**UNITED STATES DISTRICT COURT**
**DISTRICT OF MINNESOTA**

**KONG L.,**

Petitioner,

v.

**DAVID EASTERWOOD**, Director of St. Paul Enforcement and Removal Operations, Immigration and Customs Enforcement; **MARKWAYNE MULLIN**, Secretary of the Department of Homeland Security; **DAVE ISAIS**, Jail Commander of the Sherburne County Jail; **DAVID J. VENTURELLA**, Acting Director, U.S. Immigration and Customs Enforcement; **TODD BLANCHE**, Attorney General of the United States,

Respondents.

Case No. 0:26-cv-03669-LMP-LIB

**PETITIONER'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 59(e)**

## PETITIONER'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 59(e)

Petitioner Kong L. respectfully moves under Federal Rule of Civil Procedure 59(e) to alter or amend the September 21, 2026 Order denying his Petition for Writ of Habeas Corpus, ECF No. 10, and the resulting Judgment, ECF No. 13. This Court has since confirmed that Rule 59(e) applies to this final judgment and that Petitioner may file the motion as of right. ECF No. 14 at 2-3. The motion does not ask the Court to revisit every disagreement in the habeas briefing. It asks the Court to correct discrete errors of law and fact that materially affected the judgment and that concern issues Petitioner expressly preserved before judgment. See ECF No. 9 at 4-16.

The first error concerns 8 C.F.R. § 241.13. The Order holds that ICE's possession of a Lao travel document and its statement that removal was scheduled no later than September 16, 2026 "suffices" to show that Kong's removal was significantly likely in the reasonably foreseeable future, and that ICE thereby "connected the dots." ECF No. 10 at 9. But § 241.13(i)(2) does not ask whether a court can infer foreseeability from facts assembled in habeas litigation. It requires a determination by ICE, based on changed circumstances, that removal has become significantly likely. The First Circuit has identified the legal distinction directly: "The district court erred by making the foreseeability determination itself." *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023). The record before this Court contained no contemporaneous § 241.13(f) analysis, no evidence that the designated ICE decisionmaker considered the regulatory factors before revocation, and no post-interview revocation custody review evaluating Kong's written response. Those omissions were squarely presented in Petitioner's Reply. ECF No. 9 at 4-10.

The second error concerns the 2005 I-205. The Order acknowledges that the newly created 2026 I-205 "may not" have been validly issued because the SDDO who signed it may lack authority under 8 C.F.R. § 241.2(a). ECF No. 10 at 5. The Court nevertheless upheld the arrest because, under *Pao M. v. Blanche*, No. 26-cv-3399 (LMP/DJF), 2026 WL 2454331, at *2-3 (D. Minn. Aug. 21, 2026), the 2005 I-205 remained unexecuted until physical removal. But *Pao M.* itself began from the premise that "[a] warrant is no longer effective when it has been executed." *Id.* at *2. The question presented here is narrower than whether an I-205 is fully completed as a record of physical departure: whether the warrant's arrest-and-custody authority can be exercised again, twenty-one

years after the original § 1231 custody and formal release under § 241.13. The First Circuit has cautioned that removal authority and warrant authority "cannot be conflated" because an immigration warrant "authorizes an arrest to effect removal." *Kong*, 62 F.4th at 619. The judgment does not address that distinct function.

Finally, the judgment relied on a factual premise that had already failed when judgment entered. ICE's Form 71-091 stated that the Lao travel document was valid only through September 16, 2026 and that removal had been scheduled to occur no later than that date. ECF No. 8-6 at 1. On September 21, however, the Court expressly found that Kong "remains detained at the Sherburne County Jail." ECF No. 10 at 3. The September 16 deadline had passed five days earlier, and the record contained no new or extended travel document, no new removal date, and no evidence explaining why the predicted removal did not occur. Yet the Court relied on that expired date as present support for foreseeability. ECF No. 10 at 8-9. Rule 59(e) exists so a district court may correct precisely this type of material error before appellate proceedings begin.

The judgment further treats the continuing enforceability of Kong's removal order, and the fact that physical removal had not completed the 2005 I-205, as though those facts necessarily preserved unrestricted custody authority notwithstanding ICE's intervening determination under § 241.13 that Kong should be released. The regulatory scheme draws a distinction between continuing removal authority and a later return to physical custody, and the judgment does not address that distinction.

