

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

**AT CHANDEE (AKA
XAYASOUNETHONE),**

Petitioner,

v.

KRISTI NOEM, in her capacity as Secretary
of the United States Department of Homeland
Security;
TODD M. LYONS, in his official capacity as
Acting Director of the United States
Immigration and Customs Enforcement;
PAMELA BONDI, in her official capacity as
Attorney General of the United States;
MARY DE ANDA-YBARRA, in her official
capacity as Director, El Paso Field Office, U.S.
Immigration and Customs Enforcement
WARDEN EAST MONTANA FACILITY;

Respondents.

Case No. 3: 26 CV 336-LS

**AMENDED PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28
U.S.C. § 2241**

INTRODUCTION

1. At Chandee¹ (“Mr. Chandee”) is currently being unlawfully detained pursuant to an unlawful deportation order that became administratively final more than thirty years ago. Not only does he seek release from his unlawful detention, but he also asks this court to provide the necessary judicial review of his unlawful deportation order and vacate it.

¹ Mr. Chandee legally changed his name from At Xayasounethone to At Chandee. Although his removal order uses the name “Xayasounethone,” updated DHS records, including his Employment Authorization Card, all use “Chandee.” In the following petition, Chandee will be used instead of Xayasounethone.

2. A habeas petitioner seeking to vacate a deportation order by a district court may seem unusual in 2026. For the past twenty years, ever since Congress passed the REAL ID Act, district courts have been stripped of jurisdiction to consider whether a final order of removal was unlawful, even under a habeas action. 8 U.S.C. § 1252(a)(5). In May of 2005, Congress mandated Federal Circuit Courts as the exclusive forum for judicial review of removal orders. 8 U.S.C. 1252(a)(5). This statutory provision, known as the “zipper clause,” applied not only to any removal orders entered after the effective date of the REAL ID Act, but was also given retroactive effect as well. Ramirez-Molina v. Ziglar, 436 F.3d 508, 512 (5th Cir. 2006) (“Congress specified that the provisions of the REAL ID Act were to take effect immediately and retroactively upon enactment.”). But Congress never intended the retroactive impact of the zipper clause to reach all the way back to pre-1997 orders of deportation.

3. Review of deportation orders by a habeas court however has a long and storied tradition. Chinese applicants to the United States arguing against exclusion brought claims under habeas, see Chew Heong v. United States, 112 U.S. 536 (1884)(finding against the retroactive repeal of certificates of residence for chinese laborers), and was recognized by the Supreme Court as the *exclusive* forum for review of a deportation for some time. Heikkila v. Barber, 345 U.S. 229, 230 (1953)(“It is clear that, prior to the Administrative Procedure Act, habeas corpus was the only remedy by which deportation orders could be challenged in the courts.”).

4. While there is no question that this court may not examine use habeas jurisdiction to examine the lawfulness of a removal order entered now, or even a removal order entered after 1997, a close examination of the plain language of 8 U.S.C. 1252(a)(5) and applying the principles found in both Landgraf v. USI Film Products, 511 U.S. 244, 265 (1994), and I.N.S. v. St. Cyr, 533 U.S. 289, 300 (2001) lead to the inevitable conclusion that this court’s jurisdiction under 2241

habeas to review the petitioner's deportation order as established by 8 U.S.C. 1105a(a)(10)(1994 ed), remains intact. Petitioner also asserts that no court has ruled on this particular claim and is thus an issue of first impression.

5. Once the jurisdictional hurdle has been met, this Court's task becomes easy. The unlawfulness of his Order of Deportation entered in 1995 has become increasingly clear over time. Despite numerous diligent attempts to try and correct this error, including a direct appeal to the Eighth Circuit Court of Appeals in 1995, *see* 94 F.3d 649 (Table), 1996 WL 452812, and a motion to reopen filed with the Board of Immigration Appeals in 2017, the petitioner has been met with procedural hurdles and ironically, with an attitude that treated the possibility of his detention as remote and unlikely.

6. Despite the administrative finality of the order of deportation having long past in the latter part of 1995, Mr. Chandee's situation is extraordinary because less than a month after his last check-in in which he was told to check back in June of 2026, he was for the first time since his release from criminal custody in late 1995 arrested and put into ICE custody. Respondents appear to have decided that now is the right to time to effectuate his deportation order by deciding to rescind his Order of Supervision. Unfortunately, his arrest and apparent rescission² was made in complete disregard of binding regulations and basic due process protections. His unlawful detention since January 24, 2026, is in violation of his constitutional, statutory, and regulatory rights. ICE is currently detaining Mr. Chandee at Camp East Montana in El Paso, Texas.

7. Mr. Chandee brings this habeas action for two reasons, to finally get proper review of an unlawful deportation order that was entered more than thirty years ago that stripped him of his lawful

² Despite being detained for nearly four weeks, the petitioner still has not received a notice of rescission of his order of supervision.

permanent resident status erroneously and for an order requiring Respondents to immediately release him.

8. The 1995 Order of Deportation is unlawful and executing this order, especially after thirty years and after clearly established legal precedent making its unlawfulness incontrovertible, would result in a “gross miscarriage of justice” and violate due process. See Ramirez-Molina v. Ziglar, 436 F.3d 508, 514 (5th Cir. 2006)(finding that REALID does not preclude collateral attack on removal order if there was a gross miscarriage of justice); see also, Vega-Anguiano v. Barr, 982 F.3d 542, 547-51 (9th Cir. 2019)(finding that executing an invalid removal order would result in a gross miscarriage of justice).

9. Respondents’ arrest of Mr. Chandee violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the implementing regulations of the Immigration and Nationality Act (“INA”), the Administrative Procedure Act (“APA”), and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. ICE’s detention of Mr. Chandee without a lawful reason, without giving him notice or an opportunity to be heard, without findings required by law, and in violation of agency rules render his detention unlawful. The appropriate remedy is immediate release, as numerous federal courts across the country (including in the Fifth Circuit) have concluded in similar cases. See, e.g., Escalante v. Noem, No. 9:25-CV-00182-MJT, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025); Alnajjar v. GEO Group, Inc., 5:25-CV-0822-JKP, 2025 WL 3853217 (W.D. Tex. Dec. 23, 2025).

PARTIES

10. Petitioner, Mr. Chandee has lived in the United States since 1980. Prior to his detention, Mr. Chandee was residing in Brooklyn Park, Minnesota. Since his arrest on January 24, 2026, Mr. Chandee has been kept in ICE custody at Camp East Montana in El Paso, Texas. He was

originally ordered deported under 8 U.S.C. 1251(a)(2)(C), for committing a gun crime after having been convicted in 1992 of Assault in the Second Degree under Minn. Stat. § 609.222 for assault with a dangerous weapon. This order of deportation was made administratively final on August 15, 1995, and was reviewed by the Eighth Circuit Court of Appeals on August 12, 1996.

11. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. DHS is a department of the executive branch of the U.S. government that is tasked with administering and enforcing the federal immigration laws. Secretary Noem is ultimately responsible for ICE's actions; specifically, she is responsible for the administration and enforcement of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Noem is legally responsible for any effort to detain and remove Mr. Chandee and as such is Mr. Chandee's legal custodian.

12. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of the United States Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States, and as such Acting Director Lyons is Mr. Chandee's legal custodian.

13. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General. Attorney General Bondi is responsible for continuing a custody case against a noncitizen and as such is Mr. Chandee's legal custodian.

14. Respondent Mary De Anda-Ybarra is named in her official capacity as the Director for the ICE El Paso Field Office. Director De Anda-Ybarra is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's

policies and procedures. As such, Field Office Director De Anda-Ybarra is Mr. Chandee's legal as well as his immediate physical custodian as she is in charge of the Camp East Montana facility.

