

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

Lou LEE, Petitioner, v. Warden, ERO El Paso Camp East Montana facility, Pamela Bondi, Attorney General, Kristi Noem, Secretary, U.S. Department of Homeland Security, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement, and David Easterwood, Acting Director, St. Paul Field Office Immigration and Customs Enforcement. Respondents.	Case No. 3:26-cv-00407-LS PETITIONER'S SUPPLEMENT TO PETITION FOR HABEAS CORPUS PETITION UNDER 28 U.S.C. § 2241
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SUPPLEMENTAL MEMORANDUM ON JURISDICTION AND VENUE

INTRODUCTION

On February 13, 2026, the Court issued an Order to Show Cause to Respondents with a due date of March 5, 2026. Petitioner is filing this supplement in addition to the Petition for Writ of Habeas Corpus originally

filed with the MN District Court on February 8, 2026. This case was officially transferred to the Western District of Texas on February 11, 2026. Petitioner now submits this Supplement to be considered by Respondents as they prepare their response to the Order to Show Cause.

ARGUMENTS

I. The Substantive Legal Error: Invalidity of the Criminal Foundation

The Government's authority to detain Mr. Lee post-removal under 8 U.S.C. § 1231(a)(6) is potentially predicated on the legal classification of his criminal history as "aggravated felonies." The following arguments are presented in case Respondents argue this is the basis for the revocation of Mr. Lee's Order of Supervision ("OSUP").

The classification of Mr. Lee's previous convictions as "aggravated felonies" is a relic of outdated legal standards that no longer hold weight under current Fifth Circuit jurisprudence. In this Circuit, the "categorical approach" is not a mere suggestion; it is a rigid mandate. Under this approach, the Court must compare the elements of the state statute of conviction to the generic federal definition without regard to the underlying facts of the case. This analytical framework is essential to preventing the Executive Branch from expanding its detention power beyond the strict limits set by Congress.

Regarding the 2001 conviction under Wis. Stat. § 941.30(2) for second-degree recklessly endangering safety, although it is the probable basis for the 2003 removal order, subsequent Supreme Court decisions have clarified that many statutes previously deemed "aggravated felonies" are categorically overbroad. Specifically, the Supreme Court's decision in *Borden v. United States*, 593 U.S. 420 (2021), held that a "crime of violence" requires a mental state more culpable than mere recklessness. Because the Wisconsin statute explicitly punishes "reckless" conduct, it lacks the purposeful or knowing intent required to meet the federal definition of an aggravated felony. If the 2001 offense is not an aggravated felony under today's law, the very foundation of the 2003 removal order—and the Government's present justification for aggressive detention—is legally hollow.

This legal deficiency extends to the 2020 conviction under Minn. Stat. § 609.713.1 for threats of violence made with "reckless disregard." Under the same *Borden* standard, as applied by the Fifth Circuit in cases such as *United States v. Gomez-Gomez*, 23 F.4th 575 (5th Cir. 2022), a statute that permits conviction for "reckless" behavior is categorically broader than the federal "crime of violence" definition. This Court should not permit Respondents to detain Mr. Leenond on a removal order based upon an incorrectly decided aggravated felony, as the detention of a noncitizen based on a legal misclassification constitutes a clear violation of federal law.

II. The Accardi Doctrine: Procedural Arbitrariness and Agency Self-Correction

Building upon this lack of statutory authority is the Government's failure to adhere to its own internal regulations – a violation of the Accardi doctrine. This doctrine stands for the fundamental principle of administrative law that an agency is bound to follow its own rules. ICE operated in direct violation of 8 C.F.R. § 241.4, which governs the release and revocation of noncitizens under orders of supervision. For twenty-three years, ICE exercised its discretion to release Mr. Lee, making a formal administrative determination every year that he was neither a flight risk nor a danger to the community. This was not a passive oversight; it was an affirmative, repeated finding of his suitability for supervised release that the agency cannot now ignore.