## LEGAL STANDARD

Rule 59(e) serves the "limited function" of correcting "manifest errors of law or fact" or considering newly discovered evidence. *Fletcher v. Tomlinson*, 895 F.3d 1010,

1025 (8th Cir. 2018) (quoting *Innovative Home Health Care, Inc. v. P.T.-O.T. Assocs. of the Black Hills*, 141 F.3d 1284, 1286 (8th Cir. 1998)). The Rule permits a district court to "correct its own mistakes" shortly after judgment, before the case proceeds through the appellate process. *Innovative Home Health Care*, 141 F.3d at 1286. It does not permit a losing party to tender a new legal theory that could have been raised before judgment. *Fletcher*, 895 F.3d at 1025.

This motion stays within that boundary. Before judgment, Petitioner argued that § 241.13 required ICE itself to make and support an individualized changed-circumstances determination; that the record contained no § 241.13(f) analysis; that § 241.13(i)(3) separately required a post-interview revocation custody review; that the notice's assertion of a scheduled September 16 removal conflicted with ICE's later statement that it was only "currently scheduling" a flight; that the actual Lao travel document was absent; that the 2026 I-205 was invalidly issued; and that the 2005 I-205 could not function as perpetual arrest authority. ECF No. 9 at 4-16. The authorities discussed below sharpen those preserved arguments and respond to the grounds on which the Court resolved them; they do not introduce new claims.

## ARGUMENT

### I. THE JUDGMENT SHOULD BE ALTERED BECAUSE § 241.13 REQUIRES ICE TO MAKE THE INDIVIDUALIZED FORESEEABILITY DETERMINATION AND TO CONDUCT THE REVOCATION CUSTODY REVIEW; THE COURT COULD NOT SUPPLY THOSE MISSING AGENCY STEPS ITSELF.

The parties agree that § 241.13 governs this revocation. ECF No. 7 at 9-11; ECF No. 10 at 7. That matters because Congress's general authorization of post-order detention is not the end of the inquiry once ICE has already determined that removal is not significantly likely, released a person under § 241.13, and allowed that conditional liberty to continue for twenty-one years. Section 241.13(i)(2) permits revocation when, "on account of changed circumstances," ICE "determines that there is a significant likelihood" the person may be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2). The operative verb is "determines." The regulation assigns that determination to the agency, not to a reviewing court after detention has begun.

The First Circuit's decision in *Kong v. United States* is especially instructive because it involved the same procedural posture: an old final order, failed repatriation, years of supervised release, and later re-detention when removal again appeared possible. 62 F.4th at 611-14. The court explained that ICE's decision to re-detain a supervisee is governed by § 241.13(i)(2)'s requirement of an individualized agency determination based on changed circumstances. *Id.* at 619-20. It then stated the error in direct terms: "The district court erred by making the foreseeability determination itself." *Id.* at 620. To

the extent ICE claimed that it had made the required determination, the court directed the district court to review that claim under §§ 241.13(f) and 241.13(i)(2). *Id.* at 620 n.13.

That distinction was preserved here. Petitioner did not argue that a Lao travel document is irrelevant. He expressly acknowledged that a genuine travel document may be an important changed fact. ECF No. 9 at 10. He argued that a changed fact is not the same thing as evidence that ICE made the determination § 241.13 requires before extinguishing an existing order of release. *Id.* at 5-8. The Order nevertheless resolved the question by making the inference itself. It reasoned that because ICE had secured a travel document and stated that removal would occur no later than September 16, those facts "suffice[]" to show significant likelihood and adequately "connected the dots." ECF No. 10 at 8-9. That establishes what the Court inferred from the record; it does not establish what ICE actually determined, what factors ICE considered, or whether that determination preceded the revocation. At the base level, the government never even produced the alleged Laos travel document. Its existence is not even verified.

This Court's own published decision in *Roble v. Bondi* confirms that the distinction is substantive, not formal. 803 F. Supp. 3d 766 (D. Minn. 2025). Although a habeas petitioner retains the ultimate burden to establish unlawful custody, *Roble* held that § 241.13 places the threshold burden on ICE to "first establish changed circumstances" making removal significantly likely in the reasonably foreseeable future. *Id.* at 772. That allocation follows from the agency's attempt to alter an existing state of supervised liberty. *Id.* at 772-73. Kong's Reply cited and relied on *Roble* before judgment. ECF No. 9 at 4, 9.

