

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

**REPLY TO RESPONDENTS'
RESPONSE TO AMENDED
PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241**

Respondents' have not obtained a travel document or claim that Mr. Chandee has violated his order of supervision that would justify revocation. In fact, Respondents have not provided any proof that Mr. Chandee's Order of Supervision has been revoked at all. Respondents provide no defense to the Petitioner's allegation that his detention is in violation of binding regulations under 8 C.F.R. § 241.13. Instead, of providing any justification for the Petitioner's sudden arrest, transfer to El Paso and continued detention for the past 33 days, Respondents assert that Mr. Chandee fails to state a claim for unlawful detention under Zadvydas v. Davis, 533 U.S. 678, 701 (2001). But Respondent's reliance Zadvydas is entirely misplaced as

Mr. Chandee has had thirty-one years of release after a determination that removal was not likely. As with many cases around the country in the past several months, “[t]he government detained the petitioner first, and asked questions later. That’s not how this works.” *Tou Vang v. vBondi, United States Att’y Gen., et al., Defendants.*, No. 0:26-CV-1381, 2026 WL 458195, at *3 (D. Minn. Feb. 18, 2026).

Respondents’ also cling to the general proposition that 8 U.S.C. § 1252(a)(5) as amended by the REAL ID Act of 2005 is retroactive, but ignore the plain language of the statute and its amendments, established constitutional requirements that require a clear congressional statement when retroactively cutting off judicial review to try and apply 1252(a)(5) to a final order of deportation that was unquestionably governed by 8 U.S.C. § 1105a(a)(10)(1994 ed).

ARGUMENT

A. The Government fails to address the regulatory requirements of 8 C.F.R. § 241.13.

The government relies exclusively on Zadvydas v. Davis for the proposition that Mr. Chandee has the burden of showing that there is no significant likelihood of his removal in the reasonably foreseeable future. Respondents state that Mr. Chandee’s detention is lawful because “Petitioner does not and cannot make this showing, as he has been detained less than six months in post-order custody.” Filing 10 at 2. But Zadvydas does not apply to noncitizens subject to an order of supervision (“OSUP”), where there has *already been* a determination that the noncitizen is not likely to be removed. See Trejo v. Warden of ERO El Paso E. Montana, EP-25-CV-401-KC, 2025 WL 2992187, at *6–7 (W.D. Tex. Oct. 24, 2025) (holding that a noncitizen re-detained after living freely under an OSUP is “entitled to additional procedural protections by virtue of the liberty interest he obtained through his release,” unlike the “usual Zadvyas petitioner” who is detained continuously from the time of their final removal order). Once a noncitizen has been released under an OSUP, the Zadvyvas framework advanced by Respondents is superseded by

“detailed regulations concerning when and how that OSUP may be revoked.”¹ Rodriguez Romero v. Ladwig, CV 25-1106-JWD-EWD, 2026 WL 321437, at *4 (M.D. La. Feb. 6, 2026); *see* 8 C.F.R. § 241.13(i);

Because Respondents already determined that his removal to Laos was unlikely and released Mr. Chandee on OSUP, his re-detention must comply with the requirements of § 241.13(i) and the burden of proof is on the government to justify revocation of release. *See* 8 C.F.R. § 241.13(i)(2); Escalante v. Noem, 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (“These regulations clearly indicate, upon revocation of supervised release, it is the Service's burden to show a significant likelihood that the alien may be removed.”). Respondents cannot flip this burden back onto Petitioner and ignore the requirements of § 241.13(i). *See* Garcia-Aleman v. Thompson, SA-25-CV-886-OLG (HJB), 2025 WL 3534806, at *4 (W.D. Tex. Nov. 24, 2025), report and recommendation adopted, SA-25-CV-00886-OLG, 2025 WL 3532179 (W.D. Tex. Dec. 9, 2025) (stating that Respondent’s argument “misapplies the burden of proof under applicable immigration regulations”); Tou Vang v. Bondi, 0:26-CV-1381, 2026 WL 458195, at *3 (D. Minn. Feb. 18, 2026) (“it is the government's burden to show a change in circumstance before revoking an order of supervision and detaining a person indefinitely”).

B. Respondents have failed to meet their burden under 8 C.F.R. § 241.13.

¹ The regulations were amended “[i]n light of the Supreme Court’s decision in Zadvydas” that the Constitution requires a sufficiently strong justification for indefinite civil detention. 66 Fed. Reg. 220, 56,967 (Nov. 14, 2001), <https://www.justice.gov/sites/default/files/eoir/legacy/2002/09/09/fr14no01R.pdf> (“after the Service has made a determination in a particular case that removal is not significantly likely, the alien’s detention will be governed by §241.13”).