JURISDICTION AND VENUE

15. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause), and former 8 U.S.C. § 1105a(a)(10)(1994 ed.).

16. The jurisdictional bars in 8 U.S.C. § 1252(a)(5) does not deprive this Court of jurisdiction as the plain language of the statute does not prevent review of orders of *deportation* entered prior to the passage and changes to the law enacted by IRIRRA in 1996.

17. While 8 U.S.C. 1252(a)(5) as passed by the REALID Act has been recognized as retroactive, the retroactive effect should only apply to final orders entered after 1997, as the plain language of the statutory provisions only apply to "removal orders." 8 U.S.C. § 1252(a)(1) ("Judicial review of a final order of *removal*") (emphasis added), 8 U.S.C. § 1252(a)(5) ("a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an *order of removal* entered or issued under any provision of this chapter").

18. Mr. Chandee's deportation order is not a "removal order" but a deportation order under 8 U.S.C. § 1252. Orders of deportation and orders of exclusion were replaced with orders of removal with the passage of IIRIRA and AEDPA in 1996. *See, e.g.*, Pub. L. 104-208 § 305(a)(3), Stat. 3009-1, 598 (referring to noncitizens ordered removed pursuant to "removal order[s]"). Compare, current 8 U.S.C. § 1231(a)(1)(A) (ordered removed) with 8 U.S.C. § 1252(c)(1994 ed.) ("final order of deportation."). The REAL ID Act §106(a) itself refers to "orders of removal"

and thus clearly references only the post-IIRIRA framework.³ See *infra* for a more robust discussion of the jurisdiction provisions.

19. Moreover, the judicial review provisions for orders of deportation prior to 1997 were not contained in 8 U.S.C. § 1252 at all, but rather in 8 U.S.C. § 1105a(a)(10), which was a completely different “section” of the U.S. Code.

20. This Court may grant release pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court’s inherent equitable powers.

21. Venue lies in the U.S. District Court for the Western District of Texas because it is the judicial district in which Mr. Chandee is currently detained. See *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Venue is also proper in this Court under 28 U.S.C. § 1391(e)(1) because Respondents are employees, officers, and agencies of the United States.

REQUIREMENTS OF 28 U.S.C. § 2243

22. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless Mr. Chandee is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

³ Elsewhere in the REAL ID Act Congress made clear that it understood and recognized the distinction between orders of deportation/exclusion and orders of removal. See, e.g., Pub. L. 109-13 §106(d), 119 Stat. 231, 311 (indicating that any petition for review filed under the pre-IIRIRA provision pursuant to IIRIRA’s transitional rule “shall be the sole and exclusive means for judicial review of an order of deportation or exclusion.” As will be discussed *infra*, the deliberate treatment of *deportation* orders that were non-final after 1997 and during REALID’s transition period is another indication that Congress did not intend to abrogate habeas jurisdiction under the prior 8 U.S.C. §1105a(a)(10) framework that existed prior to 1997.

23. Good cause requires a showing by the *Respondents*, which in this case cannot be made. The Petitioner has been detained for more than 17 days without any notice or information. Respondents have been on notice about providing justification and authority for Petitioner's arrest and detention since January 26, 2026.

24. Petitioner had previously filed a habeas petition on this matter in the District of Minnesota on January 24, 2026 several hours after his arrest. The District of Minnesota Court issued an Order to Show Cause on January 26, 2026 and gave the Respondents 14 days to answer. No answer has been made by Respondents since. The lack of an answer by Respondents has made it unclear whether the District of Minnesota was the proper venue, given that the petitioner may have been *en route* to El Paso when the District of Minnesota petition was filed. Petitioner filed a voluntary dismissal on February 3, 2026 as Respondents had yet to provide information as to the timing of his transfer to El Paso or the reasons why Petitioner's OSUP was revoked.

25. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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) (citation omitted). "The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time." Jones v. Shell, 572 F.2d 1278, 1280 (8th Cir. 1978).

26. At the heart of habeas petitions is the ability to be heard quickly and efficaciously. Harris v. Nelson, 394 U.S. 286, 291 (1969). As the Harris court explained, "that a habeas corpus proceeding must not be allowed to founder in a 'procedural morass.'" *Id.* at 292. Due to the nature of this proceeding, Mr. Chandee asks this Court to expedite proceedings in this case as necessary and practicable for justice.

EXHAUSTION

27. Mr. Chandee has administratively exhausted his options to review his deportation order, not only by filing an appeal with the Board of Immigration Appeals, but by filing a motion to reopen in 2017.

28. Pursuant to 8 U.S.C. § 1105a(c), Mr. Chandee also provides notice that his order of deportation was reviewed by a federal court in July of 1996. However, given that key decisions from the Supreme Court over the meaning of elements, means and divisibility would not be issued by the Supreme Court until 2013, he satisfies the requirement of 1105a(c) as the ground for which he seeks recognition that his conviction is not a “firearms” offense could not have been presented in 1996.

LEGAL FRAMEWORK

Removability under 8 U.S.C. § 1251(a)(2)(C).

29. In 1995, when Mr. Chandee was issued an Order to Show Cause, he faced deportation under 1251(a)(2)(C) for “certain firearms offenses” which stated, “Any alien who at any time after entry is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18) in violation of any law is deportable.” (1994 ed.)

30. This ground of deportation, was carried over into what is now at 8 U.S.C. § 1227(a)(2)(C) which states, “Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or

carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18) in violation of any law is deportable.” 8 U.S.C. 1227(a)(2)(C). The language is identical except for the replacement of the term “after entry” with the term “after admission”.

31. In 1995 for Mr. Chandee’s case, while the Board of Immigration Appeals had recognized that in order to qualify as a firearm offense eligible for deportation, there must be a firearm involved, both the Board, and the Eighth Circuit made a fundamental error. Both tribunals assumed that if the conviction required a “weapon” then as long as that weapon can be established by records as a “firearm” it would qualify as a firearm offense.

32. For example, in Matter of Perez-Contreras, Interim Dec. 3194 (BIA 1992), while the Board refused to find that a conviction for third degree assault in Washington was a firearm offense because firearm appeared in the complaint, it did so using this reasoning, “No element of the crime to which he pled relates to the use of any *weapon*.” Id. At 617. The fact that a firearm wasn’t an *element* was not what concerned the Board, it was the fact that the respondent in that case had plead to subsection that didn’t involve a weapon at all.

33. This confusion as to whether the element of the conviction just needs to be a “weapon” which can then be proven to be a firearm by looking at the complaint played a key role in Mr. Chandee’s own deportation. This is how the Board in Mr. Chandee’s decision rejected his appeal, “We disagree with the respondent that this Board cannot look to the conviction record in cases involving convictions for “dangerous weapons” to see if the dangerous weapon was a firearm for purposes of section 241(a)(2)(C) of the Act.” The Board shifted the focus from whether the conviction element was a firearm, to whether it was a dangerous weapon that was satisfied by it being a firearm. This shift was seen in the Eighth Circuit’s unpublished decision as well-

In the present case, the criminal offense for which petitioner was convicted has as an essential element the use of a “dangerous weapon.” See Minn.Stat. Ann. § 609.222 (West 1993) (assault in the second degree). The IJ reviewed the criminal complaint as part of petitioner’s record of conviction. IJ order at 5. Based upon that document, the IJ concluded that petitioner did in fact use a firearm in the commission of his offense.

Xayasounethone v. I.N.S., 94 F.3d 649 (8th Cir. 1996).

34. The type of error- mistaking dangerous weapon crimes as qualifying as gun crimes, was the result of a misunderstanding of when a statutory term was “divisible” rather than “overbroad” and the difference between an “element” versus a “means.” As Mr. Chandee’s attorney at the time explained, the Board misunderstood the term “element” misconstruing “means” with conduct. This sort of error would be clarified in absolute terms by the Supreme Court’s decisions in Descamps v. United States, 570 U.S. 254 (2013), and Mathis v. United States, 579 U.S. 500 (2016). In fact, when the Court explained the difference between “means” versus element, it used as a hypothetical the exact scenario involved in Mr. Chandee’s own conviction.