The record did not show that ICE carried that threshold burden through the process the regulation requires. Section 241.13(f) directs the agency to consider the history of the individual's compliance, the history and ongoing nature of ICE's efforts to remove him, his assistance with those efforts, the reasonably foreseeable results of those efforts, and State Department information regarding removal prospects. 8 C.F.R. § 241.13(f). The District of Minnesota has described those as "factors probative of the [noncitizen's] future removal." *Sarail A. v. Bondi*, 803 F. Supp. 3d 775, 782 (D. Minn. 2025). The First Circuit likewise identifies subsection (f) as the framework by which a court reviews whether ICE actually made the subsection (i)(2) determination. *Kong*, 62 F.4th at 620 n.13.

Respondents produced no contemporaneous memorandum, checklist, declaration from the revoking decisionmaker, State Department assessment, or other record showing that those factors were considered before the 9:42 a.m. revocation. ECF No. 8 ¶¶ 13-20; ECF No. 8-1 at 2. The Form 71-091 identifies the new travel document and a claimed September 16 removal date, but it contains no § 241.13(f) analysis. ECF No. 8-6 at 1. Robinson's later declaration says only that ICE "is currently scheduling Petitioner on a removal flight to Laos." ECF No. 8 ¶ 20. It does not say who made the § 241.13(i)(2) determination, when that determination was made, what that person reviewed, or whether the regulatory factors were considered. Petitioner made this precise record-based argument at ECF No. 9 at 5-8. In addition, there was no guarantee that schedule would be successful or that any concrete plans were in place.

Judge Bryan reached that same textual conclusion in *Khounxai P. v. Easterwood*, No. 26-cv-3748 (JMB/ECW), ECF No. 10 at 7-9 (D. Minn. Aug. 27, 2026). *Khounxai P.*

is persuasive rather than controlling authority, but its factual parallel is unusually close: the same June 18, 2026 Lao travel-document development, the same September 16 expiration, a scheduled August 18 check-in, and materially the same Form 71-091 language. *Id.* at 2-4. Applying *Roble*, *Sarail A.*, and the text of § 241.13, Judge Bryan held that the record did not establish that ICE considered the subsection (f) factors before revocation. *Id.* at 7-8. That reasoning is also consistent with the First Circuit's instruction that a district court must review whether ICE made the required determination rather than making the determination itself. *Kong*, 62 F.4th at 620.

The separate post-interview requirement makes the error clearer. Section 241.13(i)(3) does not say that notice plus an informal interview ends the process. If the person remains detained, the regulation requires a "revocation custody review" that includes "an evaluation of any contested facts relevant to the revocation" and a determination whether the facts as found warrant revocation and further denial of release. 8 C.F.R. § 241.13(i)(3). Those are mandatory words describing an agency decision after the supervisee has had the opportunity to respond.

The Order found that Kong received same-day notice and an informal interview, during which he submitted a written statement, and concluded: "That is enough for ICE to meet Section 241.13(i)'s requirements." ECF No. 10 at 8. Respectfully, the regulation says more. Kong's written statement was not an empty formality. It was the information the regulation invited him to submit for agency consideration. ECF No. 8-6 at 3. Yet Respondents produced no post-interview custody decision, no evaluation of his submission, no findings on contested facts, and no determination that the facts as found

warranted "further denial of release." 8 C.F.R. § 241.13(i)(3). The Reply specifically identified this omission. ECF No. 9 at 7-8.

The prospect of a later custody review under § 241.4 does not establish that the required review occurred on the record before judgment. ECF No. 10 at 10. Section 241.13(i)(3) itself directs that the revocation custody review include the evaluation and determination described above. A future opportunity for process cannot serve as record evidence that ICE already performed the mandatory review on which the legality of present custody depends. *Khounxai P.* made this same point, observing that the absence of evidence of a post-interview revocation custody review was independently significant. No. 26-cv-3748, ECF No. 10 at 9 n.8.

