

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

DETH PHAENGSY,

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;

Respondents.

Case No. 3:26-cv-426

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

INTRODUCTION

1. This case seeks the immediate release of Deth Phaengsy from his unlawful detention by the Department of Homeland Security's ("DHS") U.S. Immigration and Customs Enforcement ("ICE"). ICE has been unlawfully detaining Mr. Phaengsy since January 16, 2026, in violation of his constitutional, statutory, and regulatory rights. ICE is currently detaining Mr. Phaengsy at ERO El Paso Camp East Montana in El Paso, Texas. Mr. Phaengsy was born in Thailand in a refugee camp. He and his family came to the United States in 1989 as refugees. He was just four years old at that time.

2. Mr. Phaengsy is the son of a United States citizen. His mother became a U.S. citizen on June 11, 2003, about a month after Mr. Phaengsy's eighteenth birthday. His family, including

siblings, nieces, and nephews reside in Minnesota and like his mother, Mr. Phaengsy's nieces and nephews are also U.S. citizens.

3. In 2009, Mr. Phaengsy was convicted of certain criminal acts. He served his time at the Minnesota Correctional Facility in Rush City, MN and at the Moose Lake Correctional Facility in Moose Lake, Minnesota (hereinafter "Moose Lake") until September 2022. Upon his release from Moose Lake on or about September 19, 2022, he served his 90-day detention at Freeborn County Adult Detention Center (hereinafter "Freeborn County") until about December 19, 2022.

4. Mr. Phaengsy has been gainfully employed since his release from Freeborn County, sometimes working two jobs in order to provide income for his family. He lives with his 80-year-old mother and legally mentally disabled sister. He is the primary caretaker.

5. While Mr. Phaengsy was at Moose Lake, he was initially ordered removed to Laos on February 21, 2018. (Ex. 1, 2018 Order of Removal.)

6. Because there was no significant likelihood of removal to Laos and Mr. Phaengsy did not pose a danger to the community, Mr. Phaengsy was given an Order of Supervision ("OSUP") while serving his 90-day detention at Freeborn County.

7. At the time of his removal order in February 2018 and the time of his release from Freeborn County in December 2022, Mr. Phaengsy was no longer a national or citizen of Laos because, in 2004, Laos adopted a new nationality and citizenship law that stripped anyone who left Laos for more than seven years of their Laotian citizenship. (*See* Ex. 2, Laos Nationality Act.)

8. While the number of deportees physically removed to Laos remained low from 2017 until 2022, deportations were still happening on a semi-regular basis, with seven deportees

being removed in 2017 and an average of between 6-11 being removed over the intervening years, except for zero removals in 2021.¹

9. On January 16, 2026—after years of supervised release where Mr. Phaengsy has not missed a check-in with ICE—Mr. Phaengsy’s life was suddenly upended when ICE arrested him at his OSUP check-in at Fort Snelling in Minnesota without notice or opportunity to be heard. Even though the arresting officers knew that Mr. Phaengsy had been checking in without violation of his OSUP, they provided no explanation for why he was being re-detained prior to or at the time of arrest.

10. On the same day that Mr. Phaengsy was detained, ICE transported him to the Camp Montana East detention facility in El Paso, Texas with over one hundred and fifty other detainees.

11. At no time prior to or during Mr. Phaengsy’s arrest did ICE give notice with a determination for why Mr. Phaengsy was to be taken into custody. At the time of this filing, Mr. Phaengsy still has not received any document notifying him of his OSUP revocation and explaining the reasons for his arrest, nor has he been afforded an informal interview to contest any purported reasons for the revocation of his OSUP, all steps explicitly required by ICE’s *own* regulation. *See infra* 8 C.F.R. § 241.13(i).

12. In an increasingly clear pattern, District Courts nationwide have been confronted with numerous cases where Respondents have detained non-citizens on orders of supervision contrary to the requirements of 8 C.F.R. § 241.13(i). (*See* Ex. 3 (outlining 100 cases where federal district courts have in the last several months found DHS in violation of 8 C.F.R. § 241.13(i); *see also, e.g., Phongsavanh v. Williams*, No. 4:25-CV-00426-SMR-SBJ, 2025 WL 3124032, at *4

¹ *See* Yearbook 2022, Office of Homeland Security Statistics, <https://ohss.dhs.gov/topics/immigration/yearbook/2022> (last accessed Feb. 11, 2026).