To use a hypothetical adapted from two of our prior decisions, suppose a statute requires use of a “deadly weapon” as an element of a crime and further provides that the use of a “knife, gun, bat, or similar weapon” would all qualify. See *Descamps*, 570 U. S., at ____ (slip op., at 16); *Richardson*, 526 U. S., at 817. Because that kind of list merely specifies diverse means of satisfying a single element of a single crime—or otherwise said, spells out various factual ways of committing some component of the offense—a jury need not find (or a defendant admit) any particular item: A jury could convict even if some jurors “conclude[d] that the defendant used a knife” while others “conclude[d] he used a gun,” so long as all agreed that the defendant used a “deadly weapon.” *Ibid.*; see *Descamps*, 570 U. S., at ____ (slip op., at 14) (describing means, for this reason, as “legally extraneous circumstances”).

Mathis, 579 U.S. at 506.

35. Mr. Chandee’s conviction for second degree assault fits exactly into this category. The statute of conviction at the time of his offense was “Whoever assaults another with a dangerous

weapon may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both.” Dangerous weapon is defined in a completely different statutory provision- “Subd. 6. Dangerous weapon. "Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, or any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.” Minn. Stat. § 609.02, subd. 6 (1992).

36. The Minnesota statutes of conviction are a near identical match for the hypothetical provided by the Court in Mathis. While firearms are a “means” to match the definition of a dangerous weapon, they are by no means an element. For example, in State v. Livingston, 420 N.W. 2d 223 (Minn. App. 1988) a conviction was upheld when the “dangerous weapon” was a pit bull terrier. The clear understanding that convictions which involve “deadly” or “dangerous weapons” has been well understood given that the Board of Immigration Appeals in a variety of unpublished cases have all rejected statutes similar to the one that the Mr. Chandee as being “firearms” offenses. See Exhibit 17. For example, a Texas Statute 46.03 for carrying a weapon that lists, “a handgun, illegal knife, or club” was found not to a firearms offense. Or a Texas Aggravated Assault statute under Texas Penal Code section 22.02(a) which involved using or exhibiting a “deadly weapon” and ruling that firearms are only a means to satisfy a deadly weapon under the statute. In one of the most illustrating examples, in a BIA decision on October 25, 2017, the Board ruled that while the Immigration Court had ruled that a Washington Rev. Code 9.41.270 involving carrying a concealed weapon was a firearms offense given that the Respondent had admitted to carrying a firearm, the Board of Immigration Appeals applied the “intervening” case

law of Mathis and Descamps to find that firearms were only a “means” and not an element of the statute. When the BIA applies the two Supreme Court cases on divisibility, it has found statutes that use the term “deadly” or “dangerous” weapons as overbroad and even if they list firearms, that they are “means” and not elements.

37. Finally, even if one were to try and argue that Minnesota’s use of the term “firearms” was a divisible element, the issue is that Minnesota “firearms” at the time of the conviction are not firearms as defined by federal law as required for deportation. In State v. Seifert, 256 N.W.2d 87, 88 (Minn 1977), firearms are “any gun which shot or a projectile is discharged by means of an explosive, gas, or compressed air.” In State v. Hysell, 449 N.W.2d 741 (Minn. App. 1989), the defendant used an air pistol in an assault and the court found that an expansive definition of dangerous weapon was required, while in State v. Fleming, 724 N.W.2d 537, 540 (Minn. App. 2006) a BB gun qualified under the statute. This state definition of a firearm matters, because under federal law a firearm is defined by the need to expel a projectile through an explosive, and compressed air such as with a BB or air piston do not qualify under that definition.

Judicial Review of Deportation Orders in 1995

38. In 1995, judicial review of orders of deportation could take place through two different forums, the first was appeals to the circuit court under 8 U.S.C. § 1105a(a)(1), and the second was through habeas proceedings under 8 U.S.C. § 1105a(a)(10). Review through a petition for review to the circuit court had a timing requirement (90 days) and a venue component as well. 8 U.S.C. § 1105a(a)(1), (2). The provision for habeas review was simpler, no time limitations applied, and venue was handled by the fact that one had to be “held in custody pursuant to an order

of deportation.” 8 U.S.C. § 1105a(a)(10). Under both forms of review, exhaustion was required. 8 U.S.C. § 1105a(c)(1994 ed).

39. Moreover, if a prior proceeding had upheld the validity of the deportation order, the petition for review or the habeas petition, must state the date, the court it took place, and no petition can be entertained, “unless the petition presents grounds which the court finds could not have been presented in such prior proceeding...” 8 U.S.C. 1105a(c)(1994 ed).

40. Not all federal circuits agreed as to the scope of what was available for habeas courts to review. For example, the Eighth Circuit where Mr. Chandee has resided only provided “collateral” review matters and not any review over the deportation order itself. Daneshvar v. Chauvin, 644 F.2d 1248 (8th Cir. 1981). However, the Fifth Circuit explicitly found that habeas review under 1105a(a)(10)(1994 ed) was as broad as the review for petitions for review. Marcello v. District Director, 634 F.2d 964, 967 (5th Cir. 1981).

IIRIRA, AEDPA and St. Cyr

41. In 1996, Congress passed two acts, the Illegal Immigration Reform and Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA), that fundamentally altered immigration law, including by increasing the number of penalties that would subject noncitizens to removal. IIRIRA also substantially altered the structure of immigration proceedings, abolishing the longstanding distinction between deportation and exclusion procedures and combining the two into “removal proceedings.” Pub. L. 104-208 § 304, Stat. 3009-546, 587. Relatedly, orders of deportation and orders of exclusion were replaced with orders of removal. *See, e.g.*, Pub. L. 104-208 § 305(a)(3), Stat. 3009-1, 598 (referring to noncitizens ordered removed pursuant to “removal order[s]”); *see also* Pub. L. 104-208 § 309(d)(2), Stat. 3009-1, 627 (providing

that any reference in the INA to “order of removal shall be deemed to include a reference to an order of exclusion and deportation or an order of deportation”).

42. The two acts also made several efforts to limit judicial review of immigration procedures. The AEDPA, for example, eliminated the provision authorizing habeas corpus review, previously located at 8 U.S.C. 1105a(a)(10) (1994). See Pub. L. 104-132 § 401(e), 110 Stat. 1214, 1268. And IIRIRA added several provisions to the INA that were meant to substantially limit judicial review over immigration proceedings, including for any orders of removal issued to noncitizens convicted of certain criminal offenses. Pub. L. 104-208 § 306(a), 110 Stat. 3009-1, 607-12 (outlining jurisdiction-stripping provisions to be codified at 8 U.S.C. § 1252). IIRIRA also limited the federal courts’ jurisdiction to hear claims “arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this act.” Pub. L. 104-208 § 306(a), 110 Stat. 3009-1, 612. And it affirmed that judicial review of orders of removal would be channeled through petitions for review to the circuit courts, consolidating judicial review of “all questions of law and fact.” Pub. L. 104-208 § 306(a), 110 Stat. 3009-1, 610.

43. In a note to 8 U.S.C. § 1252, Congress clarified that these judicial review procedures would apply to “all final orders of deportation or removal and motions to reopen filed on or after the date of the enactment of this act” with the exception of § 1252(g), which would “apply without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings under such Act.” Pub. L. 104-208 § 304(c), 110 Stat. 3009-1, 612 (emphasis added).