By revoking Mr. Lee's OSUP in 2026 based upon what is believed to be on a 2020 conviction that ICE was fully aware of for six years, the agency has acted with staggering inconsistency. Under their own internal protocols and the standards reinforced in regional habeas litigation, revocation requires a "significant change in circumstances" or new evidence of danger. Re-detaining a compliant refugee for a stale conviction that the agency already "cleared" through six years of continued supervision is the definition of arbitrary and capricious action. This Court should find that ICE is estopped by its own

regulations and decades of past conduct from suddenly declaring a person "dangerous" based on the same facts it previously deemed acceptable for nearly a quarter-century.

III. Settled Expectations and the "Staleness" of the Government's Interest

The procedural failures of the agency are further compounded by the substantive violation of Mr. Lee's constitutional rights. Under the Fifth Amendment, Mr. Lee possesses a protected liberty interest fortified by twenty-three years of settled expectations. He has lived as a compliant, supervised resident who adhered to every Government mandate, creating a profound reliance interest in his continued liberty. The Government's interest in detention—public safety and ensuring removal—must be "reasonably related" to the detention itself, as established in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

The six-year gap between the 2020 conviction and the 2026 detention is fatal to the Government's claim of emergency or public safety necessity. If Mr. Lee were truly a danger to society, it is legally inconceivable that the Government would wait over half a decade to act. This delay serves as objective evidence that the Government's current interest is not safety but is instead punitive or purely administrative. After twenty-three years of perfect compliance, the Government cannot simply ignore the reliance interests Mr. Lee has built. Abruptly snatching Mr. Lee from his community for a conviction

that the Government effectively waived as a ground for detention six years ago offends the basic sense of fair play and substantial justice inherent in the Due Process Clause.

IV. The Zadvydas Bar: Foreseeability of Removal for a Refugee

Because Mr. Lee is a refugee, the constitutional limitations on post-removal detention under *Zadvydas* are triggered immediately, as his status inherently complicates the likelihood of removal. The Government's authority under § 1231 is not a license for permanent incarceration; to detain a noncitizen beyond the presumptive six-month period, the Government must show a "significant likelihood of removal in the reasonably foreseeable future." For a refugee, this burden is rarely met when legal protections against return are in place.

As a refugee, Mr. Lee benefits from "withholding of removal" or "non-refoulement" protections under 8 U.S.C. § 1231(b)(3). If the Government cannot return him to his home country due to his refugee status, his removal is not just unlikely—it is legally prohibited. In this context, detention serves no purpose other than to exert unlawful pressure. The combination of his refugee status, the legal errors in his criminal classification, and the sheer length of his successful supervision in the U.S. makes the prospect of his removal remote at best. Consequently, his continued detention is

unconstitutional because it has no foreseeable ending and lacks the administrative necessity required by the Supreme Court.

V. Jurisdictional Authority to Review Criminal Classifications

A critical threshold issue is this Court's authority to assess these criminal convictions within a habeas proceeding. While the Government may argue that § 2241 habeas review is limited to the "legality of detention," the "jurisdictional fact" doctrine mandates that a court verify the statutory basis for that detention. This principle ensures that the Executive branch remains subject to judicial oversight when it deprives an individual of their physical liberty.

If the Government asserts authority under § 1231(a)(6) because a petitioner is a "criminal alien," this Court has the obligation to ensure the petitioner actually meets that definition. This petition does not ask the Court to vacate the 2003 removal order; it asks the Court to determine if the current, physical imprisonment of Mr. Lee is authorized by the statutory text. Without this judicial check, the Executive Branch could arbitrarily label any individual an "aggravated felon" to bypass bond requirements, rendering the Great Writ of habeas corpus meaningless. As a matter of separation of powers, the Court must ensure the Executive Branch is not detaining a person based on a legal classification that has been categorically debunked by higher courts.

CONCLUSION

For the foregoing reasons, along with information that is in the Writ of Habeas Corpus petition, Petitioner asks this Court to immediately release him.

Respectfully Submitted,

Dated this 16th of February of 2026

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. My firm has discussed the factual assertions in this petition with Petitioner and his wife. I hereby verify that the statements made in the attached Supplement of Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: February 16, 2026

/s/ Sherene Mostaghimi

Sherene Mostaghimi