(S.D. Iowa Nov. 7, 2025) (“In the substantial majority of these cases, courts have granted relief after finding that the Government failed to identify sufficient changed circumstances or demonstrate a significant likelihood of removal in the reasonably foreseeable future.”).

13. Rather than follow its own regulations, Respondents have engaged in a practice of arresting or “revoking” OSUP first and then attempting to establish a change in circumstances afterwards. *See Romero v. Ladwig*, No. 25-1106-JWD-EWD, 2026 WL 321437, at *5 (M.D. La. Feb. 6, 2026) (“The 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.” (alteration in original)); *Nguyen v. Noem*, No. 25CV3032-LL-MMP, 2025 WL 3564211, at *2 (S.D. Cal. Dec. 12, 2025) (finding that the government did not submit a travel document request until six months after re-detaining the Petitioner); *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 [the changed circumstances] determination is made before the removable alien has had his release revoked”); *Munagi v. McDonald*, No. CV 25-13175-NMG, 2025 WL 3688023, at *3 (D. Mass. Dec. 19, 2025) (“The question before the Court is not whether petitioner’s deportation is now likely in the reasonably foreseeable future but whether such likelihood existed at the time his OSUP was revoked.”).

14. Establishing changed circumstances only after re-arresting the noncitizen is not permitted by 8 C.F.R. § 241.13(i) or under Due Process. Moreover, the Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (2001). Detention for the sole purpose of manufacturing an increased likelihood of removal that otherwise would not exist, to further Respondents’ targets for deportation, is unlawful.

15. General policy changes do not establish a change in circumstances. *See Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151 (D. Mass. 2025) (refusing to find Respondent assertion of 300 removals to Vietnam as “pertinent” to inquiry). Therefore, to the extent that Respondents attempt to point to changes in country policies, such as with Vietnam or Laos, to argue that these policies are a “change in circumstances” that help establish a significant likelihood of removal is not sufficient and should be rejected.

16. Mr. Phaengsy brings this habeas action for an order requiring Respondents to immediately release him. Respondents’ arrest of Mr. Phaengsy 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. Phaengsy 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., Romero v. Ladwig*, No. 25-1106-JWD-EWD, 2026 WL 321437 (M.D. La. Feb. 6, 2026); *Alnajjar v. GEO Group, Inc.*, 5:25-CV-0822-JKP, 2025 WL 3853217 (W.D. Tex. Dec. 23, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025).

PARTIES

17. Mr. Phaengsy has lived in the United States since 1989 when he came to this country as a refugee. Prior to his detention, Mr. Phaengsy was residing in Minneapolis, Minnesota

with his mother and sister. Since his arrest on January 16, 2026, Mr. Phaengsy has been kept in ICE custody at ERO El Paso Camp East Montana in El Paso, Texas.

18. 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. Phaengsy and as such is Mr. Phaengsy's legal custodian.

19. 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. Phaengsy's legal custodian.

20. 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. Phaengsy's legal custodian.

21. 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. Phaengsy's legal as well as his immediate physical custodian as she is in charge of the Camp East Montana facility.

JURISDICTION AND VENUE

22. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

23. Nothing in 8 U.S.C. § 1252 deprives this Court of jurisdiction.

24. This Court may grant relief 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.

25. Venue lies in the U.S. District Court for the Western District of Texas because it is the judicial district in which Mr. Phaengsy is currently detained. *See Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("The plain language of the habeas statute . . . confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement."). 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, and because a substantial part of the events or omissions giving rise to the claims occurred in this district.

REQUIREMENTS OF 28 U.S.C. § 2243

26. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Mr. Phaengsy 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.*

27. Good cause requires a showing by the *Respondents*, which in this case cannot be made. The Petitioner has been detained for more than twenty-seven days without any notice or

information. Respondents have been on notice about providing justification and authority for Petitioner's arrest and detention since January 16, 2026.

28. 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).