44. Despite this clear language referencing all “past deportation proceedings” the Supreme Court in I.N.S. v. St. Cyr, 533 U.S. 289, 300 (2001), refused to find that AEDPA and IIRIRA’s amendments stripped the federal courts of habeas jurisdiction, finding that such a construction, by

“entirely preclud[ing] review of a pure question of law by any court,” “would give rise to substantial constitutional questions” under the Suspension Clause. Congress’s failure to provide a forum for judicial review of questions of law, coupled with a “lack of a clear, unambiguous, and express statement of congressional statement to preclude judicial consideration on habeas,” strongly counseled against adopting the government’s construction. *Id.* at 314.

45. Not only was habeas jurisdiction preserved, but eligibility for former 212(c) relief was also preserved for those who had been convicted of crimes prior to the effective date of IIRIRA and AEDPA.

REAL ID Act of 2005

46. In 2005, Congress enacted the REAL ID Act, which responded to *St. Cyr* by expressly “eliminating all district court habeas jurisdiction over orders of removal” while retaining appellate review of constitutional questions and questions of law. *Iasu v. Smith*, 511 F.3d 881, 886 (9th Cir. 2007); *see also* Pub. L. 109-13 §106(a), 119 Stat. 231, 310 (establishing that PFR would be the “exclusive means for judicial review” “[n]otwithstanding any other provisions of law . . . including section 2241 of title 28); *see also id.* (providing that “nothing . . . which limits judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section”).

47. The operative language of the REAL ID Act’s jurisdiction stripping provision explicitly limits its effects to orders of removal, not orders of deportation. *See* Pub. L. 109-13 §106(a)(1)(B), 119 Stat. 231, 310 (creating 8 U.S.C. § 1252(a)(5), which states that a petition for review “shall be the sole and exclusive means for judicial review of an *order of removal* entered or issued under any provision of this Act”) (emphasis added). IIRIRA fundamentally amended the INA by creating

unified “removal proceedings” under Section 240 and replacing “deportation” and “exclusion” orders with “removal orders.” The REAL ID Act §106(a) refers to “orders of removal” and thus clearly references only the post-IIRIRA framework. Accordingly, because, pre-IIRIRA, noncitizens were issued orders of deportation, not orders of removal, this provision is inapplicable to individuals such as Petitioner, who were ordered deported prior to the passage of IIRIRA.

48. The Act’s effective date statement, codified as a note to 8 U.S.C. § 1252, provided that this section would “take effect on the date of the enactment” and would “apply to cases in which the final order of removal, deportation, or exclusion was issued before, on, or after the date of the enactment of this division.” Pub. L. 109-13 §106(b), 119 Stat. 231, 311.] This effective date statement mirrored the note provided during IIRIRA in its application. .

49. A second provision provided that all habeas challenges to “orders of removal, deportation or exclusion” that were “pending before a district court on the date of the enactment,” would be transferred to the court of appeals for the circuit and converted into a PFR. Pub. L. 109-13 §106(c), 119 Stat. 231, 311. And a third provision, Pub. L. 109-13 §106(d), 119 Stat. 231, 311, specifically addressed cases that fell under IIRIRA § 309(c), the transitional rule that provided that IIRIRA’s amendments would not apply to proceedings that were pending as of the Act’s effective date. REAL ID Act §106(d), which is expressly directed at these “transitional rule cases,” provided that PFRs filed under the transitional rule pursuant to the pre-IIRIRA provision would be treated “as if [they] had been filed as a petition for review under section 242.”

50. A “specific statute will not be controlled or nullified by a general one.” *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974). Here, while the REAL ID Act’s general effective date statement, codified as a note to 8 U.S.C. § 1252, appears to apply to all “order[s] of removal, deportation, or

exclusion . . . issued before, on, or after the date of the enactment,” Pub. L. 109-13 §106(b), 119 Stat. 231, 311, section 106(a)’s more specific limitation as to the applicability of the jurisdiction-stripping provisions controls and restricts the general retroactivity provision, Pub. L. 109-13 §106(a)(1)(B), 119 Stat. 231, 310 (adding 8 U.S.C. § 1252(a)(5), establishing PFRs as “exclusive means of review”). This construction seems to indicate that Congress intended for *some* and maybe *most* parts of REAL ID Act §106(a) to apply retroactively to orders of deportation and exclusion, but that this particular provision, which references orders of removal exclusively, was not one of them. The REAL ID Act’s retroactive language could nevertheless apply, for example, to the newly enacted provision governing claims under the Convention Against Torture (CAT), 8 U.S.C. § 1252(a)(4). *See* Pub. L. 109-13 §106(a)(1)(B), 119 Stat. 231, 310 (providing that a petition for review would be the “sole and exclusive means of judicial review of *any cause or claim* under the [CAT]”).

51. In mentioning “orders of deportation” in the effective date language, Congress may have been referring to post-IIRIRA orders implicated by IIRIRA’s transitional rule who received orders of deportation even after IIRIRA’s passage. *See* Pub. L. 104-208 § 309(c), 110 Stat. 3009-1, 626. This interpretation is supported by REAL ID Act § 106(d), which explicitly refers to orders of deportation in reference to IIRIRA’s transitional rule. Pub. L. 109-13 §106(d), 119 Stat. 231, 311.

52. In understanding whether or not to apply REAL ID’s 1252(a)(5) zipper clause to orders of deportation that were finalized prior to 1997, important principles of statutory construction are necessary.

53. The Supreme Court has affirmed that “the presumption against retroactive legislation is deeply rooted in our jurisprudence.” Landgraf v. USI Film Products, 511 U.S. 244, 265 (1994).

The doctrine is based on “[e]lementary considerations of fairness,” which “dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.” *Id.*; see also *St. Cyr*, 533 U.S. at 315 (“The legislature’s unmatched powers allow it to sweep away settled expectations suddenly and without individualized consideration.”) (quoting *Landgraf*, 511 U.S. at 266). Accordingly, the Court has held that “congressional enactments . . . will not be construed to have retroactive effect unless their language requires this.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 24, 208 (1988).

54. Congress’s effective date provision in the REAL ID Act is ambiguous, as it unclear whether its provisions are applicable to its specific jurisdiction-stripping provisions, which limit their effect to orders of removal exclusively, or whether they apply only to those individuals who were subject to IIRIRA’s transitional language. Compare Pub. L. 109-13 §106(b), 119 Stat. 231, 311 with Pub. L. 109-13 §106(a), 119 Stat. 231, 310.

55. That Congress did not clearly intend to have the REAL ID Act’s retroactive language reach pre-IIRIRA orders of deportation is also supported by §106(d), which clarifies that PFRs issued under IIRIRA’s transitional rule *should* be treated retroactively as PFRs issued pursuant to 8 U.S.C. § 1252. Pub. L. 109-13 §106(d), 119 Stat. 231, 311. Through this provision, Congress clearly indicated its intent to retroactively apply the REAL ID Act’s habeas jurisdiction-stripping provisions to this limited subset of post-IIRIRA orders of deportation. But Congress failed to express any intent to retroactively apply the REAL ID Act’s provisions to pre-IIRIRA orders of deportation.

56. That Congress did not clearly intend to have the REAL ID Act’s retroactive language reach pre-IIRIRA orders of deportation is also supported by §106(d), which clarifies that PFRs issued

under IIRIRA's transitional rule should be treated retroactively as PFRs issued pursuant to 8 U.S.C. § 1252. Pub. L. 109-13 §106(d), 119 Stat. 231, 311. Through this provision, Congress clearly indicated its intent to retroactively apply the REAL ID Act's habeas jurisdiction-stripping provisions to this limited subset of post-IIRIRA orders of deportation. But Congress failed to express any intent to retroactively apply the REAL ID Act's provisions to pre-IIRIRA orders of deportation.

