner’s detention beyond the statutory removal period, which ended in 2016, is unlawful because there is no significant likelihood of removal in the reasonably foreseeable future. Therefore, his continued detention violates due process and he must be immediately released.
62. When courts find a noncitizen’s removal is not reasonably foreseeable under *Zadvydas*, the remedy provided is release. *See, e.g., Morales-Fernandez v. INS*, 418 F.3d 1116, 1124 (10th Cir. 2008) (ordering petitioner’s release where “[t]here is no contention that conditions in Cuba have changed so that [the

petitioner's] removal to Cuba is reasonably foreseeable,” and therefore he must “be released and paroled into the United States.”) (citing *Clark v. Martinez*, 543 U.S. 371, 386–87 (2005); *Nzayikorera v. Fabbricatore*, No. 1:21-CV-02037-RMR, 2021 WL 9385836, at *2 (D. Colo. Sep. 9, 2021). District courts across the country recognize immediate release as the remedy to a *Zadvydas* violation. *Zhuzhiashvili v. Carter*, No. 25-3189-JWL, 2025 WL 2837716, at *3 (D. Kan. Oct. 7, 2025); *Manago v. Carter, et. al.*, No. 5:25-cv-03183-JWL, 2025 WL 2841209, at *2 (D. Kan. Oct. 7, 2025); *Vargas v. Noem*, No. 25-3155-JWL, 2025 WL 2770679, at *2 (D. Kan. Sept. 29, 2025); *Zavvar v. Scott, et. al.*, No. 1:25-cv-02104-TDC, 2025 WL 2592543, at *8 (D. Md. Sept. 8, 2025); *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *8 (D.N.J. June 24, 2025); *Tadros v. Noem*, No. 2:25-cv-04108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025); *see also Tadros v. Noem*, No. 2:25-cv-04108-EP, Order (D.N.J. June 17, 2025), ECF No. 17 (granting habeas petition).

63. Respondents have not and cannot credibly allege that Petitioner poses any danger given his full compliance with his order of supervision for the past ten years.

64. Moreover, the Supreme Court has determined that “preventing flight” is a “weak or nonexistent” justification for detention when removal is not reasonably foreseeable, as is the case here. *Zadvydas*, 533 U.S. at 690. Respondents have not pointed to any valid justification for ongoing detention. Therefore, the Court should order his release.

COUNT TWO

Violation of Fifth Amendment Right to Due Process (As-Applied Challenge)

65. Petitioner incorporates by reference the above paragraphs of this petition.
66. The Due Process Clause of the Fifth Amendment to the U.S. Constitution guarantees protection to all “persons” in the United States, including noncitizens, regardless of immigration status. *See Zadvydas*, 533 U.S. at 693. It further prohibits the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.
67. To comport with the due process clause, civil detention must “bear[] a reasonable relation to the purpose for which the individual was committed,” which for detention under §1231 is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).
68. The indefinite nature of Petitioner’s detention under section 1231 violates his substantive due process rights under the Fifth Amendment by depriving him of his “strong liberty interest.” *United States v. Salerno*, 481 U.S. 739, 750 (1987).
69. There is no indication that the government has made any effort towards securing removal in the near-decade his removal order became final. The 90-day removal period at 8 U.S.C. § 1231(a) almost ten years ago. There is no indication that the government has arranged for his removal to Laos, Thailand, or any third country. Nor, if the government intends to remove Petitioner to a third country not designated as the country of removal in the removal order,

has it afforded him any notice or opportunity to express a fear of removal to that country. At this stage in the process, there is no likelihood that he will be removed in the near future. This violates his procedural due process rights and renders his detention indefinite.

70. Petitioner's detention is thus in violation of Petitioner's Fifth Amendment rights.

COUNT THREE

Violation of Fifth Amendment Rights (Substantive Due Process)

71. Petitioner incorporates by reference the above paragraphs of this petition.

72. The Due Process Clause of the Fifth Amendment protects against punitive detention and similar restrictions on a person's liberty.

73. ICE has unlawfully detained Petitioner, because he had a valid Order of Supervision and did not receive notice and an opportunity to be heard, as required by the regulations and the Due Process Clause of the Fifth Amendment.