29. This Court is not free to ignore the statutory requirements of 28 U.S.C. § 2243. While some courts such as in *Bueso v. Noem*, 3:25-CV-01505, 2025 WL 3710207 (W.D. La. Dec. 22, 2025) (relying on *Castillo v. Pratt*, 162 F.Supp.2d 575 (N.D. Tex. 2001)), have suggested that the provisions of 2243 have somehow been superseded by Rule 4 of 28 U.S.C. § 2254 habeases, this position cannot withstand legal scrutiny.

30. First, Rule 4 was promulgated under the Rules Enabling Act, under 28 U.S.C. § 2072(b), but this statute makes clear that such rules "shall not abridge, enlarge, or modify any substantive right." This is important for the requirement for a Respondent to justify and provide authority for the detention of a person, and goes to the heart of habeas relief completely. To allow the Court to set deadlines for 30, or even 60 days would render such detention unreviewable.

31. Moreover, such a reading of Rule 4 ignores that the rule was to apply to 28 U.S.C. § 2254 petitions, which are entirely different types of vehicles. Petitioners under Section 2254 are *prisoners* who have otherwise been convicted of a crime and hence there is an underlying default authority and notice as to the purpose of their detention. 28 U.S.C. § 2254 habeases are explicitly not covered by the statutory provisions of Section 2243. In fact, in the advisory notes for Rule 4 of 28 U.S.C. § 2255, it was noted that Section 2253 rather than Section 2243 does *not* have a specific

time limitation. Even if the requirement of a response would not be considered “substantive” Rule 4 itself does not on its own terms apply to habeas petitions under 28 U.S.C. § 2241 and thus cannot supersede the Congressional statute in such an obtuse manner.

32. 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 (quoting *Price v. Johnston*, 334 U.S. 266, 334 U.S. 269 (1948)).

33. Due to the nature of this proceeding, Mr. Phaengsy respectfully asks this Court to expedite proceedings in this case as necessary and practicable for justice.

LEGAL FRAMEWORK

Release on Supervision After a Final Order of Removal

34. When the government issues a final order of removal against a noncitizen, DHS has a presumptive 90-day “removal period” to remove that noncitizen. 8 U.S.C. § 1231(a)(1)(A). Upon expiration of the removal period, the Government may continue to detain a noncitizen or release them under conditions of supervision if removal cannot be effectuated. 8 U.S.C. § 1231(a)(6); *see Villanueva v. Tate*, 801 F. Supp. 3d. 689, 694-95 (S.D. Tex. 2025) (“[I]f there is no reasonably [*sic*] likelihood that the noncitizen will be removed in the foreseeable future, the government may not continue to detain him.”); *Roble v. Bondi*, 803 F. Supp. 3d 766, 770–71 (D. Minn. 2025) (“Not all noncitizens ordered removed from the United States can actually be removed from the United States... [u]nless it finds a suitable third country for removal, ICE cannot detain such noncitizens indefinitely.”). Under *Zadvydas v. Davis*, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized.” 533 U.S. 678, 699 (2001).

35. In deciding to grant a supervised release, ICE must find the noncitizen is not a flight risk, is nonviolent and likely to remain nonviolent, poses no threat to society, likely to comply with any conditions of release, and travel documents are not available or immediate removal is not practicable or in the public interest. 8 C.F.R. § 241.4(e)(1)-(6).

36. “Once ICE releases a noncitizen on an Order of Supervision, ICE’s ability to re-detain that noncitizen is constrained by its own regulations.” *Roble*, 2025 WL 2443453, at*3; *see also Gurung v. Warden, S. Tex. Ice Processing Ctr.*, No. SA-25-CA-01614-XR, 2026 WL 93145, at *4 (W.D. Tex. Jan. 6, 2026) (“Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations.”)

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

37. 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”).

38. 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”).

39. 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); *Romero*, 2026 WL 321437, at *6 (“[I]n order to revoke an OSUP for the purpose of effectuating deportation, ICE must find a significant likelihood of removal as to the individual noncitizen in question.”). 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); *Romero*, 2026 WL 321437, at *6. 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).²

40. 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. §

² Such inadequate assertions include: first, vague and conclusory statements by Respondents that “ICE is ‘making efforts to remove the petitioner to a third-party country[.]’” *Gomez-Simeon v. Bondi*, No. SA-25-CV-01460-JKP, 2025 WL 3470872, at *5 (W.D. Tex. Nov. 24, 2025); *see also Yee S. v. Bondi*, No. 25-CV-02782 (JMB/DLM), 2025 WL 2879479, at *5 (D. Minn. Oct. 9, 2025) (stating that “ICE is in the process of obtaining a travel document” is insufficient); *Romero*, 2026 WL 321437, at *7 (“The conclusory statement that there were ‘changed circumstances’ and alleged review by countries that very recently did not accept this Petitioner cannot establish a significant likelihood of removal in the reasonably foreseeable future.”). 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).