57. A retroactive application of 8 U.S.C. § 1252(a)(5), in this particular case would pose severe due process issues. While there is no question that the petitioner has had judicial review of his order of deportation, and that had he been deported following that review there would neither exist a suspension clause or due process issue. If physical removal occurred long before the validity of the deportation order became either clear or certain, than no concerns over fairness or due process would apply. Lopez-Vazquez v. Garland, 17 F.4th 1223 (9th Cir. 2021)(finding that no gross miscarriage occurs if the removal order was valid both finality and effectuating). It does not offend due process or fairness to correct deportation orders *after* they have been effectuated. See Ovalles v. Holder, 577 F.3d 288 (5th Cir. 2009). However, the lengthy period of time between when judicial review occurred, and when the government is attempting to effectuate the deportation has exposed a significant due process concern.

58. Moreover, the petitioner has "clean hands" as it were, as he has never failed to comply with the reporting requirements or attempted to avoid deportation – accept by filing for legal review. Enforcing a deportation order that is clearly erroneous and against a person who has developed more than thirty years of reliance interest would not only be constitutionally suspect, but cruel.

59. Not only has he complied with his OSUP, but he has also consistently and diligently tried to correct the erroneous deportation order. He not only exhausted his administrative options by appealing to the Board of Immigration Appeals, but he even filed for review by the Circuit court. After his marriage, which he had hoped would allow him to legalize his status, he hired counsel to try and correct the deportation order through a motion to reopen and a motion to reconsider. Even though his counsel explained clearly that his deportation order was erroneous, neither the Government, or the Board of Immigration Appeals, ever engaged in that analysis. Even as the Board left his deportation order intact, it never attempted to defend its validity at all, only denying the motions to reopen on timeliness considerations. Even Government counsel seemed to focus on availability of a waiver of inadmissibility or 212(c) rather than acknowledging that his underlying order of deportation was erroneous.

60. While courts that have found the retroactive provisions of 8 U.S.C. 1252(a)(5) survive suspension clause analysis, they do so while relying on the availability of the statutory motions to reopen, and that circuits courts have jurisdiction over those claims. Kaweesa v. Gonzales, 450 F.3d 62 (1st Cir. 2006) ("if an IJ's denial of a motion to reopen constitutes an error of law or a violation of constitutional rights, we may review those issues"). Iasu v. Smith, 511 F.3d 881 (9th Cir. 2007), Luna v. Holder, 637 F.3d 85 (2011).

61. The difficulty of course is that statutory motions to reopen have severe time limitations, and as such when, as here, an unexecuted (and long assumed to never be executed) order of deportation becomes invalid over time, the statutory motions to reopen are unavailable, and courts treat untimely motions to reopen as *regulatory* discretion motions to reopen, which courts such as the Eighth Circuit treat as beyond their jurisdiction to review. See Miah v. Mukasey, 519 F.3d 784

(8th Cir. 2008). This is exactly what happened when the Eighth Circuit was asked to review Mr. Chandee's denied motion to reopen. Xayasounthone v. Barr, 772 Fed. Appx 408 (2019).

62. Importantly, the court never recognized that Mr. Chandee could never have applied for a statutory motion to reopen, because prior to IIRIRA, there were no statutory motions to reopen available. It was only after the passage of IIRIRA and AEDPA, that Congress created a statutory motion to reopen. In other words, under the Eighth Circuit's own precedent, Mr. Chandee could never have judicial review over a denied motion to reopen because it would necessarily be regulatory. As suspension clause analysis relies so heavily on the ability for judicial review of statutory motions to reopens, then that is another strong indication that the retroactive stripping of habeas was not meant to reach orders of deportation finalized before 1995.

63. Habeas review was important precisely because it preserved review of a deportation order *at the time it would be effectuated* because it was limited to those in custody. Because of the lengthy delay between the administrative finality of the deportation order and an attempt through detention to effectuate that order, the validity of that order has not only become suspect, but utterly and clearly erroneous. Effectuating a clearly invalid deportation order would be a gross miscarriage of justice. Vega-Anguiano v. Barr, 982 F.3d 542, 547 (9th Cir. 2019).

Revocation of Supervised Release Under 8 C.F.R. § 241.13(i)

64. 8 C.F.R. § 241.13(i) governs re-detention when ICE has previously determined that there is no significant likelihood of removal for a noncitizen under a final order of removal. Abuelhawa v. Noem, 4:25-CV-04128, 2025 WL 2937692, at *3 (S.D. Tex. Oct. 16, 2025) (clarifying that 8 C.F.R. § 241.4(l) controls "when the Government has *not* previously determined that there is no significant likelihood of removal").

65. While the Petitioner was released on an Order of Supervision prior to the promulgation of 8 C.F.R. 241.14(i) or 241.13(l), because his release was tied to the inability to remove him under then 8 U.S.C. 1252(c)(1994 ed), which allows for release “If deportation has not been practicable, advisable, or possible, or departure of the alien from the United States under the order of deportation has not been effected, within such six-month period, the alien shall become subject to such further supervision and detention pending eventual deportation as is authorized in this section.” Once the regulations were promulgated, his revocation would be controlled by 8 C.F.R. 241.14(i), as there was a determination that removal was not significantly likely in the foreseeable future.

66. ICE may re-detain a noncitizen released on an Order of Supervision if the noncitizen “violates any of the conditions of release,” 8 C.F.R. § 241.13(i)(1), or “if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future,” 8 C.F.R. § 241.13(i)(2). “The regulations clearly indicate, upon the revocation of supervised release, it is [ICE’s] burden to show a significant likelihood that the [noncitizen] may be removed.” Escalante v. Noem, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025). The determination that changed circumstances regarding the likelihood of removal must be made *prior to or at the time of* revocation. 8 C.F.R. § 241.13(i)(2) (emphasis added); see Tran v. Noem, No. 3:25-CV-02391-BTM-BLM, 2025 WL 3005347, at *2 (S.D. Cal. Oct. 27, 2025) (“§ 241.13(i)(2) requires that this determination is made before the removable alien has had his release revoked”).

67. 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), but see Saengnakhones v. Noem, 2026 WL 34132 at 1 (D. Minn. 2026)(finding that an assertion of increased deportations to Laos satisfies the change in circumstances District Courts have held that generalized assertions made by Respondents do not constitute changed circumstances sufficiently individualized to the noncitizen to satisfy 8 C.F.R. § 241.13(i)(2)).⁴

68. After finding an *individualized* changed circumstance, the “reasons” for that revocation must be stated in a notification given to the noncitizen “upon revocation.” 8 C.F.R. § 241.13(i)(3). ICE must provide notice that specifies the reasons for the revocation of release. Nguyen v. Noem, 5:25-CV-176, 2026 WL 237282, at *10 (S.D. Tex. Jan. 28, 2026) (granting release and reinstatement of the OSUP because ICE failed to rebut evidence that Petitioner did not receive notice). Courts have held notice untimely when it occurs *after* the noncitizen has been taken into custody. Constantinovici v. Bondi, No. 3:25-CV-02405-RBM-AHG, 2025 WL 2898985, at *6 (S.D. Cal. Oct. 10, 2025) (“Petitioner was not given any notice of the reasons for his re-detention prior to his arrest...despite both [8 C.F.R. § 241.4(l)(1) and § 241.13(i)(3)] requiring notice “upon revocation.”).

⁴ 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, No. 25-CV-2144 (ECT/JFD), 2025 WL 2533673, 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, merely 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).

69. Respondents have not identified circumstances particular to Mr. Chandee to justify revocation of his release under 8 C.F.R. § 241.13(i) and certainly did not give notice of them.