74. Petitioner has complied with all terms and conditions of his Order of Supervision.

75. No change in circumstances has warranted Petitioner's detention.

76. Petitioner's arrest and detention, therefore, did not bear a reasonable relationship to the two recognized purposes of immigration detention: preventing danger to the community, or flight prior to removal.

77. Because Respondents had no legitimate, non-punitive objective in detaining Petitioner, his detention violated his substantive due process rights under the Fifth Amendment of the U.S. Constitution.

COUNT FOUR
Violation of Fifth Amendment Rights
(Procedural Due Process)

78. Petitioner incorporates by reference the above paragraphs of this petition.

79. The Supreme Court's decision in *Mathews*, 424 U.S. at 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.

80. All three factors demonstrate Respondents have violated Petitioner's rights to due process.

81. 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*, 533 U.S. at 690.

82. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner.

83. To safeguard against erroneous deprivations of liberty, the 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. 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i).

84. Here, Respondents unlawfully detained Petitioner in violation of his procedural due process protections under the statute, regulations, and the Fifth Amendment. The failure to follow the requisite procedural safeguards has led to the deprivation of Petitioner's liberty.

85. The third factor, the government's interest, also favors Petitioner.

86. When the government does not provide the required notice and an opportunity for a person with an order of supervision to respond, the government is more likely to waste limited financial and administrative resources on the unnecessary detention of people who are neither flight risks nor dangerous to the community, as is the case with Petitioner. Further, because the government must also allocate resources defending against a habeas corpus petitions in federal court to compel Respondents to comply with the law, requiring Respondents to instead provide notice and a meaningful opportunity to respond, prior to revoking an order of supervision, reduces the fiscal and administrative burdens on the government.

87. Respondents' detention of Petitioner, prior to the revocation of his order of supervision and without providing him with the requisite notice and a

meaningful opportunity to respond, violated his procedural due process rights under the Fifth Amendment of the U.S. Constitution.

COUNT FIVE

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B) (Contrary to Law and Constitutional Right)

88. Petitioner incorporates by reference the above paragraphs of this petition.

89. 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).

90. 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).

91. ICE failed to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 at the time of Petitioner’s detention.

92. ICE never revoked Petitioner’s Order of Supervision prior to taking him into custody.

93. Respondents’ detention of Petitioner was, therefore, arbitrary and capricious because it violated statute, regulation, and the Constitution.

94. 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).

95. Respondents' decision to arrest and detain Petitioner was unlawful, and must be set aside. 5 U.S.C. § 706(2)(A).

COUNT SIX

Violation of Fifth Amendment Rights to Procedural Due Process and Administrative Procedure Act, 5 U.S.C. § 706(2) (Adequate Notice and a Meaningful Opportunity to Present a Fear-Based Claim)

96. Petitioner incorporates by reference the above paragraphs of this petition.

97. The INA and implementing regulations as well as the Constitution mandate meaningful notice and an opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

98. The Administrative Procedure Act empowers courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C).

99. The APA compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

100. Agencies must follow their own policies and procedures, particularly when they impact individual rights. *See Accardi*, 347 U.S. at 268.

101. Petitioner has been given no notice regarding any intended removal to a third country. He has not had any opportunity to present a fear-based claim to an immigration judge.

102. Petitioner has no adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court grant the following:

- (1) Assume jurisdiction over the matter;
- (2) Enjoin Petitioner's removal or transfer outside of this Court's jurisdiction during the pendency of this case;
- (3) Pursuant to 28 U.S.C. § 2243, forthwith award the writ or issue an order directing respondents to show cause why the writ should not be granted within three days;
- (4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment; the INA and implementing regulations, the APA, and the *Accardi* doctrine;
- (5) Grant a writ of habeas corpus directing Respondents to immediately release Petitioner on the same terms of supervision as were in place prior to his unlawful detention and enjoining Respondents from removing or attempting to remove Respondent to a third country or a country to which his removal has been withheld in violation of the Constitution as well as statutory and regulatory procedures;
- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

Dated: February 1, 2026

/s/ Aaron C. Hall
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Attorney for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Aaron Hall, submit this verification on behalf of the Petitioner because I am Petitioner's attorney. On the basis of documents reviewed and discussions with Petitioner and Petitioner's family, I hereby verify that statements made in this petition are true and correct to the best of my knowledge.

Dated: February 1, 2026

/s/ Aaron C. Hall
Attorney for Petitioner