

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Ounheuan HONG,

Petitioner

Case No. 3:26-CV-00302-LS

v.

Warden of ERO El Paso Camp East Montana,
et al.,

Respondents

PETITIONER'S REPLY
IN SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS

In their late Response in Opposition to Mr. Hong's Petition, Respondents (1) submit evidence that Mr. Hong's home was forcibly invaded and his arrest executed at gunpoint without a judicial warrant in violation of his Fourth Amendment rights; and (2) make no attempt to defend their unlawful revocation of Mr. Hong's release without following the procedures prescribed in DHS's own regulations; and (3) fail to show Mr. Hong's removal to Laos is significantly likely in the foreseeable future. Respondents' vague assertion—in an electronically signed declaration—that Mr. Hong will be placed on a flight to Laos on an undisclosed date is both unsubstantiated and contradicted by their failure to provide a travel document showing that Laos has agreed to accept him and Mr. Hong's evidence that his name is not on the Laos government's list of deportees this month. *See* Exs. 6 & 7. On this record, Mr. Hong respectfully submits that the Court must find his detention unlawful and order his immediate release.

RELEVANT FACTS

Mr. Hong's final order of removal is sixteen years old. Pet'n ¶ 33. Mr. Hong has previously spent over eight months in immigration detention while ICE attempted but failed to obtain a travel document for his removal to Laos. *Id.* ¶ 34. Laos has been designated as a "recalcitrant" country because it systematically refuses or delays the repatriation of its citizens. *Id.* ¶¶ 63-64. Because Mr. Hong's removal was not foreseeable, he was released from detention on January 24, 2011, on an order of supervision and has unfailingly complied with its conditions since then. *Id.* ¶ 35.

On January 18, 2026, approximately fifteen ICE agents broke down the door to Mr. Hong's home and forcibly arrested him at gunpoint without a judicial warrant. *See id.* ¶¶ 12-20; ECF No. 7-3 (administrative warrant for Mr. Hong's arrest signed by an Assistant Field Office Director for ICE). He was shortly thereafter transported to El Paso Camp East, Montana, in El Paso, Texas, where he was confined and isolated, and not even given a change of clothes or underwear for two weeks. Pet'n ¶ 24. At no point has ICE provided him with a written explanation for its decision to revoke his supervised release or an interview to contest his re-detention. *Id.* ¶ 26.

On February 2, 2026, Mr. Hong filed the instant Petition for a Writ of Habeas Corpus. The Court ordered Respondents to show cause why the Court should not grant Mr. Hong's release by February 25, 2026. ECF No. 4. Respondents failed to do so.¹ On February 25, 2026, they requested an extension to March 4, 2026, to respond to Mr. Hong's Petition, ECF No. 5, to which Mr. Hong objected given the egregious circumstances of his arrest and harsh conditions of his ongoing,

¹ On this ground alone, the Court may order Mr. Hong's release. In a habeas petition, the Court has broad equitable authority to fashion appropriate relief, including immediate release. *See Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Respondents received clear and timely notice of the Court's order yet failed to meet its deadline. If such conduct carries no meaningful consequence, the Court's orders become advisory rather than binding.

unlawful detention, ECF No. 6. Respondents did not file their Response until March 5, 2026. ECF No. 7.

Respondents' key exhibit to justify Mr. Hong's detention is an electronically signed declaration by an ICE employee stating he is "manifested for removal on a charter flight" that is "scheduled to depart before April 3, 2026" but the exact date of departure is "not provided [to the Court] to protect the integrity of the mission and the safety of officers and detainees to, from, and on the flight." ECF No. 7-4, ¶¶ 5-7. Respondents produced no substantiating documents for this electronically signed declaration, and counsel for Respondents is not in possession of a travel document issued by Laos for Mr. Hong's removal. *See* Ex. A (Email Correspondence). Moreover, Mr. Hong is not on the Laos government's list of deportees anticipated to arrive in April 2026. *See* Ex. B (Potter Declaration).