70. On its face, the proposition that merely showing that a country takes some deportees cannot be sufficient to show an individual's removal would now be more likely. To adopt such a rule would mean that any "a significant likelihood of removal in the reasonably foreseeable future" ("SLRFF") would be established for any country that takes deportees at all. But this can't be true, especially when a country is as small, and poor as Laos is. Setting aside its recalcitrant status, logistically speaking, Laos cannot absorb a large numbers of deportees. It is ranked 140 out of 184 countries in terms of economic freedoms,⁵ and it ranks 147th out of 193 countries in human development, the simple fact that it accepts *some* deportees does not mean much on its own.

71. Laos has consistently taken deportees as from 1998-2005 with the possible exception of 1999. In 2017, there were 10 removals to Laos. (*Id.*) A trend in a higher number of deportees being accepted cannot be enough to show the necessary change in circumstances for any single individual, for there are a myriad of circumstances that may have prevented removal when the OSUP. There are a myriad of reasons why Laos may not have accepted the petitioner back in 1995. (Laos Nationality Act; Ex. 4) Perhaps it was the fact that he entered the United States as a statutory refugee in 1980, (*see* Ex. 3) or his criminal record that caused Laos to refuse to take him, or the lack of family members, or his lack of financial resources. Allowing the Respondent to re-detain a person merely on the idea that *others* have been deported twists the meaning of "changed circumstances" and would be tantamount to the petitioner arguing that he cannot be removed merely because not all those with removal orders to Laos have been removed.

⁵ *Laos*, Index of Economic Freedom, The Heritage Foundation, <https://www.heritage.org/index/pages/country-pages/laos>.

Due Process Limits on Revocation of Release

72. Courts acknowledge that § 241.13(i)(3) “undisput[ably]” was enacted to guarantee due process when ICE decides to re-detain a noncitizen with a final order of removal. Santamaria Orellana v. Baker, No. CV 25-1788-TDC, 2025 WL 2444087, at *8 (D. Md. Aug. 25, 2025).

73. “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.

74. Under substantive due process doctrine, a restraint on liberty—such as the revocation of a noncitizen’s Order of Supervision—is only permissible if it serves a “legitimate nonpunitive objective.” Kansas v. Hendricks, 521 U.S. 346, 363 (1997). As noted previously, the only legitimate objectives of immigration detention are to 1) prevent danger to the community or 2) prevent flight prior to removal. See *Zadvydas*, 533 U.S. at 690-92 (explaining that civil detention violates the due process clause unless a special justification outweighs the “individual’s constitutionally protected interest in avoiding physical restraint”) (quoting Kansas v. Hendricks, 521 U.S. 346, 356 (1997)).

75. In the context of revocation of release under 8 C.F.R. § 241.13(i), the only justifications for re-detention are violation of the OSUP or a changed circumstance sufficiently individualized to the Petitioner’s own likelihood of removal. The regulations “place the burden on ICE to establish that ‘changed circumstances’ justified the revocation of release.” Yee S. v. Bondi, No. 25-CV-02782 (JMB/DLM), 2025 WL 2879479, at *4 (D. Minn. Oct. 9, 2025).

76. “Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty,” such as the decision to revoke a noncitizen’s order of supervision.

Mathews v. Eldridge, 424 U.S. 319, 332 (1976) (citation modified). “The essence of due process is notice and an opportunity to respond.” Roble v. Bondi, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *3 (D. Minn. Aug. 25, 2025).

77. In Morrissey v. Brewer, 408 U.S. 471, 482 (1972), the Supreme Court found that parolees had a liberty interest in remaining free, and thus could not have that liberty interest taken away without some required procedural protections, such that a determination of whether to revoke parole must be made by someone who is “not directly involved,” notice of such a revocation, and a hearing which is properly recorded. *Id.* at 486-487.

78. Those on OSUP have at least the same amount of substantial liberty interest in remaining free, especially when as with the Petitioner that period of freedom can be indefinite, out of the control of the person out on supervision and lasting decades. *See Nguyen v. Bondi*, EP-25-CV-323-KC, 2025 WL 3120516 (W.D. Tex. Nov. 7, 2025)(ordering a bond hearing or release based on failure to conduct a pre-deprivation hearing).

79. Under Mathews v. Eldridge, 424 U.S. 319, 335 (1976) three part framework “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” All favor the need for some form of hearing, notice and ability to be heard before an OSUP can be revoked.

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

80. The Administrative Procedure Act (“APA”) authorizes judicial review of final agency action. *See* 5 U.S.C. § 704. The APA instructs courts to set aside as unlawful final actions

that are “arbitrary, capricious, an abuse of discretion, . . . or otherwise not in accordance with law.”

5 U.S.C. § 706(2)(A).

81. ICE’s decision to re-detain Mr. Chandee is arbitrary and capricious and not in accordance with law because the agency has failed to provide (1) notice and (2) an informal interview where Mr. Chandee may rebut the reasons for revocation as required by 8 C.F.R. § 241.13(i).

82. The revocation of Mr. Chandee’s OSUP should be set aside as arbitrary and capricious under 5 U.S.C. § 706(2)(A).

The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

83. The *Accardi* doctrine is a foundational principle of administrative law which requires agencies to 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.”).

84. ICE violated the *Accardi* doctrine when it suddenly arrested Mr. Chandee and revoked his OSUP, without providing (1) notice and (2) an informal interview where Mr. Chandee may rebut the reasons for revocation as required by 8 C.F.R. § 241.13(i).

STATEMENT OF FACTS

85. Mr. Chandee entered the United States as a refugee from Laos on April 29, 1980 at 6 years old. (See Mr. Chandee’s Refugee Resettlement Documents; Ex. 2.) He gained lawful permanent resident status on June 18, 1981.

86. On November 29, 1993, Mr. Chandee was convicted of two counts of Assault in the Second Degree pursuant to Minn. Stat. § 609.222. Mr. Chandee was placed in deportation proceedings on February 15, 1994 and charged with having committed an aggravated felony, multiple crimes involving moral turpitude and a gun crime. On September 22, 1994, the Immigration Judge (“IJ”) found that Mr. Chandee’s assault in the second degree conviction was a firearm offense rendering him removable under INA § 241(a)(2)(C) for a firearms offense. (IJ decision at 5.)

87. Minn. Stat. § 609.22 is defined as: “Whoever assaults another with a dangerous weapon and inflicts substantial bodily harm may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both.” (IJ Decision at 5.) When determining the meaning of “dangerous weapon” the IJ looked to the facts contained in Mr. Chandee’s complaint. (IJ Decision at 6.) There is no mention of “firearm” in the Minnesota Statute. Minn. Stat. Ann. § 609.22.

88. Mr. Chandee appealed the IJ’s decision to the Board of Immigration Appeals (“BIA”). On August 17, 1995 the BIA affirmed the decision, holding that it could “look to the conviction record for convictions for “dangerous weapons” to see if that dangerous weapon was a firearm for the purposes of § 241(2)(a)(C).” (BIA decision at 4; Ex. 2.)

89. Mr. Chandee then filed a Petition for Review in the 8th Circuit. This petition was denied with the court holding “[t]he IJ reviewed the criminal complaint as part of petitioner’s record of conviction . . . we hold that the BIA did not err in determining that petitioner is deportable pursuant to 8 U.S.C. § 1251(a)(2)(C).” on August 12, 1996. *Xayasounethone v. I.N.S.*, 94 F.3d 649 (C.A.8,1996) (unpublished)

90. Even before his Court of Appeals decision was finalized, Mr. Chandee was released from ICE custody at the end of 1995 and he was placed on an Order of Supervision (“OSUP”), as INS at the time did not believe it could effectuate his deportation order.

91. For the past 30 years, Mr. Chandee has been checking in with ICE with no violations or changes in his circumstances. (See Mr. Chandee’s INS Records, Ex. 3.) Despite Laos historically not taking a large number deportees, Mr. Chandee chose not to rely on what was not set in stone, or a judge’s decision, and continued to pursue his rights to terminate his removal.