Petitioner need not persuade the Court, for purposes of Rule 59(e), that the wording of the Form 71-091 was independently inadequate under *Sarail A.* or that *Zang X. v. Blanche*, No. 26-cv-3870 (KMM/EMB), 2026 WL 2690221, at *3 (D. Minn. Sept. 14, 2026), was wrongly decided. Even if the notice adequately told Kong *what* changed, notice is only one element. It does not prove that ICE performed the antecedent § 241.13(i)(2)/(f) determination or the subsequent § 241.13(i)(3) custody review. Put differently, even an adequate explanation of a decision cannot substitute for the decisionmaking the regulation requires.

The distinction also explains why the existence of an old removal warrant cannot answer the independent § 241.13 question. Section 241.13 was promulgated for the circumstance in which continued post-order detention can no longer be justified because removal is not significantly likely in the reasonably foreseeable future. Once ICE makes that determination and releases the individual, the regulation specifies both the

substantive circumstance that may justify a later "return" to custody and the process that must accompany that return. 8 C.F.R. § 241.13(i)(2)–(3). It would be anomalous to hold that the same agency may formally determine that continued detention is no longer permissible, release the individual pursuant to that determination, and yet retain an independent and unfettered power under the original warrant to recreate physical detention without satisfying the very regulation governing re-detention. The old removal order remains enforceable; that does not mean every prior instrument of custody remains perpetually reusable without regard to the intervening § 241.13 release.

Put differently, the Government's authority to continue pursuing Kong's removal did not disappear in 2005, but its authority to imprison him again after twenty-one years of supervised liberty was no longer governed as though that release had never occurred.

The judgment also relied on a factual premise that had already ceased to be true. The revocation notice stated that the Lao document was "valid through September 16, 2026" and that ICE had "scheduled" removal to occur "no later than" September 16. ECF No. 8-6 at 1. But Robinson's August 25 declaration did not say a flight had been booked or that Kong had been manifested; it said only that ICE was "currently scheduling" a flight. ECF No. 8 ¶ 20. Petitioner called out that discrepancy before judgment. ECF No. 9 at 6-7.

By September 21, the discrepancy was no longer predictive. The Court's Order itself states that Kong "remains detained at the Sherburne County Jail." ECF No. 10 at 3. Thus, when judgment entered, the September 16 removal deadline had already passed and the only travel document described in the record had, by ICE's own notice, expired. There was no supplemental declaration identifying an extension, a replacement

document, a new acceptance by Laos, or a new removal date. Yet the Court relied on the September 16 representation to hold that the record demonstrated present foreseeability. ECF No. 10 at 8-9. The point is not that missing a projected date automatically makes removal unforeseeable. The point is that a judgment entered on September 21 cannot treat an already failed September 16 prediction, supported by an already expired document on the record presented, as if it remained current proof of the agency's determination.

**a. The § 241.13 violations require restoration of Kong's preexisting supervised release.**

The violations identified above are not collateral procedural irregularities that can be cured while Kong remains imprisoned. Section 241.13(i) defines the circumstances and procedures under which ICE may lawfully "return the alien to custody" after the agency previously determined that removal was not significantly likely in the reasonably foreseeable future and released the person under supervision. 8 C.F.R. § 241.13(i)(2)–(3). When ICE fails to satisfy those requirements, the resulting re-detention is unlawful. As Judge Nelson recently explained, "[a]gencies must follow their own regulations," and where ICE re-detains a noncitizen without complying with § 241.13(i), "he is entitled to habeas relief." *Flores Miguel v. Bondi*, No. 26-cv-469 (SRN/EMB), ECF No. 33 at 11, 14 (D. Minn. Mar. 12, 2026) (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265–68 (1954)). The court therefore ordered "the immediate release" of the petitioner "subject to the conditions in his preexisting Order of Supervision." *Id.* at 17–18.

That remedy follows from the nature of habeas itself. The Supreme Court has recognized that "[h]abeas has traditionally been a means to secure release from unlawful

detention." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020) (emphasis omitted). And 28 U.S.C. § 2243 directs the habeas court to "dispose of the matter as law and justice require." Where the challenged custody arose only because ICE unlawfully revoked a preexisting release, restoring the petitioner to that release is not extraordinary relief; it is the ordinary means of undoing the unlawful custody event. See *Roble v. Bondi*, 803 F. Supp. 3d 766, 774 (D. Minn. 2025) (ordering "release from custody as a remedy for ICE's illegal re-detention"); *Sarail A. v. Bondi*, 803 F. Supp. 3d 775, 788–89 (D. Minn. 2025) (ordering release subject to the conditions of the prior supervision order).