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. *Romero*, 2026 WL 321437, at *6 (“The changed circumstances ... must have existed at or before the OSUP revocation; post-hoc justifications are inadequate.”); *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.”).

41. Respondents have not identified circumstances particular to Mr. Phaengsy to justify revocation of his release under 8 C.F.R. § 241.13(i) and certainly did not give notice of them.³

42. 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 “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 number of deportees. It is ranked 140 out of 184

³ In communications with counsel, Petitioner has made it clear that there has been no communication, on paper or otherwise, about why his OSUP was revoked and he has not heard of any basis. Counsel would normally submit a declaration from Petitioner to create a record, but the detention facility that houses Petitioner in El Paso does not provide any means to have petitioner sign a declaration other than through U.S. mail which would not be expeditious enough. <https://www.ice.gov/detain/detention-facilities/camp-east-montana> Should the Respondents contest this claim, petitioner would request an evidentiary hearing on the matter.

countries in terms of economic freedoms,⁴ 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.

43. In *Saengnakhone v. Noem*, the district court presumed to be true the assertion by both petitioner and respondent that Laos had not taken *any* deportees until recently and found increased deportations to Laos satisfies the changed circumstances requirement in 8 C.F.R. § 241.13(i)(2). No. 25-cv-4775, 2026 WL 34132, at *4 (D. Minn. 2026). But this assertion is wrong. Laos did take deportees, and in fact, took seven deportees in 2022, the same year that the Petitioner was released on OSUP.⁵

44. Laos has consistently taken deportees as from 1998-2005 with the possible exception of 1999. What may have caused some confusion is that there had not been any removals to Laos of those who were Hmong and had entered as refugees until this year. (Petitioner is not of Hmong ethnicity.) But this just emphasizes the larger point that a general 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 was issued and a determination was originally made that SLRFF was not possible. There are a myriad of reasons why Laos may not have accepted the Petitioner back in 2018 and 2022. Perhaps it was the fact that Mr. Phaengsy entered the United States as a statutory refugee in 1989, or his criminal record that caused Laos to refuse to take him, or the lack of family members present in Laos, or his lack of financial resources. Allowing the Respondents to re-detain one individual purportedly to remove him to Laos merely on the idea that *others* have been deported to Laos erodes the meaning

⁴ Laos, Index of Economic Freedom, The Heritage Foundation, <https://www.heritage.org/index/pages/country-pages/laos>.

⁵ See Yearbook 2022, Office of Homeland Security Statistics, <https://ohss.dhs.gov/topics/immigration/yearbook/2022> (last accessed Feb. 11, 2026).

of “changed circumstances” and removes all consideration of whether Respondents can show “changed circumstances” that pertain specifically to Petitioner.⁶ The entire purpose of the regulation is to require a showing that the specific circumstances that prevented removal when SLRFF was found not to exist has been removed *before* detention could be justified.

45. Importantly, statelessness is an important consideration in deciding SLRFF. *See Zadvydas v. Davis*, 533 U.S. 678 (2001) (considering that Mr. Zadvydas himself was stateless). Mr. Phaengsy has no claim now or in the foreseeable future to Laos nationality as explained above.

46. After a noncitizen has been timely provided notice containing individualized reasons for the OSUP revocation, ICE must “conduct an initial informal interview *promptly* after [the noncitizen’s] return to [ICE] custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3) (emphasis added). At this informal interview, the noncitizen may submit evidence regarding the likelihood of removal and respond to ICE’s stated reasons for revocation.⁷ 8 C.F.R. § 241.13(i)(3). *See Romero*, 2026 WL 321437, at *4; *Gurung*, 2026 WL 93145, at *4; *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *3 (D. Minn. Aug. 25, 2025); *Esmail v. Noem*, 2:25-CV-08325-WLH-RAO, 2025 WL 3030590, at *5 (C.D. Cal. Sept. 12, 2025).