If an OSUP is revoked for the purpose of effectuating deportation, ICE must show that “on account of changed circumstances, . . . there is a *significant likelihood* that the [noncitizen] may be removed in the *reasonably foreseeable future*.” 8 C.F.R. § 241.13(i)(2) (emphasis added). A district court in Louisiana Circuit recently interpreted this regulation to require “an individualized finding” that affects the petitioner’s own likelihood of removal for multiple petitioners. Rodriguez Romero v. Ladwig, CV 25-1106-JWD-EWD, 2026 WL 321437, at *6 (M.D. La. Feb. 6, 2026) (the plain language of 8 C.F.R. § 241.13(i)(2) “clearly refers to the individual detainee, not any broad group to which the detainee belongs”).² After Respondents find 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). Shortly after returning the noncitizen to custody, Respondents must conduct an initial informal interview to afford them “an opportunity to respond to the reasons for revocation stated in the notification.” *Id.*

Respondents have yet to identify *any* changed circumstances that affect the likelihood of Mr. Chandee’s individual deportation. Since his arrest over a month ago, he has received no paperwork formally revoking his OSUP, nor has he received written notice or been told anything that explains the basis of his re-detention.³ In their reply, Respondents make no claims that they have secured a travel document for Mr. Chandee—they do not even suggest that they are taking

² The First Circuit Court has also interpreted § 241.13(i)(2) to require an individualized finding, along with district courts around the country. *See Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023); *see e.g., Roble v. Bondi*, 803 F. Supp. 3d 766, 771 (D. Minn. 2025);

³ Importantly, “[t]he changed circumstances that make an [noncitizen]’s removal likely in the foreseeable future must have existed at or before the OSUP revocation; post-hoc justifications are inadequate.” Munagi v. McDonald, No. 25-13175, 2025 WL 3688023, at *2 (D. Mass. Dec. 19, 2025). In this case, Respondents never identified a change circumstance, so any notification now would come over a month after Mr. Chandee’s re-detention, in violation of § 241.13(i)(3) and due process.

steps to request a travel document from Laos or otherwise effectuate Mr. Chandee's deportation. The *only* facts Respondents state regarding his detention are that "[o]n January 24, 2026, Petitioner was taken into ICE custody, and is currently in custody at the Camp East Montana facility in El Paso, Texas." Filing 10 at 2. This bare restatement of a known fact does nothing to show that Mr. Chandee's removal to Laos is significantly likely in the reasonably foreseeable future. Because Respondents have provided so little information, it is not even clear whether Mr. Chandee OSUP has been officially revoked by ICE.

Courts in the Fifth Circuit have held that the government failed to meet its burden under § 241.13(i) when Respondents made much stronger showings. See Nguyen v. Bondi, EP-25-CV-323-KC, 2025 WL 3120516, at *7 (W.D. Tex. Nov. 7, 2025) (holding that even when Respondents submitted a travel document request after arresting a noncitizen on OSUP, this was not sufficient to "indicate whether the barriers to [the Petitioner's own] repatriation have been removed"); Abuelhawa v. Noem, No. 25-4128, 2025 WL 2937692, at *9 (S.D. Tex. Oct. 16, 2025) ("the Government fails to meet its burden where it provides only conclusory statements as to the likelihood of removal"); Rodriguez Romero v. Ladwig, CV 25-1106-JWD-EWD, 2026 WL 321437, at *7 (M.D. La. Feb. 6, 2026) ("ICE did not meet its burden to show a significant likelihood of removal in the reasonably foreseeable future when [Petitioner's] case was merely under review by a country that had already rejected him."); Balouch v. Bondi, No. 25-216, 2025 WL 2871914, at *3 (E.D. Tex. Oct. 9, 2025) (holding that the "potential for another removal flight" in 1–2 weeks does not meet the Government's burden when the Petitioner is not scheduled to be on that flight).

Respondents did not make the initial determination that Mr. Chandee's removal was significantly likely as required by § 241.13(i)(2) and did not afford him notice and an

opportunity to respond as required by 8 C.F.R. § 241.13(i)(3). Because freedom from unlawful detention “lies at the heart of the liberty that Clause protects,” Respondent’s failure to follow 8 C.F.R. § 241.13(i) in revoking release has resulted in substantial prejudice to Petitioner. Zadvydas, 533 U.S. at 678. See Patel v. U.S. I.N.S., 803 F.2d 804, 807 (5th Cir. 1986) (“[T]o sustain a due process challenge to a deportation proceeding, an alien must show substantial prejudice.”); Truong v. Bondi et al., SA-25-CA-01947-XR, 2026 WL 475296, at *5 (W.D. Tex. Feb. 11, 2026) (finding that Respondent’s failure to follow 8 C.F.R. § 241.13(i) resulted in substantial prejudice); see also Bonitto v. Bureau of Immigr. & Customs Enf’t, 547 F. Supp. 2d 747, 755–56 (S.D. Tex. 2008) (“The regulations involved here [8 C.F.R. §§ 241.4, 241.13] do not merely facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees. This Court must insist on DHS’s compliance with the post-order custody regulations for detention to be considered constitutional.”).⁴