Recent decisions in this District apply that rule directly to the precise § 241.13 defects at issue here. In *Chong X. v. Blanche*, the court found that ICE had failed to conduct the required "revocation custody review" after the informal interview. It did not remand the matter to ICE while leaving the petitioner incarcerated. It held: "Release is the appropriate remedy," and ordered the petitioner "release[d] . . . immediately, subject to the same terms and conditions previously ordered." No. 26-cv-3591, ECF No. 10 at 10–11 (D. Minn. Aug. 21, 2026). Likewise, in *Jor Y. v. Mullin*, after concluding that ICE's contemporaneous reasons were insufficient under § 241.13 and that later litigation explanations could not justify the revocation, the court again held that "release is the appropriate remedy" and ordered immediate restoration to the prior conditions of supervision. No. 26-cv-3722, ECF No. 11 at 9–10 (D. Minn. Aug. 27, 2026).

*Khounxai P.* applied the same remedy to materially the same regulatory failures presented here. After finding no adequate showing that ICE considered the § 241.13(f) factors before revocation and no evidence that ICE conducted the required post-interview

"revocation custody review," the court held that "[a]ccordingly, release is the appropriate remedy." *Khounxai P. v. Easterwood*, No. 26-cv-3748 (JMB/ECW), ECF No. 10 at 8–10 (D. Minn. Aug. 27, 2026). The court ordered immediate release "subject to the same terms and conditions previously ordered." *Id.* at 10.

That result makes sense because a later agency effort cannot retroactively supply the process that was required before or during the challenged revocation. Section 241.13(i)(2) requires the changed-circumstances determination that authorizes the return to custody; § 241.13(i)(3) then requires notice, an opportunity to respond, and an individualized custody review. A court cannot preserve detention produced by an unlawful revocation simply so that ICE may attempt to create the missing analysis after the fact. As courts applying § 241.13 have explained, "post-hoc rationalizations cannot justify the detention." *Jor Y.*, No. 26-cv-3722, ECF No. 11 at 9; see also *Sarail A.*, 803 F. Supp. 3d at 781–84.

Nor does release immunize Kong from lawful immigration enforcement. Restoration to the OSUP leaves the final removal order intact. If ICE later possesses a lawful basis to revoke that release, it may act again—provided it complies with the governing statute and regulations. Courts have repeatedly emphasized precisely that distinction. See *Quiroz Lopez v. Bondi*, No. 26-cv-767, ECF No. 11 at 8 (W.D. Wash. Apr. 6, 2026) (ordering release under the prior OSUP while providing that Respondents "may not re-detain Petitioner without compliance with 8 C.F.R. § 241.13(i) and 8 U.S.C. § 1231"); *Cardona Meza v. Woosley*, No. 26-cv-148, ECF No. 15 at 5 (W.D. Ky. July 15, 2026) (explaining that release does not constrain future enforcement action "so long as those actions comply with the applicable law and regulations").

Thus, if the Court concludes that ICE failed to make the individualized § 241.13(i)(2) determination, failed to provide the process required by § 241.13(i)(3), or failed to conduct the mandatory post-interview revocation custody review, the proper remedy is not continued incarceration followed by belated agency process. It is restoration of the last lawful custody status: Kong's preexisting Order of Supervision.

**II. THE WARRANT RULING SHOULD BE ALTERED BECAUSE AN I-205'S UNCOMPLETED REMOVAL FUNCTION DOES NOT, WITHOUT FURTHER ANALYSIS, MAKE ITS ARREST AUTHORITY PERPETUALLY REUSABLE AFTER THE ORIGINAL § 1231 CUSTODY AND RELEASE.**

The Court correctly recognized a serious problem with the 2026 I-205. Respondents' I-213 states that the new warrant was "signed by SDDO Carey," ECF No. 8-1 at 2, while § 241.2(a)(1) does not list an SDDO by title among officials authorized to issue an I-205. The Order therefore acknowledged that the 2026 warrant "may not be" validly issued under *Ger V. v. Mullin*, No. 26-cv-2543 (KMM/DTS), 2026 WL 1847044, at *2-3 (D. Minn. June 26, 2026). ECF No. 10 at 5. The Court nevertheless held the arrest lawful because the 2005 I-205 remained effective until Kong was physically removed. *Id.* at 5-6 (citing *Pao M.*, 2026 WL 2454331, at *2-3).