92. In November of 2017, Mr. Chandee began a new flurry of attacks on his removal order. He first filed a Motion to Reopen with BIA after marrying Tina Huynh-Chandee, a United States citizen, and U.S.C.I.S.’s approved his I-130 Immediate Relative Petition. (Chandee, Motion to Reopen - November 17, 2017 at 6.) Mr. Chandee also argued that he was eligible for relief under the former INA § 212(c) waiver that was reinstated through *Judulang v. Holder*, 565 U.S. 42 (2011). The BIA denied the motion to reopen, refusing to exercise its discretion to reopen sua sponte on May 11, 2018. (Chandee, Denial of Motion to Reopen - May 11, 2018 at 2.)

93. Mr. Chandee then filed a Motion to Reconsider to the BIA on June 11, 2018. (Chandee, Motion to Reconsider - June 11, 2018.) The Motion to Reconsider was denied on March 14, 2019 because Mr. Chandee had “not identified any material error of fact or law in [the] prior decision. (Id.)

94. As he had done in 1997, Mr. Chandee exercised his rights all the way up to the 8th Circuit, where he promptly filed a Petition for Review. The court of appeals dismissed his petition on July 5, 2019 finding it lacked jurisdiction to review the discretionary grant or denial

of sua sponte reopening. Xayasounethone v. Barr, 772 Fed.Appx. 408 (C.A.8, 2019). In none of the proceedings, did the Government, or the Board of Immigration Appeals, or the Eighth Circuit court of appeals ever disagree or defend the original deportation order as having been valid. His motion to reopen, and his motion to reconsider were all denied based on timeliness and discretion. Throughout, this new process, his own attorney described the potential for actual physical removal to Laos as “remote” and unlikely and the Government attorney indicated that the Motion to Reopen should not be granted merely because Laos wouldn’t take him back.

95. Importantly, over the intervening years, Mr. Chandee had lost his Laos citizenship and nationality because Laos nationality law strips the citizenship and nationality of any Laotian who lives abroad for more than seven years without government permission. (Ex. 4.) If Mr. Chandee was now removed to Laos, he would be considered an ‘apatrid,’ a stateless person without citizenship in any country, by the Laotian government. (Id.) Despite his final removal order designating him as a Laos national and citizen, Laos itself does not consider him as such.

96. During the intervening thirty years of his order of supervision, Mr. Chandee never had another run-in with the law. His sole criminal arrest much less conviction was the second degree assault from when he was eighteen years old. Right after his release from custody he got a diploma as an engineering drafter. And after more work and education, Mr. Chandee also began to work for the City of Minneapolis in 1999 and has maintained employment there until his recent arrest. He works as a water quality engineer and is a member of the Union.

97. He has volunteered with multiple organizations, from churches to police organizations, and several people have spoken highly of him, from his work supervisor, to other members of the community such as a retired police officer. See Exhibit 10 Chandee Pardon

Application and references. The Mayor of Minneapolis Jacob Fry has written to support Mr. Chandee. Exhibit 28.

98. While on his order of supervision, he continues to maintain close family ties, with his brothers, and his elderly mother, all U.S. citizens. See Exhibit 23. His son, Alexander is a United States citizen and has enlisted in the Air Force. He is currently serving in Germany, and he has filed for Deferred Action for his father. See Exhibit 18. He is currently married to a United States citizen, Tina Huynh. See Exhibit 7, 25.

99. Mr. Chandee most recently checked in with ICE on December 16, 2025 and he was scheduled to check in again with ICE on June 18, 2026. (Id.)

100. On the morning of January 24, 2026, Mr. Chandee was suddenly arrested at his home by ICE agents. Mr. Chandee received no notice, written or otherwise, explaining Respondents' reasons for revoking his release prior to or at the time of his arrest. Unprompted, the arresting ICE officers told his family that there was a decent chance Mr. Chandee would be released because he had been checking in without issue. The arresting officers knew that Mr. Chandee was not in violation of the conditions of his OSUP—suggesting that the basis of his release is some unidentified changed circumstance regarding his likelihood of removal to Laos. Respondents provided no explanation for why Mr. Chandee was being re-detained prior to or at the time of the arrest, and as of the date of this filing, Respondents have yet to give Mr. Chandee any explanation, written or otherwise, for the revocation of his OSUP. Moreover, no interview took place anytime between Mr. Chandee's arrest at home, during his brief detention at the Bishop Wheeler Building in Minneapolis, Minnesota, or following his transfer to Camp East Montana in El Paso, Texas, in the hours after his arrest.

CLAIMS FOR RELIEF

COUNT ONE

Review of Order of Deportation Under Former 8 U.S.C. § 1105a(a)(10)

101. Mr. Chandee realleges all paragraph above as if fully set forth here.
102. Mr. Chandee alleges that his order of deportation is invalid and unlawful. His conviction for second degree assault under Minn. Stat. § 609.222 is categorically overbroad to encompass a gun crime as defined by 8 U.S.C. § 1251(a)(2)(C). While a firearm may qualify as a “dangerous weapon” it is merely one means or type of conduct that can satisfy the larger element of a dangerous weapon. Minnesota’s definition of a “dangerous weapon” is extremely broad and has included, flammable liquid and even a pit bull. Under *Mathis v. United States*, 579 U.S. 500 (2013) he is not deportable.

103. Effectuating an order of deportation that is clearly invalid and rests on an incorrect application of the law would be a gross miscarriage of justice. *Vega-Anguiano v. Barr*, 982 F.3d 542, 547 (9th Cir. 2019), *Matter of Farinas*, Interim Dec. 1797 (BIA 1967)(allowing collateral attack when an order of deportaiton could not withstand judicial scrutiny at the time of effectuation.)

COUNT TWO

Violation of 8 C.F.R. § 241.13(i)

104. Mr. Chandee realleges all paragraphs above as if fully set forth here.
105. Before his arrest on January 24, 2026, Mr. Chandee had been in full compliance with the requirements of his OSUP, diligently attending every ICE check-in. At the time of revoking Mr. Chandee’s release, ICE did not—and could not—make findings that Mr. Chandee’s OSUP should be revoked because 1) Mr. Chandee has not violated any condition of release and 2) Mr. Chandee’s *individual* likelihood of removal to Laos had not changed. See 8 C.F.R. § 241.13(i).

Neither Mr. Chandee's conduct nor other circumstances supported re-detention, which is evidenced by Respondent's failure to give Mr. Chandee any notice of the reasons for revocation or an opportunity to be heard. See 8 C.F.R. § 241.13(i).

106. Mr. Chandee's detention cannot be justified by the two reasons for revocation of release authorized by 8 C.F.R. § 241.13(i)(1–2): violation of any of the conditions of release or changed circumstances showing a significant likelihood that the noncitizen may be removed in the reasonably foreseeable future.

107. Respondents violate 8 C.F.R. § 241.13(i) by failing to meet their burden to make a changed circumstances determination prior to arresting a noncitizen who is on supervised release. See *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("it is [ICE's] burden to show a significant likelihood that the [noncitizen] may be removed"); see *Tran v. Noem*, No. 3:25-CV-02391-BTM-BLM, 2025 WL 3005347, at *2 (S.D. Cal. Oct. 27, 2025) ("§ 241.13(i)(2) requires that this determination is made before the removable alien has had his release revoked").

108. Respondents further violate 8 C.F.R. § 241.13(i) by not providing Mr. Chandee with any notice of the reasons for revocation or an opportunity to be heard as required by 8 C.F.R. § 241.13(i)(3).

