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

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| LOR THOR,<br><br>Petitioner,<br>v.<br>MARY DE ANDA-YBARRA, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement; Warden of ERO El Paso Camp East Montana,;<br><br>TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;<br><br>KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security;<br><br>and<br><br>PAMELA JO BONDI, *in her official capacity* as Attorney General of the United States;<br><br>Respondents. | C/A No. 3:26-cv-422<br><br>VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF<br><br>Agency # [redacted] |

## INTRODUCTION

1. Respondents are detaining Petitioner, Mr. Lor Thor, ("Petitioner"), who is subject to a final order of removal.

2. Petitioner has an administratively final order of removal from December 15, 2005.

3. Respondents subsequently released Petitioner.

4. Petitioner has no adverse criminal history since his release from custody.

5. Respondents detained Petitioner on February 7, 2026.

6. Respondents have neither provided notice of its intent to reopen proceedings to afford Petitioner an opportunity to challenge removal, nor established that removal to a third country is reasonably foreseeable, and it has failed to provide Petitioner an opportunity to seek withholding protection from any such country.

7. Petitioner's continued post–final order detention violates the Due Process Clause of the United States Constitution in the absence of any travel documents to Laos or any third country.

8. The continued detention of Petitioner serves no legitimate purpose.

9. To remedy this unlawful detention, Petitioner seeks declaratory and injunctive relief in the form of immediate release from detention.

10. Pending the adjudication of his Petition, Petitioner seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to- day operations

of U.S. Customs and Immigration's ("ICE") El Paso, Texas, of the Office of Enforcement and Removal Operations in the State of Texas.

11. Pending the adjudication of this Petition, Petitioner also respectfully requests that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Petitioner.

12. Petitioner requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hour notice prior to any removal or movement of him away from the State of Texas.

## JURISDICTION AND VENUE

13. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (federal employee mandamus action), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the United States Constitution ("Suspension Clause"); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), specifically, 8 U.S.C. § 1101-1537.

14. Because Petitioner seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court. *See Zadvydas, v. Davis*, 533 U.S. 678 (2001).

15. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 290-94 (2018); *Nielsen v. Preap*, 586 U.S. 392, 399, 399-401 (2019).

16. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Petitioner is detained within this District. He is currently detained in El Paso, at the ICE El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

## PARTIES

17. Petitioner is a citizen and national of Laos. Petitioner is currently in Immigration and Customs Enforcement ("ICE") custody in El Paso, at the ICE El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.

18. Respondent Mary De Anda-Ybarra, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement and Warden of ERO El Paso Camp East Montana, is sued in her official capacity. Respondent Anda-Ybarra is a legal custodian of Petitioner.

19. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the BIA and the immigration judges through the Executive Office for Immigration Review. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Petitioner.

20. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

21. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

## EXHAUSTION

22. A final order of removal has been entered against Petitioner and Petitioner has exhausted his administrative remedies such that judicial action is his only remedy.

23. Notably, no statutory exhaustion requirement applies to Petitioner's claim of unlawful detention. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); 8

U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only where requesting review of a final removal order).

24. Furthermore, prudential "[e]xhaustion is not required when the issue presented to the court … involves purely legal issues." *Trinity Indus. v. Reich*, 901 F. Supp. 282, 286 (E.D. Ark. 1993), aff'd, 33 F.3d 942 (8th Cir. 1994) (citing *Bethlehem Steel v. E.P.A.*, 669 F.2d 903, 907 (3rd Cir.1982)).

25. Petitioner raises a purely legal challenge to Respondents' failure to initiate reopening proceedings or provide notice before continuing to detain Petitioner. 8 C.F.R. § 208.24 (requiring formal reopening of proceedings and an opportunity to respond before a grant of withholding of removal can be terminated).

26. "Further, exhaustion is not required when the nonjudicial remedy is clearly shown to be inadequate to prevent irreparable injury." *Id.* (citing *Miss America Organization v. Mattel*, 945 F.2d 536, 545 (2nd Cir.1991)).

27. Unlawful, going on indefinite, detention is clearly an irreparable injury given that "a loss of liberty … is perhaps the best example of irreparable harm." *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018). "Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).