This motion does not contend that § 241.13 automatically restarts the statutory removal period or that a new I-205 must issue every time ICE lawfully revokes an OSUP. *See Ansumana S. v. Blanche*, No. 26-cv-3371 (KMM/DJF), 2026 WL 2606655, at *8 (D. Minn. Sept. 3, 2026). The preserved argument is narrower. If the Government relies on a 2005 warrant as the legal authority for a new 2026 seizure, the question is whether the arrest-and-custody authority conferred by that warrant remained available for reuse after

the original post-order custody and formal release. ECF No. 9 at 13-16. The fact that physical removal was never completed does not itself answer that question.

Indeed, *Pao M.* began from a rule favorable to that distinction: "A warrant is no longer effective when it has been executed." 2026 WL 2454331, at *2. It cited *Peña-Borrero v. Estremeda*, 365 F.3d 7, 13 (1st Cir. 2004), involving an arrest warrant rendered inactive by prior execution, and *United States v. Keszthelyi*, 308 F.3d 557, 571 (6th Cir. 2002), explaining that once execution is complete the "authority conferred by the warrant terminates." The dispute is therefore not over the baseline rule. It is over what authority an I-205 confers and which of its functions remained unperformed after the original custody event.

The I-205 itself answers part of that question in two distinct verbs. Its first page commands immigration officers to "take into custody and remove" the person named. ECF No. 8-4 at 1. Section 241.3(a) likewise provides that when the removal period begins, the person "will be taken into custody pursuant to the warrant of removal." 8 C.F.R. § 241.3(a). The reverse side of Form I-205, by contrast, contains fields to memorialize the later port, date, and manner of removal and to verify departure. ECF No. 8-4 at 2. That structure reflects two related but analytically distinct functions: custody and ultimate removal.

*Pao M.* concluded that the warrant there had not been fully executed because Pao had never been physically removed. 2026 WL 2454331, at *2-3. In doing so, it relied in part on cases describing the recordkeeping purpose of an I-205, including *United States v. Torres-Villalobos*, 487 F.3d 607, 613 (8th Cir. 2007). But *Torres-Villalobos* addressed whether warrants of deportation were testimonial records under the Confrontation Clause.

*Id.* at 612-13. Its description of the form's primary recordkeeping purpose answered whether the document was created for future criminal prosecution; it did not decide whether the arrest command on page one can be invoked repeatedly after an earlier custody event and supervised release. That different question is the one presented here.

The First Circuit confronted that distinction much more directly in *Kong v. United States*. There, as here, the Government obtained an old immigration warrant, could not effect repatriation, released the person under supervision, and years later relied on the old warrant to justify re-arrest. 62 F.4th at 611-14, 618-20. The First Circuit did not finally adjudicate warrant validity on the incomplete record, but it expressly rejected the district court's warrant rationale as unsupported on the grounds stated. *Id.* at 618-19. In particular, it warned that the concepts of removal order and warrant "cannot be conflated" and explained that a warrant "authorizes an arrest to effect removal." *Id.* at 619. It further described *Spector v. Landon*, 209 F.2d 481 (9th Cir. 1954), as problematic authority because *Spector* blurred whether the enduring instrument was the removal order or the arrest warrant. *Kong*, 62 F.4th at 619.

That distinction is particularly important once the Government itself has determined that removal cannot be accomplished and has released the noncitizen under 8 C.F.R. § 241.13. The regulatory scheme does not contemplate that the original custody authority simply remains dormant, available for unrestricted reuse indefinitely. To the contrary, once the initial removal period has passed and the noncitizen has been released under supervision, "the connection between executing a removal order and detaining a noncitizen unravels." *Kong*, 62 F.4th at 620. Congress and the agency addressed that changed posture through a different regulatory mechanism. Section 241.13(i)(2) provides

that, upon qualifying changed circumstances, ICE may "return the alien to custody," while § 241.13(i)(3) separately prescribes what must occur "after his or her return to Service custody." 8 C.F.R. § 241.13(i)(2)–(3). The regulation thus presupposes an earlier release from custody and a later, legally distinct return to custody governed by the conditions that § 241.13 itself imposes.