COUNT THREE
Violation of the Fifth Amendment of the U.S. Constitution
Due Process Clause

109. Mr. Chandee realleges all paragraphs above as if fully set forth here.

110. Respondents have no legal basis to re-detain Mr. Chandee under 8 C.F.R. § 241.13(i) and no basis to place him in immigration detention generally. The only legitimate purposes of immigration detention are preventing danger to the community or flight prior to

removal. *See Zadvydas*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

111. Mr. Chandee's re-detention does not bear a reasonable relationship to either of these purposes. Mr. Chandee is not a danger to the community: he has had no criminal charges or allegations brought against him in the more than two decades since his first conviction. Mr. Chandee is not a flight risk: he cares for his wife who recently had surgery, provides mentorship for his young niece and nephew, and has been gainfully employed by the City of Minneapolis for the past 27 years. Mr. Chandee is steadfast in his residence in Minnesota, therefore unlikely to flee, and a productive, prosocial member of his community.

112. To the extent Mr. Chandee's detention may be related to preventing flight prior to removal, Respondents have not articulated any reason to believe that his removal is significantly likely to occur in the *reasonably foreseeable* future. *See* 8 C.F.R. § 241.13(i)(2).

113. Because Respondents have no legitimate objective in placing Mr. Chandee in civil detention, and have identified no basis to re-detain him under the relevant regulations, Mr. Chandee's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

COUNT FOUR
Violation of the Fifth Amendment of the U.S. Constitution
Procedural Due Process

114. Mr. Chandee realleges all paragraphs above as if fully set forth here.

115. *Mathews v. Eldridge*, 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 imposing additional or substitute procedural requirements would entail. 424 U.S. 319, 333 (1976).

116. The first factor, the private interest at issue, favors Mr. Chandee. “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. Moreover, Mr. Chandee is irreparably harmed when detention bears no “reasonable relation” to its purpose. *Deqa M. Y.*, 2020 WL 4928321, at *3; see *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that “[a]ny amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual.” (citation modified)).

117. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also favors Mr. Chandee. The regulations specify under what narrow circumstance ICE may revoke supervised release and the procedural process that must be followed to do so, including timely notice and a prompt opportunity to be heard. 8 C.F.R. § 241.13(i). Respondents failed to adhere to the procedural requirements of the regulation, transforming the ‘risk’ of erroneous deprivation into an absolute certainty.

118. The third factor, the government’s interest, favors Mr. Chandee as well. When Respondents do not provide adequate notice and a prompt informal interview to contest the reasons for re-detention, more noncitizens are detained arbitrarily, wasting limited financial and administrative resources and hampering the efficiency of the entire immigration system. As more detained noncitizens file habeas petitions to challenge these unlawful re-detentions, the government must spend resources litigating in federal courts. Respondents save tax-payer money by following procedural requirements, rather than repeatedly ignoring them to hasten policy goals.

119. The Supreme Court “usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property.” Zinermon v. Burch, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the only remedies the State could be expected to provide” can post-deprivation process satisfy the requirements of due process. Zinermon, 494 U.S. at 985. Moreover, only where “one of the variables in the Mathews equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue” such that “the State cannot be required constitutionally to do the impossible by providing predeprivation process,” can the government avoid providing pre-deprivation process. *Id.*

120. All *Mathews* factors favor Mr. Chandee and the provision of notice and the opportunity to be heard in the context of revocation of supervised release. *See Mathews*, 424 U.S. at 333. The revocation of Mr. Chandee’s Order of Supervision without timely notice and a meaningful opportunity to respond should be set aside for violating procedural due process under the Fifth Amendment to the U.S. Constitution.

COUNT FIVE

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B), & (D)

121. Mr. Chandee realleges all paragraphs above as if fully set forth here.

122. Under the APA, a court shall “hold unlawful and set aside agency action . . . found to be . . . not in accordance with law” or “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(A–B). The APA also requires a court to set aside and hold unlawful agency action that is “without observance of procedure required by law.” *Id.* § 706(2)(D).

123. 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). This “law” of course includes the United States Constitution. *Id.*

124. Respondents’ re-detention of Mr. Chandee while he was on an Order of Supervision is contrary to the agency’s constitutional power under the Fifth Amendment’s Due Process Clause, as explained *supra*.

125. His re-detention was also not in accordance with the INA and implementing regulations governing under what circumstances ICE may revoke supervised release. *See* 8 C.F.R. § 241.13(i).

126. At the time of revoking Mr. Chandee’s release, ICE did not—and could not—make findings that Mr. Chandee’s OSUP should be revoked because 1) Mr. Chandee has not violated any condition of release and 2) Mr. Chandee’s individual likelihood of removal to Laos had not changed. *See* 8 C.F.R. § 241.13(i). Mr. Chandee’s conduct does not support re-detention. Neither do other circumstances support re-detention, which is notably evidenced by Respondent’s failure to give Mr. Chandee any notice of the reasons for revocation prior to or after his arrest. *See* 8 C.F.R. § 241.13(i). Additionally, he has not been given an opportunity to be heard though an informal interview as required by the § 241.13(i).

127. Federal district courts across jurisdictions have granted noncitizens habeas relief under similar circumstances. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163-64 (W.D.N.Y. May 2, 2025) (collecting cases and rejecting the government’s argument that an initial informal interview is only required if supervision is revoked based on a violation of conditions of release); *K.E.O. v. Woosley*, 4:25-CV-74-RGJ, 2025 WL 2553394, at *4-6 (W.D. Ky. Sept. 4, 2025) (finding due process violation where ICE failed to provide notice and interview as required under 8 C.F.R. § 241.13); *Roble*, 2025 WL 2443453, at *5.

128. An agency decision that “runs counter to the evidence before the agency” is arbitrary and capricious. Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins., 463 U.S. 29, 43 (1983). Respondents’ decision to re-detain Mr. Chandee runs counter to the evidence before the agency that Mr. Chandee would comply with a demand to appear for removal without detention. (Ex. 3.) Mr. Chandee has attended each and every ICE check-in since his release in 2005 and has never violated a condition of his Order of Supervision. (*Id.*) No new facts suggest he has tarnished his three-decade long clean record and Respondents have not presented Mr. Chandee with any evidence of changed circumstances.

129. Accordingly, because ICE failed to comply with its own regulations, Mr. Chandee’s detention should be held unlawful and set aside because it was (1) arbitrary, capricious, and not otherwise in accordance with law, *see* 5 U.S.C. § 706(2)(A); (2) contrary to the agency’s constitutional authority, *see id.* § 706(2)(B); and (3) not in accordance with the INA and implementing regulations, *see id.* § 706(2)(D).

COUNT SIX
Violation of the *Accardi* Doctrine

130. Mr. Chandee realleges all paragraphs above as if fully set forth here.

131. Under the Accardi doctrine, Mr. Chandee has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (“If Petitioner can prove the allegation [that the agency failed to follow its rules in a hearing] he should receive a new hearing”).

132. Respondents violated agency regulations 8 C.F.R. § 241.13(i) governing upon what findings and how the agency may properly revoke an Order of Supervision. *See, e.g., Ceesay*, 781 F. Supp. at 162 (citing Rombot v. Moniz, 296 F. Supp. 3d 386, 386-89 (D. Mass. 2017); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL

2430267 (D. Or. Aug. 21, 2025) (releasing habeas Petitioner where revocation of an ICE Order of Supervision was ordered by someone without regulatory authority to do so).

133. Respondents have failed to give Mr. Chandee notice of any changed circumstances as required by 8 C.F.R. § 241.13(i)(2). Mr. Chandee has also not been given a formal interview

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

PRAYER FOR RELIEF

WHEREFORE, Mr. Chandee requests that this Court: Exercise jurisdiction over this matter;

a. Declare that Mr. Chandee's order of deportation is invalid and cannot be used to remove him or hold him in custody;

b. Declare that Mr. Chandee's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;

c. In the alternative grant Mr. Chandee a bond hearing to decide whether he currently poses a flight risk or danger to the community,

d. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

DATED: February 12, 2026

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