ARGUMENT

I. Respondents' warrantless arrest of Mr. Hong is grounds for his release.

Respondents do not dispute their violation of Mr. Hong's Fourth Amendment rights. They make no claim that a judicial warrant, consent, or exigent circumstances justified ICE's forcible entry into Mr. Hong's home on January 18, 2026. Rather, they explain Mr. Hong was re-detained on January 18, 2026, solely on an administrative warrant. *See* ECF No. 7 at 2; ECF No. 7-3. Respondents' only attempted defense to ICE's illegal, SWAT-style invasion into Mr. Hong's home is that Mr. Hong's Fourth Amendment claim is not cognizable in habeas. This argument fails.

The great writ of habeas corpus "at its historical core," "has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been at its strongest." *INS v. St. Cyr*, 533 U.S. 289, 301 (2001). In a habeas action, the Court has broad equitable authority to fashion appropriate relief, including immediate release. *See Boumediene v.*

Bush, 553 U.S. 723, 779 (2008). Accordingly, numerous courts have ordered release as a remedy when ICE initiates detention through an unlawful seizure. *See, e.g., Martinez v. McAleenan*, 385 F. Supp. 3d 349, 373 (S.D.N.Y. 2019); *Pedro Eduardo R.P. v. Bondi*, Case No. 26-cv-1323 (ECT/DJF), 2026 WL 473140, at *3 (D. Minn. Feb. 17, 2026) (recommending release based on petitioner's undisputed claim that he was arrested by ICE in violation of the Fourth Amendment); *Urquilla-Ramos v. Trump*, No. 2:26-cv-00066, 2026 WL 475069, at *18 (S.D. W. Va. Feb. 19, 2026) (similar). As one court explained, habeas relief restores a person to his liberty "if he has been against law deprived of it." *Urquilla-Ramos*, 2026 WL 475069, at *18 (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)).

Respondents' assertion that the legality of Petitioner's arrest is irrelevant to this habeas proceeding is incorrect. Mr. Hong's *current* detention is the direct result of the government's warrantless entry into his home and the arrest that followed. The government cannot evade that inquiry by characterizing the unconstitutional arrest as a "past error." Warrantless entry into a home to effect an arrest is presumptively unconstitutional. *Payton v. New York*, 445 U.S. 573, 586 (1980). When detention follows such an arrest, the Fourth Amendment requires a prompt judicial determination of probable cause. *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). Because Mr. Hong's current detention stems directly from a warrantless home arrest, the constitutional violation is central to determining whether the government's custody is lawful.

Respondents also fail to address that Mr. Hong's arrest violated statutory limits on ICE's authority. Under 8 U.S.C. § 1357(a)(2), officers may conduct a warrantless arrest only where they have reason to believe the individual is removable and reason to believe the individual is likely to escape before a warrant can be obtained. Similarly, 8 C.F.R. § 287.8(c)(2) permits a warrantless residential arrest only where officers have reason to believe the individual is likely to escape before

a warrant can be obtained. Mr. Hong alleged that no such circumstances existed here. Respondents' failure to respond to these arguments concedes the point and constitutes waiver.

The cases cited by Respondents are inapposite. *Lane v. Williams*, 455 U.S. 624, 631, (1982), addresses mootness where detention has expired, but Mr. Hong is still detained and his Fourth Amendment claim still live. *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973) confirms that habeas is the proper vehicle to challenge unlawful detention and that the Court has broad equitable authority to order release.

It is undisputed that Mr. Hong's current detention started with ICE's egregious violation of his Fourth Amendment rights when ICE broke down Mr. Hong's door and arrested him at gunpoint without a warrant, consent, or exigent circumstances. The Court has equitable authority to order his release. *Boumediene*, 553 U.S. at 779.

II. Respondents' failure to follow procedural requirements to revoke release is grounds for his release.

Respondents likewise do not contest Mr. Hong's claim that Respondents revoked his release without adhering to the procedures set forth in DHS's own regulations at 8 C.F.R. §§ 241.4 and 241.13. Re-detention under either regulation requires ICE to provide notice, "upon revocation," of the reasons for the revocation of release and a "prompt" opportunity to respond. *Id.* §§ 241.4(i)(1) & 241.13(i)(3). It is undisputed that Respondents have provided Mr. Hong no written notice or interview upon revocation of his release or thereafter. *See* Pet'n ¶ 26.

