

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

YOUA LEE,

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; and

JOHN OR JANE DOE, in their official
capacity as the Warden of the ERO El Paso
Camp East Montana, Texas,

Respondents.

Case No. 3:26-cv-432

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

**EXPEDITED HANDLING
REQUESTED**

INTRODUCTION

Petitioner Youa Lee is in poor health and has been held illegally for nearly two months in conditions that have caused her health to decline further. Despite the urgency of Ms. Lee's situation, Respondents took three weeks to file a stock response that appears copied-and-pasted from other filings—as evidenced by the fact that Respondents' brief repeatedly misgenders Ms. Lee. *See* ECF No. 5 at 4 (“Petitioner cannot meet his burden”). Their response fails to meet the substance of Ms. Lee's Petition and applies the wrong legal framework. The Court should order Ms. Lee's immediate release. **Ms. Lee respectfully asks that the Court issue a ruling as quickly as practicable due to her declining health.**

Petitioner further notes that, shortly after Respondents filed their response, Ms. Lee was moved without warning or explanation to ICE's South Louisiana Ice Processing Center in Basile, LA. Ms. Lee's sudden removal from this district does not deprive the Court of jurisdiction, nor lessen the urgency of Ms. Lee's Petition. *See Griffin v. Ebbert*, 751 F.3d 288, 290 (5th Cir. 2014) ("Jurisdiction attached on that initial filing for habeas corpus relief, and it was not destroyed by the transfer of petitioner and accompanying custodial change.").

ARGUMENT

Ms. Lee explains in her Petition that her detention is illegal on various regulatory, statutory, and constitutional grounds. *See* ECF No. 1. Respondents fail to respond to Ms. Lee's arguments. Indeed, Respondents do not even apply the correct legal framework in opposing Ms. Lee's Petition. "[T]he district court is under 'no obligation to assist attorneys representing the State' by raising [a] defense sua sponte" that the government failed to raise in responding to a habeas petition. *Nunez-Perez v. Escobar-Pabon*, 133 F.4th 33, 42 n.10 (1st Cir. 2025) (citation omitted). Here, Respondents do not make a serious attempt to justify detaining a 67-year-old grandmother in conditions that threaten her health and wellbeing. That is because there is no such justification.

I. Ms. Lee's petition is governed by the regulatory framework of 8 C.F.R. § 241.13.

Rather than rebut the detailed claims set forth in Ms. Lee's Petition, Respondents raise a single copied-and-pasted argument: that Ms. Lee fails to state a claim for unlawful detention under the framework set out by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). That is because the *Zadvydas* framework does not apply to noncitizens who are subject to an order of supervision ("OSUP") and where, as here, there has already been a determination that the noncitizen is not likely to be removed. *See, e.g., Trejo v. Warden of ERO El Paso E. Montana*, EP-25-CV-401, 2025 WL 2992187, at *6–7 (W.D. Tex. Oct. 24, 2025) (holding that a noncitizen re-

detained after an OSUP issues is “entitled to additional procedural protections by virtue of the liberty interest he obtained through his release,” unlike the “usual *Zadvydas* petitioner” who is detained continuously from the time of their final removal order). As Respondents well know, once a noncitizen has been released under an OSUP, the *Zadvydas* framework advanced by Respondents is superseded by “detailed regulations concerning when and how that OSUP may be revoked.” *Rodriguez Romero v. Ladwig*, CV 25-1106-JWD-EWD, 2026 WL 321437, at *4 (M.D. La. Feb. 6, 2026); *see also* 8 C.F.R. § 241.13(i).¹ Because Respondents concede that they already determined that Ms. Lee’s removal to Laos was unlikely and released her under an OSUP, Ms. Lee’s re-detention must comply with the requirements of § 241.13(i).

II. Respondents fail to carry their burden under 8 C.F.R. § 241.13.

8 C.F.R. § 241.13(i)(2) places the burden of proof on the government to justify revocation of Ms. Lee’s release. *See 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 ignore the requirements of § 241.13(i) and attempt to shift their burden to Ms. Lee. *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) (rejecting a similar argument because it “misapplies the burden of proof under applicable immigration regulations”); *Tou Vang v. Bondi*, 0:26-CV-1381,

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”).

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”).

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). The regulation requires “an individualized finding” that affects the petitioner’s own likelihood of removal. *Rodriguez Romero v. Ladwig*, CV 25-1106, 2026 WL 321437, at *6 (M.D. La. Feb. 6, 2026) (explaining 8 C.F.R. § 241.13(i)(2) “clearly refers to the individual detainee, not any broad group to which the detainee belongs”).² The reasons for the 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 do not and cannot contend they complied with any of these requirements. Starting with the latter prerequisites, Respondents failed to provide Ms. Lee with the reasons for the revocation of her OSUP or give her a chance to contest its revocation. They do not explain their reasoning even now in their response nearly two months after detaining Ms. Lee. Indeed, Respondents have not even put forth evidence that Ms. Lee’s OSUP was revoked at all.

The only justification Respondents offer in their opposition is that, long after detaining Ms. Lee, Petitioners belatedly requested travel documents from Laos for Ms. Lee. But “[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.*

² See also *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (same); *Roble v. Bondi*, 803 F. Supp. 3d 766, 771 (D. Minn. 2025) (same).

McDonald, No. 25-13175, 2025 WL 3688023, at *2 (D. Mass. Dec. 19, 2025); *see also id.* at *3 (ordering a petitioner’s release where the government only sought and obtained travel documents after detaining the petitioner). Respondents’ decision to request travel documents after the fact cannot support Ms. Lee’s detention. *See, e.g., Nguyen v. Noem*, No. 25CV3032, 2025 WL 3564211, at *2–3 (S.D. Cal. Dec. 12, 2025) (holding that a post-detention request for travel documents could not justify a petitioner’s detention and ordering them released). And Respondents provide no other justification whatsoever. This is a sufficient basis to grant the Petition.

Moreover, as explained in Ms. Lee’s Petition, it is speculative the Laotian government will ever approve Ms. Lee’s travel documents, particularly given that it previously refused to repatriate Ms. Lee. Courts in the Fifth Circuit and elsewhere have repeatedly held the bare fact that the government has requested travel documents is insufficient. *See, e.g., 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 absent evidence the Petitioner is scheduled to be on that flight). This Court should follow suit.

Because freedom from unlawful detention “lies at the heart of the liberty that [the Due Process] Clause protects,” Respondent’s failure to follow 8 C.F.R. § 241.13(i) in detaining Ms. Lee has resulted in substantial prejudice to Ms. Lee. *Zadvydas*, 533 U.S. at 690; *see also Truong v. Bondi et al.*, SA-25-CA-01947-XR, 2026 WL 475296, at *5 (W.D. Tex. Feb. 11, 2026) (holding that failure to follow 8 C.F.R. § 241.13(i) results in substantial prejudice to a detained individual); *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.”). As explained in the Petition, the prejudice to Ms. Lee has only been compounded by the fact that Ms. Lee is in ill health and the conditions in which Respondents are holding her have caused her health to decline further.

CONCLUSION

Respondents have detained a 67-year-old grandmother in squalid conditions as her health declines. They have done so in clear violations of their own regulations, as well as the Due Process Clause of the United States Constitution. Respondents make no serious effort to justify their illegal actions. The Court should grant Ms. Lee’s Petition and order that she be immediately released.

Respectfully submitted,

DATED: March 9, 2026

/s/ Cyrus Morton

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2026, a copy of the foregoing was served on all counsel of record by filing the same with the Court's CM/ECF system.

/s/ Cyrus Morton

Cyrus A. Morton