47. ICE has not conducted an initial informal interview of Mr. Phaengsy.

Due Process Limits on Revocation of Release

⁶ For example, the detained petitioner in *Bronola, et al. v. Noem, et al.*, Docket No. 0:26-cv-00037 (D. Minn. Jan 05, 2026) who was ordered deported to Laos many years ago has been detained in Minnesota since late December 2025 and still has not been removed. Nonetheless, this fact alone cannot be the basis to show that petitioner’s own removal is unlikely.

⁷ When ICE does not state what factual or legal basis they relied on in determining that a changed circumstance exists, the noncitizen cannot assert a “meaningful challenge to the decision” to revoke release. *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *8 (D. Md. Aug. 25, 2025).

48. 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).

49. “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.

50. 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)).

51. 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).

52. “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); *see also Gurung*, 2026 WL 93145, at *9 (“The regulations enacted by the government itself are intended to ensure that noncitizens who have been released to supervision do not arbitrarily have that supervision revoked.”). Failure to timely notify a person of the reasons for their arrest, or failure to notify them at all, interferes with their due process right to a prompt, meaningful rebuttal.

53. 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 486-87.

54. Those on OSUP have at least the same amount of substantial liberty interest in remaining free, especially when, as with this Petitioner, that period of freedom can be indefinite—out of the control of the person released on supervision—thereby 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).

55. Under *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976), courts should consider a three part framework: (1) “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

56. 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).

57. Final agency actions are those (1) that “mark the consummation of the agency’s decisionmaking process” and (2) “by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

58. The revocation of Mr. Phaengsy’s OSUP is a final agency action because it marks the consummation of the agency’s decisionmaking process under 8 C.F.R. § 241.13(i) and his resulting loss of liberty is a legal consequence.

59. ICE’s decision to re-detain Mr. Phaengsy 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. Phaengsy may rebut the reasons for revocation as required by 8 C.F.R. § 241.13(i).

60. The revocation of Mr. Phaengsy’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

61. 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.”).

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

63. Because Respondents violated agency regulations governing how and upon what findings it may properly revoke an Order of Supervision, the revocation of Mr. Phaengsy’s OSUP should be set aside under the *Accardi* doctrine.

STATEMENT OF FACTS

64. As stated above, Mr. Phaengsy was born at a refugee camp in Thailand and came to the U.S. with his family as a refugee in 1989.

65. He and the majority of his family, including his mother, siblings, nieces, and nephews, live in Minnesota. His mother became a U.S. citizen in June 2003 while living in Minnesota. Before he passed away in 2006, Mr. Phaengsy’s father became a U.S. citizen as well.

66. In 2009, Mr. Phaengsy was convicted for certain criminal acts and served his sentence at Moose Lake until September 2022, when he was released and began serving his 90-day detention pursuant to 8 U.S.C. § 1231(a)(2)(A).

67. During this 90-day removal period, Mr. Phaengsy was released on an Order of Supervision because there was not a significant likelihood of removal in the reasonably foreseeable future and because he did not pose a danger the community. (Ex. 4, Order of Supervision.)

68. Mr. Phaengsy’s Order of Supervision dated December 19, 2022 identifies the following conditions of his release:

- a. Do not associate with known gang members, criminal associates, or be associated with any such activity.
- b. Do not commit any crimes while on the Order of Supervision.
- c. Provide ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document.
- d. Provide ICE with written responses from the Embassy or Consulate regarding your request.
- e. Abide by all conditions set by Mr. Phaengsy's probation/parole officer.

69. Since his release in 2022, Mr. Phaengsy has complied with each of the conditions of his release.

70. Mr. Phaengsy has been gainfully employed since his release in 2022 and is the primary caretaker of his mother and sister. He has taken on multiple jobs in the last few years to ensure that he could provide for his mother and his sister.

71. If Mr. Phaengsy is now removed to Laos, he would be considered an 'apatrid,' a stateless person without citizenship in any country, by the Laotian government. Despite Mr. Phaengsy's final removal order designating him as a Laos national and citizen, Laos itself does not consider him as such—casting significant doubt as to the ability of the Respondents to remove him to Laos.