"It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid." *Gulf States Mfrs., Inc. v. Nat'l Labor Relations Bd.*, 579 F.2d 1298, 1308 (5th Cir. 1978). The majority of district courts that have considered the issue have determined that where ICE fails to follow its own regulations in revoking release, detention is

unlawful, and the petitioner's release is warranted. *See, e.g., Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113 at *3 (E.D. Tex. Aug. 2, 2025); *Villanueva v. Tate*, 801 F.Supp. 3d 689, 700 (S.D. Tex. 2025); *Truong v. Bondi*, Case No. SA-25-CA-01947-XR, 2026 WL 475296, at *5 (W.D. Tex. Feb. 11, 2026). Specifically, ICE's failure to provide notice and opportunity to be heard as required by §§ 241.4 and 241.13 has been held unlawful under ICE's regulations and the Due Process Clause. *See, e.g., Mbonga v. Raycraft*, No. 4:25-CV-2315, 2025 WL 3122829, at *4 (N.D. Ohio Nov. 7, 2025) (ordering release because ICE provide no notice or interview); *Sarail A. v. Bondi*, No. 25-cv-2144-ECT-JFD, 2025 WL 2533673, at *2, 10 (D. Minn. Sep. 3, 2025) (recommending release because ICE provided insufficient notice); *Grigorian v. Bondi*, No. 25-cv-22914, 2025 WL 2604573, at *9-10 (S.D. Fla. Sept. 9, 2025) (ordering release because ICE provided no interview); *see K.E.O. v. Woosley*, Civil Action No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *6-7 (W. D. Ky. Sep. 4, 2025) (ordering release for ICE's violations of petitioner's due process rights by failing to follow its own regulations); *Orellana v. Baker*, Civil Action No. 25-1788-TDC, 2025 WL 2444087 (D. Md. Aug. 24, 2025) (same); *Zhu v. Genalo*, Case No. 1:25-cv-06523 (JLR), 2025 WL 2452352 at *9 (S.D.N.Y. Aug. 26, 2025) (same).

The Court must reject Respondents' argument that his due process claims should be reviewed under the *Zadvydas* framework. Courts in this district have held that a § 1231(a) detainee subject to re-detention after their release pursuant to an Order of Supervision ("OSUP") is not limited to a *Zadvydas* claim, *see Nguyen v. Bondi*, Case No. EP-25-CV-323-KC, 2025 WL 3120516, at *4 (W.D. Tex. Nov. 7, 2025) (citing *Trejo v. Warden of ERO El Paso E. Montana*, 807 F. Supp. 3d 697, 707 (W.D. Tex. 2025), and that their due process rights are implicated and violated when ICE fails to follow the standards and procedures set forth in §§ 241.4 and 241.13, *id.* Moreover, Mr. Hong's case is unlike *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994), and

Mohammed v. Lynch, No. EP-16-CV-28-PRM, 2016 WL 8674354 (W.D. Tex. May 24, 2016), in which both courts found the requisite notice or opportunity to be heard was provided. Here, Respondents have not suggested that they have provided Mr. Hong even the “constitutional minima” of due process. *See Trejo*, 807 F. Supp. 3d at 707.

“The opportunity to contest detention through an informal interview is not some ticky-tacky procedural requirement; it strikes at the heart of what due process demands.” *Grigorian*, 2025 WL 1895479, at *9. It is undisputed that Mr. Hong has suffered nearly two months in detention without any written notice of the reasons for the revocation of his release nor a meaningful opportunity to be heard. On this basis, he must be ordered release. *See Villanueva*, 801 F. Supp. at 700-701 (denying Government’s motion for summary judgment on petitioner’s due process claims where Government did not dispute it failed to provide notice and interview required by § 241.4).