Respondents' contrary theory would largely erase that structure. If an I-205 issued at the beginning of the original § 1231 detention remains an unrestricted arrest warrant until the day physical removal ultimately occurs, then ICE would retain authority to seize a person released under § 241.13 at any time and for any reason, regardless of whether the conditions for "return[ing] the alien to custody" under § 241.13(i) were satisfied. The changed-circumstances determination, notice requirement, opportunity to respond, and revocation custody review would cease to operate as limitations on re-detention and would instead become procedural formalities that ICE could bypass by invoking the original warrant. Courts ordinarily reject interpretations that render regulatory text "inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (quotation omitted).

That cannot be the correct interaction between §§ 241.3 and 241.13. Section 241.3(a) identifies the warrant of removal as the instrument pursuant to which a noncitizen is taken into custody when the removal period begins. Section 241.13 addresses what occurs after that detention framework has failed to result in removal and ICE has affirmatively released the person because removal is not significantly likely in the reasonably foreseeable future. Once ICE invoked that latter regime and permitted Kong to remain at liberty for approximately twenty-one years, a later seizure was not

simply a continuation of uninterrupted 2005 custody. It was a return to custody, and the regulation expressly governing that return had to have legal effect.

Petitioner does not contend that revocation of an OSUP creates a new ninety-day removal period under 8 U.S.C. § 1231(a)(1), nor does he need the Court to revisit that issue. The narrower point is that there is a difference between restarting the statutory removal period and beginning a new episode of physical detention after the Government affirmatively terminated the prior detention and substituted supervised liberty. Whatever continued authority the removal order itself may carry, ICE's authority to deprive Kong of that restored liberty again is governed by the regulatory framework created for precisely that event. *See Kong*, 62 F.4th at 619–20. The Court's conclusion that the 2005 I-205 remained unexecuted because Kong had not yet been physically removed does not answer that separate question.

That analysis is directly responsive to the basis of the judgment here. There is no dispute that Kong's 2005 removal order remains a final removal order. The issue is what authorizes a new seizure from twenty-one years of supervised liberty. An uncompleted removal order can remain executable without answering whether an arrest warrant's custody authority remains indefinitely reusable. As *Kong* explains, those concepts are different. *Id.* The Court should therefore reconsider the conclusion that lack of physical removal alone establishes continued arrest authority under the 2005 I-205.

The same construction is necessary to avoid a more fundamental problem under *Zadvydas v. Davis*, 533 U.S. 678 (2001). An I-205 is an administrative instrument for implementing the Government's statutory removal and custody authority; it is not an independent source of limitless detention power. Section 1231(a)(6), which supplies the

underlying authority for post-removal-period detention, has already been authoritatively construed to contain a temporal limitation. The Supreme Court held that the statute, "read in light of the Constitution's demands," permits detention only for the period "reasonably necessary to bring about" removal and "does not permit indefinite detention." *Zadvydas*, 533 U.S. at 689. Once removal is no longer reasonably foreseeable, continued detention becomes "unreasonable and no longer authorized." *Id.* at 699–700.

The Government's proposed understanding of the 2005 I-205 cannot be reconciled with those limits. If an unexecuted I-205 confers unrestricted arrest authority until the day physical removal occurs, regardless of an intervening determination that removal is not reasonably foreseeable and regardless of release under § 241.13, ICE could accomplish indirectly what *Zadvydas* prohibits directly. It could release a noncitizen when continued detention becomes unlawful, leave the original I-205 outstanding, and later invoke that same warrant to begin another presumptively reasonable detention period without satisfying the limitations governing re-detention. Nothing in *Zadvydas* permits the constitutional and statutory limit on post-order detention to be reset in that manner.