72. Since his release in December 2022 from the Freeborn County Adult Detention Center, Mr. Phaengsy has completed each of his check-ins with ICE without issue.⁸ (Ex. 5, ICE Check-In Records.) Mr. Phaengsy was detained by ICE on January 16, 2026, during the date of his

⁸ The most recent copy of Mr. Phaengsy's ICE Check-In Records was obtained by ICE during Mr. Phaengsy's detainment on January 16, 2026.

most recent check-in. Mr. Phaengsy received no notice, indication, or warning prior to his detention that he would be detained or that his Order of Supervision had been revoked. At the time of his detention, no one explained to Mr. Phaengsy why he was being detained or gave any reason justifying his detention on that date.

73. Prior to his detention, Mr. Phaengsy's most recent check-in was on or about January 24, 2025. ICE did not indicate in any way that there would be a revocation of his Order of Supervision or that he would be detained.

74. Mr. Phaengsy is not aware of any violations of his Order of Supervision and is not aware of any attempt to notify him that he violated his Order of Supervision.

75. Prior to his detention, Mr. Phaengsy was not notified of any changed circumstances specific to him that related to removal to Laos.

76. While he has been detained at ERO El Paso Camp East Montana, an ICE official or employee informed Mr. Phaengsy that ICE previously attempted to remove him to Laos in 2018 and 2022, but was unable to do so. The ICE official or employee stated that Laos would not issue travel documents for Mr. Phaengsy to be sent to Laos. The same ICE official or employee stated that ICE would attempt to obtain travel documents from Laos again to send Mr. Phaengsy to Laos. No one from ICE has informed Mr. Phaengsy of any changed circumstances that would make it more likely that he could be removed to Laos. No one from ICE has informed Mr. Phaengsy of any changed circumstance that would justify deporting Mr. Phaengsy to Laos at this time.

77. Prior to his detention, Mr. Phaengsy was not subject to an "initial informal interview" as the regulations require regarding revocation of his Order of Supervision. Mr. Phaengsy was not offered any opportunity to demonstrate that he has complied with the requirements of the Order of Supervision.

78. While he has been detained at ERO El Paso Camp East Montana, Mr. Phaengsy has not been subject to an “initial informal interview” regarding revocation of his Order of Supervision. As of the time this petition is being filed, Mr. Phaengsy has not been offered any opportunity to demonstrate that he has complied with the requirements of the Order of Supervision.

79. Respondents have not and cannot identify any changed circumstances that would indicate a significant likelihood that Mr. Phaengsy can be removed to Laos or another country.

80. In *Nguyen v. Hyde*, the Court held that a documented increase in the number of removals to the Petitioner’s designated country of removal was not enough to demonstrate changed circumstances. 788 F. Supp. 3d 144, 151 (D. Mass. 2025). Although Respondents may have effectuated the removal of some individuals to Laos in recent months, this contention alone does not address whether Respondents may be able to effectuate the removal of Mr. Phaengsy, especially in light of the fact that Respondents have twice attempted unsuccessfully to effectuate Mr. Phaengsy’s removal.

81. Even if ICE later presents evidence to suggest a shift in the historic difficulty of removing individuals to Laos or highlight an increase in the number of individuals who have been removed to Laos in recent months, this type of generalized information has no bearing on the *individualized* likelihood of Mr. Phaengsy’s removal. Mere intent to eventually request a travel document after re-detaining the Petitioner does not constitute a changed circumstance under 8 C.F.R. § 241.13(i)(2). See *Nguyen v. Noem*, No. 25CV3032-LL-MMP, 2025 WL 3564211, at *2 (S.D. Cal. Dec. 12, 2025). Respondents must identify “concrete steps” taken to effectuate the specific Petitioner’s removal. *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151 (D. Mass. 2025) (requiring ICE to present “clear information” on when Petitioner’s individual travel documents were

submitted to the country of removal, whether that country had acknowledged the request, and the anticipated response time of the country).