28. "In addition, exhaustion is not required where administrative proceedings involve questions of significant national interest or where the agency has clearly violated rights secured by the Constitution, statutes, or administrative regulations." *Trinity Indus.*, 901 F. Supp. at 286 (citing *Philip Morris v. Block*, 755 F.2d 368, 370 (4th Cir.1985)).

29. Respondents have not shown that Petitioner's removal to a third country is reasonably foreseeable. Thus, his continued detention constitutes irreparable harm. ("the loss of constitutional freedoms 'for even minimal periods of time ... unquestionably constitutes irreparable injury.'" *BST Holdings, L.L.C. v. Occupational Safety & Health Admin.*, 17 F.4th 604, 618 (5th Cir. 2021) (quoting *Elrod v. Burns*, 427 U.S. at 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)).

## FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

30. Petitioner was born in Laos and is a citizen and national of Laos.

31. Upon information and belief, Petitioner last entered the United States over 35 years ago when he was a small child.

32. Upon information and belief, Petitioner was a lawful permanent resident, but his status was later revoked.

33. On December 15, 2005, Petitioner was ordered removed.

34. Respondents were unable to remove Petitioner to Laos.

35. Petitioner was released from ICE custody on an order of supervision.

36. Petitioner attended ICE check-ins regularly since his release.

37. Respondents have not identified a third country to which they intend to remove Petitioner.

38. Respondents have not received authorization or permission from Laos or any third country willing to accept Petitioner.

39. Respondents have not obtained a travel document that would permit them to remove Petitioner to Laos, or a third country.

40. Petitioner has not been made aware of any specific plans to remove him to Laos or any specific, identified, third country.

41. Petitioner has not been made aware of the Government's intention to reopen proceedings.

42. Petitioner remains in detention at Camp East Montana in El Paso, Texas.

## LEGAL FRAMEWORK

43. As the constitution states, "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it." U.S. Const. art. I, § 9 cl. 2.

44. Such a writ is available to a person who "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

45. "There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law." *Harris v. Nelson*, 394 U.S. 286, 291-22 (1969).

46. "The scope and flexibility of the writ – its capacity to real all manner of illegal detention – its ability to cut through barriers of form and procedural mazes – have always been emphasized and jealously guarded by courts and lawmakers." *Id.* at 291.

47. Once a noncitizen is given a final removal order, 8 U.S.C. §1231(b)(2) governs the country to which that individual may be removed. The statute allows the noncitizen to "designate one country to which the alien wants to be removed," and requires that "the Attorney General shall remove the alien to the country the alien so designates." 8 U.S.C. § 1231(b)(2)(A)(i), (ii).

48. The Attorney General may disregard the noncitizen's designation only under certain enumerated conditions. 8 U.S.C. § 1231(b)(2)(C). If the noncitizen cannot be removed to that country, then 8 U.S.C. § 1231(b)(2)(E) provides a list of other countries to which the noncitizen may be removed. The very last country of removal on the list is "[a] country with a government that will

accept the alien into the country's territory if removal to each country described in a previous clause of this subparagraph is impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii).

49. As the Supreme Court has explained, "[t]he statute thus provides four consecutive removal commands[.]" *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005) (emphasis added). "With respect to the third step, however, the Attorney General is directed to move on to the fourth step only if it is 'impracticable, inadvisable, or impossible to remove the alien to each country described in' the third step." *Id.* at 342.

50. However, "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A).

51. "[T]he prohibition on removal to a country where a noncitizen would face persecution or torture remains absolute. And precisely because withholding of removal is country-specific, as the government says, if a noncitizen who has been granted withholding as to one country faces removal to an alternative country, then she must be given notice and an opportunity to request withholding of removal to that particular country." *Guzman Chavez*

*v. Hott*, 940 F.3d 867, 879 (4th Cir. 2019) (citing *Kossov v. INS*, 132 F.3d 405, 409 (7th Cir. 1998)), rev'd on other grounds, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

52. For noncitizens ordered removed, 8 U.S.C. §1231(a) permits the government to detain noncitizens during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A).

53. Petitioner fulfilled this requirement.

54. After the expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that the government shall release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be "released" if "subject to the terms of supervision" set forth in 8 U.S.C. § 1231(a)(3).

55. Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). "[W]here detention's goal is no longer practically attainable, detention no longer 'bear[s] [a] reasonable relation to the purpose

for which the individual [was] committed.'" *Id.* at 690 (alterations in original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

56. Additionally, cursory or pro forma findings of dangerousness do not suffice to justify prolonged or indefinite detention. *Zadvydas*, 533 U.S. at 690–91 ("But we have upheld preventive detention based on dangerousness only when limited to specially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.").

57. The purpose of detention during and beyond the removal period is to "secure[] the alien's removal." *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court "read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien's removal." *Demore v. Kim*, 538 U.S. at 527 (citing *Zadvydas*, 533 U.S. at 699).

58. As the Supreme Court has explained, where there is no possibility of removal, immigration detention presents substantive due process concerns because the need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is "weak or nonexistent." *Zadvydas*, 533 U.S. at 690–92. Detention is lawful only when "necessary to bring about that alien's removal." *See id.* at 689.

59. To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a "reasonable period of detention" for noncitizens after a removal order. *Id.* at 700–01. The Court determined that six months detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to justify continued detention if the noncitizen provides a "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

**COUNT ONE: VIOLATION OF THE APA – FAILURE TO COMPLY WITH REGULATORY MANDATE & *ACCARDI* DOCTRINE**

60. Petitioner re-alleges and incorporates by reference each allegation.

61. Under the APA, "the reviewing court shall … interpret constitutional … provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall … hold unlawful and set aside agency action, findings, and conclusions found to be … contrary to constitutional right." 5 U.S.C. § 706 (2)(B).

62. Despite the absence of travel documents to remove Petitioner to Laos, and despite the Government's failure to initiate or complete any process to secure removal to an alternative country, Respondents detained Petitioner decades after his final order of removal.

63. Respondents have not alleged that any changes justify the withdrawal of release relating to either removal in the reasonably foreseeable future or any refusal to comply with the conditions of his release.

64. These are violations of 8 U.S.C. § 1231 and 8 C.F.R. § 241.13.

65. Respondents' action also violates the mandate of *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

66. Respondents must observe the rules, regulations or procedures which it has established. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

67. Respondents acted in excess of their regulatory authority or limitation.

68. Respondents' action constitutes a final agency decision.

69. Petitioner has no administrative remedy available to him.

70. Respondents' action violates the APA.

**COUNT TWO: SUBSTANTIVE DUE PROCESS VIOLATION**

71. Petitioner re-alleges and incorporates by reference each allegation.

72. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

73. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest.

74. To the extent the Government relies on a purported final order of removal from 2005, Petitioner's 90-day removal period and 180-day *Zadvydas* presumptively reasonable period would have expired no later than 2006.

75. Petitioner's 90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts have long since passed.

76. Respondents have not obtained travel documents for Petitioner's removal to Laos.

77. No other country has issued a travel document.

78. Under *Zadvydas*, the continued detention of someone like Petitioner is unreasonable and not authorized by 8 U.S.C. § 1231.

79. Continued detention violates the Fifth Amendment and Petitioner's writ of habeas corpus must issue.

## PRAYER FOR RELIEF

WHEREFORE, Petitioner, asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Issue an order restraining Respondents from removing Petitioner to Laos in violation of law.

3. Issue an injunction against Respondents prohibiting Respondents from removing Petitioner to Laos in violation of law.
4. Issue an order restraining Respondents from attempting to move Petitioner from the State of Texas during the pendency of this Petition.
5. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner.
6. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C., chapter 153 related to habeas actions.
7. Order Respondents to show cause for their continued detention of Petitioner within three days pursuant to 28 U.S.C. § 2243.
8. Grant the writ of habeas corpus.
9. Order Petitioner's release from custody under an order of supervision or other condition as set by the Court.
10. Declare that Respondents' action is arbitrary and capricious.
11. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment where formal reopening proceedings have not been initiated.
12. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).
13. Grant all further relief this Court deems just and proper.

DATED: February 11, 2026

Respectfully submitted,

*/s/ David L. Wilson*
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**Verification by**
**Petitioner Pursuant to 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner because I am his attorney. I have discussed the events described in this Petition with Petitioner and have reviewed his documents to corroborate the claims made herein. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the dates and nature of the administrative appellate procedure, are true and correct to the best of my knowledge.

/s/ David L. Wilson
David L. Wilson

02/11/2026
Date:

## CERTIFICATE OF SERVICE

I, **David L. Wilson**, hereby certify that on February 11, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.