III. Mr. Hong’s detention is unlawful because Respondents have not shown that his removal is likely in the foreseeable future.

Respondents’ only evidence that Mr. Hong’s removal is likely in the foreseeable future is an electronically signed declaration by an ICE employee stating he will be put on a flight to Laos sometime before April 3, 2026. ECF No. 7-4. As an initial matter, the Court should reject this declaration because it lacks the declarant’s true signature. *See Blount v. Stanley Eng’g Fastening*, 55 F.4th 504, 515 (6th Cir. 2022) (“The first affidavit was not a proper declaration under 28 U.S.C. § 1746 because it was unsworn and filed with [an] electronic signature rather than [a] personal signature.”); *ACS All. Constr. Specialties, LLC v. Cueto Consulting & Constr. LLC*, No. 23-50735, 2024 WL 3338305 (5th Cir. July 9, 2025) (affirming district court’s exclusion of an electronically signed declaration).

Second, the Court should question the veracity of this assertion and likelihood of Mr. Hong's removal given that Respondents have produced no travel document issued by the Laos government. *See Gonzalez Lopez v. Wesling*, No. 26-cv-047-JJM-AEM, 2026 WL 309607, at *5-6 (questioning veracity of ICE's assertions in litigation without substantiating documents). Repatriation to Laos requires a passport or other travel document issued by the Laos government upon ICE's request. Pet'n ¶ 65. The Government has not produced any travel document to show its date, expiration, or other relevant details—nor has the Government even asserted that such a document exists. *See* ECF No. 7-4. The Government's counsel has stated she is not in possession of such a document. *See* Ex. A. As one court recently held, the Government cannot meet its burden to show significant likelihood of removal in the reasonably foreseeable future without such evidence. *See Hall v. Nessinger*, C.A. No. 25-cv-667-JJM-PAS, 2026 WL 18583, at *8 (D.R.I. Jan. 2, 2026); *cf. Mohammed*, 2016 WL 8674354, at *7 (finding significant likelihood of removal in the reasonably foreseeable future because the Government presented the Court with the petitioner's travel document from the government of Bangladesh).

Finally, Mr. Hong has presented evidence that Respondents have not in fact obtained a travel document for his removal to Laos. *See* Ex. B. Chanida Bhaengdara Potter, Founder & Director of ROOTS Laos, a nonprofit based in Vientiane, Laos, has personal knowledge of the deportees that the Laos government has accepted for repatriation in the coming month, and Mr. Hong's name is not on that list. *Id.*

To avoid repetition of the other cases cited in Mr. Hong's Petition, he draws the Court's attention to a number of recent decisions within the Fifth Circuit ordering noncitizens' release on similar facts where the Government has failed to demonstrate removal is likely in the reasonably foreseeable future. *See Truong*, 2026 WL 475296, at *5 (finding no likelihood of removal where

Vietnam had refused to repatriate petitioner in the past and the Government provided no explanation in its declaration of why it expected a different outcome now); *Mogos v. Thompson*, No. 5:26-CV-0740-JKP, 2026 WL 475079, at *6 (W.D. Tex. Feb. 13, 2026) (finding “entirely speculative” without evidence that any country had issued travel documents to accept petitioner); *Nguyen v. Noem*, No. 5:25-CV-176, 2026 WL 237282, at *8 (S.D. Tex. Jan. 28, 2026) (similar); *Rodriguez Romero v. Ladwig*, No. 25-1106-JWD-EWD, 2026 WL 321437, at *14-16 (M.D. La. Feb. 6, 2026) (similar). Because Respondents utterly lack evidence of Mr. Hong’s likelihood of removal in the reasonably foreseeable future, the Court must order his release.

CONCLUSION

This case presents Respondents’ egregious violations of law that destroyed Mr. Hong’s property, traumatized his family, and deprived him of his liberty for nearly two months to date. The proper remedy is to immediately restore him to his liberty by granting his prayer for relief.

Respectfully submitted this 12th day of March, 2026.

By and through his Counsel,

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