82. As evidenced in the Introduction, the Department of Homeland Security (“DHS”), through the Office of Immigration and Customs Enforcement (“ICE”), has demonstrated a pattern of detaining individuals on supervised release without legal basis or due process—in flagrant violation of their own regulations and the Constitution. Repeated violations of 8 C.F.R. § 241.13(i) have occurred simultaneously as ICE expands enforcement activity to increase rates of arrest and detention,⁹ presumably to effectuate as many removals as possible.¹⁰ In light of these policy goals, ICE has a strong incentive to ignore the requirements 8 C.F.R. § 241.13(i) and arrest noncitizens on supervised release even though there are no changed circumstances regarding the person’s *individualized* likelihood of removal prior to or at the time of arrest.

83. The arrest and prolonged detention of people on supervised release like Mr. Phaengsy—noncitizens who have previously been found not removable to their designated country of removal—appears to serve the purpose of punishing non-citizens as “the worst of the worst” rather than effectuating any legitimate goal.¹¹

⁹ White House Deputy Chief of Staff for Policy and Homeland Security Advisor Stephen Miller and Department of Homeland Security Secretary Kristi Noem have reportedly demanded that federal agents arrest 3,000 people a day. Brittany Gibson & Stef W. Kight, *Scoop: Stephen Miller, Noem Tell ICE To Supercharge Immigrant Arrests*, Axios (May 28, 2025), <https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller>.

¹⁰ DHS’s stated goal is to deport 100 million people per year. *Secretary Noem Commends President Trump and One Big Beautiful Bill Signing into Law: Historic Win for the American People and the Rule of Law*, Dept. of Homeland Security (July 4, 2025), <https://www.dhs.gov/news/2025/07/04/secretary-noem-commends-president-trump-and-one-big-beautiful-bill-signing-law>.

¹¹ *DHS highlights more Worst of the Worst Including Kidnappers, Pedophiles, Violent Assailants, and Perpetrators of Fraud Arrested Yesterday in Minnesota*, Release Date January 27, 2026 (referencing the date of the Petitioner’s arrest) accessed at <https://www.dhs.gov/news/2026/01/27/dhs-highlights-more-worst-worst-including-kidnappers-pedophiles-violent-assailants>.

84. Nonetheless, the Petitioner recognizes that detention on its own may drive the ability to deport people from the country. But even if true, ICE must still follow its own policies and the basics of due process before depriving individuals of their significant liberty interest in this country.

85. Even if his detention could effectuate his removal, that detention itself must be lawful.

86. The repeated arrests of noncitizens without notice to explain the reasons for the revocation of their release *prior to or at the time of revocation*, suggests that ICE uses detention to manufacture a changed circumstance in the likelihood of removal after arrest, in violation of 8 C.F.R. § 241.13(i) and due process.

87. Respondents cannot effectuate deportation goals by ignoring their own regulations. To properly re-detain a noncitizen on an OSUP, ICE must: 1) determine “that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future,” 2) notify the noncitizen of the reasons for the revocation of their release prior to or at the time of revocation, and 3) conduct an informal interview promptly after the noncitizen is taken into custody so the noncitizen has a meaningful opportunity to respond to the stated reasons for revocation. 8 C.F.R. § 241.13(i). ICE cannot re-detain a noncitizen first, then later justify the arrest by pointing to a changed circumstance that materialized only after the arrest. Allowing Respondents to do an end-round of the regulations renders the substantive and procedural requirements of 8 C.F.R. § 241.13(i)(1) a nullity and permits Respondents to ignore the necessary steps required by the regulations, due process, and District Courts around the country.

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 C.F.R. § 241.13(i)

88. Mr. Phaengsy realleges all paragraphs above as if fully set forth here.

89. Before arrest Mr. Phaengsy had been in full compliance with the requirements of his OSUP, diligently attending every ICE check-in. At the time of revoking his release, ICE did not—and could not—make findings that Mr. Phaengsy’s OSUP should be revoked because: 1) Mr. Phaengsy has not violated any condition of release; and 2) Mr. Phaengsy’s *individual* likelihood of removal to Laos had not changed. *See* 8 C.F.R. § 241.13(i). Neither Mr. Phaengsy’s conduct nor other circumstances supported re-detention, which is evidenced by Respondents’ failure to give Mr. Phaengsy any notice of the reasons for revocation or an opportunity to be heard. *See* 8 C.F.R. § 241.13(i).