C. The Court’s Habeas jurisdiction to Review his Order of Deportation Remains Intact Under 8 U.S.C. 1105a(a)(10).

Finalized pre-IIRIRA orders of deportation were never brought within § 1252’s framework by IIRIRA and as such they are outside the very statutory scheme that § 106 of REAL ID was designed to rationalize and consolidate. When Congress repealed 8 U.S.C. § 1105a(a), (formerly INA § 106) it provided the repeal “shall 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” while those who still had ongoing deportation proceedings as of the date of enactment were also not subject to the amended

⁴ The Respondents’ appear to dismiss the regulatory framework by a blanket statement that APA claims are not cognizable in a habeas action by citing to a single unpublished 10th Circuit decision, Mesina v. Wiley, 352 F. App’x 240 (10th Cir. 2009). This is a remarkably strange and incorrect citation. Mesina, did not deal with an APA claim, or a habeas under 2241, it involved a federal prisoner who objected to being placed in “punitive mail monitoring.” Mesina, 352 F.App’x 242.

judicial review provisions, Section 309(c)(1)(B), though if finalized more than thirty days after the enactment of IIRIRA, there were judicial review changes that did apply, section 309(c)(4). Mr. Chandee's deportation order, finalized in August of 1995 was not covered by the newly created 1252 or its transitional rules and thus was still subject to former 8 U.S.C. 1105a(a)(10).

The statutory text of § 106 in REAL ID confirms this limited reach. Section 106(a)'s core jurisdiction-stripping provision, which amended 8 U.S.C. § 1252(a)(5) to make the petition for review the "sole and exclusive means for judicial review of an order of removal," speaks exclusively to "orders of removal" — the term of art created by IIRIRA to describe post-1997 proceedings. Pub. L. 109-13 § 106(a)(1)(B), 119 Stat. 231, 310. The general effective-date clause in § 106(b) — refers explicitly to the effective date of the *amendments* to 1252, which did not cover final orders of deportation under 1105a. Even though the 106(b) does refer to past "orders of deportation" this is most likely a reference to transitional orders of deportation that were made final more than 30 days after the enactment of IIRIRA and thus covered by IIRIRA section 309(c)(4).

Even if the text were ambiguous, the anti-retroactivity canon forecloses the government's reading. See Landgraf v. USI Film Products, 511 U.S. 244, 265 (1994), Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667 (1986) (requiring clear unambiguous evidence of congressional intent to curtail judicial review of agency actions). INS v. St. Cyr, 533 U.S. at 314–15 (courts must not read jurisdiction-stripping statutes to eliminate habeas review absent "clear, unambiguous, and express statement of congressional intent"). Because § 106 was drafted against a background in which pre-IIRIRA deportation orders were not part of the § 1252 framework, and because Congress gave no clear indication of intent to drag those orders retroactively into it, § 106's jurisdiction-stripping provisions do not apply to Petitioner's final order of deportation.

D. This Court has subject matter jurisdiction despite § 1252(g).

Respondents contend that 8 U.S.C. § 1252(g) strips this Court of jurisdiction to review the validity of Mr. Chandee's final deportation order. As Respondents correctly point out, § 1252(g) applies, "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" Reno v. American-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999) (emphasis in original). Petitioner's amended habeas petition does not challenge these discretionary decisions, rather Petitioner seeks to challenge first, his detention, and secondly, the underlying legal basis of order of deportation itself. ECF 4 at ¶ 33-¶ 37. It is unequivocal that detention decisions are not covered under § 1252(g). The lawfulness of a deportation order is also not a discretionary decision to commence, adjudicate or execute removal orders, if it were, the Supreme Court would not have rejected the application of § 1252(g) to "pure questions of law" so clearly. See Motion to Reconsider Denial of TRO, ECF 5; I.N.S. v. St. Cyr, 533 U.S. 289, 307 (2001). When deciding what is the scope of review for habeas courts under 8 U.S.C. 1105a(a)(10) the Fifth Circuit was clear that all claims that could be brought under a petition for review could be brought. U.S. ex rel. Marcello v. District Director of Immigration & Naturalization Service, 634 F.2d 964, 972 (5th Cir. 1981), *reh'g and reh'g en banc denied*, Mar. 13, 1981

CONCLUSION

"[C]ourts have overwhelmingly ruled that the revocation regulations provide important procedural safeguards and are intended to protect a fundamental right derived from the constitution—liberty." Rodriguez Romero v. Ladwig, CV 25-1106-JWD-EWD, 2026 WL 321437, at *10 (M.D. La. Feb. 6, 2026). Because Petitioner did not receive *any* of the process

due to him under 8 C.F.R. § 241.13—a regulation promulgated specifically to prevent unconstitutional deprivations of liberty without due process—he is entitled to immediate release.

Respectfully submitted,

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