90. Mr. Phaengsy’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.

91. 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”).

92. Respondents further violate 8 C.F.R. § 241.13(i) by not providing Mr. Phaengsy 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 TWO
Violation of the Fifth Amendment of the U.S. Constitution
Due Process Clause

93. Mr. Phaengsy realleges all paragraphs above as if fully set forth here.

94. Respondents have no legal basis to re-detain Mr. Phaengsy 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).

95. Mr. Phaengsy's re-detention does not bear a reasonable relationship to either of these purposes. Mr. Phaengsy is not a danger to the community: since his release in 2022, Mr. Phaengsy has not been charged with any crimes or been subject to criminal allegations. He is not a flight risk: Mr. Phaengsy has been gainfully employed since his release in 2022, has had a stable job for over a year prior to his detention, and is the primary caretaker of his mother and sister—both of whom he lives with. Mr. Phaengsy is steadfast in his residence in Minneapolis, Minnesota, therefore unlikely to flee, and a productive, prosocial member of his community.

96. To the extent Mr. Phaengsy'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).

97. Because Respondents have no legitimate objective in placing Mr. Phaengsy in civil detention, and have identified no basis to re-detain him under the relevant regulations, Mr.

Phaengsy's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

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

98. Mr. Phaengsy realleges all paragraphs above as if fully set forth here.

99. *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).

100. The first factor, the private interest at issue, favors Mr. Phaengsy. "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. Phaengsy 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)).

101. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also favors Mr. Phaengsy. 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.

102. The third factor, the government’s interest, favors Mr. Phaengsy 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.

103. 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.” *Zinerman 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. *Zinerman*, 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.*

104. All *Mathews* factors favor Mr. Phaengsy 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. Phaengsy’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 FOUR

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

105. Mr. Phaengsy realleges all paragraphs above as if fully set forth here.

106. 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).

107. 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.*

108. Respondents’ re-detention of Mr. Phaengsy 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* at Counts II–III.

109. 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).

110. At the time of revoking Mr. Phaengsy’s release, ICE did not—and could not—make findings that Mr. Phaengsy’s Order of Supervision should be revoked because: 1) Mr. Phaengsy has not violated any condition of release; and 2) Mr. Phaengsy’s individual likelihood of removal to Laos has not changed. *See* 8 C.F.R. § 241.13(i). Mr. Phaengsy’s conduct does not support re-detention. Neither do other circumstances support re-detention, which is notably evidenced by Respondents’ failure to give Mr. Phaengsy 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 via an initial informal interview as required by § 241.13(i).

111. 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.

112. 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. Phaengsy runs counter to the evidence before the agency that Mr. Phaengsy would comply with a demand to appear for removal without detention. (Ex. 5, ICE Check-In Records.) Mr. Phaengsy has attended each and every ICE check-in since his release in the fall of 2022 and has never violated a condition of his Order of Supervision. (*Id.*) No new facts suggest he has tarnished this record and Respondents have not presented Mr. Phaengsy with any evidence of changed circumstances.

113. Accordingly, because ICE failed to comply with its own regulations, Mr. Phaengsy’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 FIVE
Violation of the *Accardi* Doctrine

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

115. Under the *Accardi* doctrine, Mr. Phaengsy 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”).

116. 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).

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

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

PRAYER FOR RELIEF

WHEREFORE, Deth Phaengsy requests that this Court:

- a. Exercise jurisdiction over this matter;
- b. Declare that Mr. Phaengsy’s detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;
- c. Order Mr. Phaengsy’s immediate release and place him back on the original Order of Supervision;

d. In the alternative, grant Mr. Phaengsy a bond hearing to decide whether he currently poses a flight risk or danger to the community; and

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

Respectfully submitted,

DATED: February 12, 2026

By: s/ Rebekah L. Bailey

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(* *Pro hac vice* application forthcoming)

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

I am submitting this verification on Petitioner's behalf because I am his attorney. I have reviewed documents and discussed the factual assertions in this petition with my attorney colleague, who is in direct contact with Petitioner and his family. I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge given the exigent circumstances and based on my colleague's conversation with the Petitioner.

Dated: February 12, 2026
Minneapolis, MN

Respectfully submitted,

s/Rebekah L. Bailey
Rebekah L. Bailey