Courts confronting precisely that consequence have rejected it. In *Chumachenko v. Noem*, No. 2:26-cv-344, 2026 WL , ***at*** * (M.D. Fla. Feb. 27, 2026), the Government argued that "the six-month presumptively reasonable period of detention resets each time a noncitizen is detained." The court held that assumption "inconsistent with *Zadvydas*" because it "would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every 180 days." *Id.* Courts elsewhere likewise have concluded that the *Zadvydas* period is cumulative rather than infinitely renewable through successive releases and re-arrests. *See, e.g.*, *Zarate v. Bondi*,

No. 2:26-cv-320, ECF No. 13 at 7–8 (D. Nev. Apr. __, 2026) (collecting cases); *Siguenza v. Moniz*, No. 25-cv-11914, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025).

The First Circuit's treatment of supervised release reinforces the same conclusion. Once the original removal period has passed, "the connection between executing a removal order and detaining a noncitizen unravels," particularly after the noncitizen has been released under supervision. *Kong v. United States*, 62 F.4th 608, 620 n.12 (1st Cir. 2023). At that point, § 241.13 supplies the mechanism for returning the person to custody upon the required changed-circumstances determination. *Id.* at 619–20. Thus, even if the 2005 I-205 remained formally unexecuted for purposes of documenting Kong's eventual physical removal, it cannot reasonably be construed as an unlimited detention instrument that survives, and permits ICE to bypass, the substantive limits imposed by *Zadvydas* and § 241.13.

There is also a factual distinction between this record and *Pao M.* In *Pao M.*, it was undisputed that the petitioner had been arrested on the old I-205 and never removed. 2026 WL 2454331, at *1-3. Here, Respondents' declaration says that an Immigration Judge ordered Kong removed on May 17, 2005, that ICE issued an I-205 that day, and that ICE released him on an OSUP on August 18, 2005. ECF No. 8 ¶¶ 9-11.

The merits Order nevertheless states that on May 17 ICE issued the I-205 "and he was taken into custody," citing Robinson ¶ 10 and the warrant itself. ECF No. 10 at 2. Kong was in custody pursuant to the I-205 in 2005.

The 2026 operational record underscores that this was a new custody event. ICE created an updated I-205 at 9:40 a.m. specifically because the prior warrant was in another field office; it created the revocation notice at 9:42; it took Kong into custody at

9:45; and it served the new I-205 at 9:46. ECF No. 8 ¶¶ 15-19; ECF No. 8-1 at 2. Petitioner does not contend that creation of the new warrant formally extinguished the old one merely by implication. Rather, the sequence confirms why the Court should decide the legal function of the warrant actually invoked for a new seizure, instead of treating the continued validity of the removal order as dispositive of arrest authority.

There is a further defect in the Government's own chronology. Section 241.3(a) requires that a final-order noncitizen "be taken into custody pursuant to the warrant of removal." Recent decisions in this District have treated that language as requiring the Government to establish not merely that a warrant existed somewhere within DHS, but that the operative warrant had been issued before the seizure and was served in connection with the arrest. *Ger V. v. Mullin*, No. 26-cv-2543 (KMM/DTS), 2026 WL 1847044, at *4 (D. Minn. June 26, 2026) (citing *Francisco O.C. v. Bondi*, No. 26-cv-1231 (KMM/JFD), Dkt. 13 at 3 (D. Minn. Feb. 18, 2026), for the requirement that the Government establish that the warrant was "issued prior to [the noncitizen's] arrest and was, in fact, served on him at the time of his arrest"). Respondents' own evidence establishes a different sequence here. ICE took Kong into custody at 9:45 a.m. and did not serve the new I-205 until 9:46 a.m. ECF No. 8 ¶¶ 18–19; ECF No. 8-1 at 2. Thus, even apart from the defect in the issuing official's authority, the record does not show that Kong was taken into custody pursuant to a warrant served as the authority for that seizure; it shows that he was first placed in custody and was then handed the document one minute later.

The narrower analysis also avoids any conflict with *Ansumana S.* That decision concluded that § 241.13 revocation does not itself begin a new statutory removal period

and that the regulations do not expressly demand issuance of a fresh I-205 upon every re-detention. 2026 WL 2606655, at *7-8. Petitioner does not ask the Court to hold otherwise. He asks the Court to decide whether, when the Government relies on an old warrant rather than validly issuing a new one, the arrest authority in that old instrument remained unexercised and reusable after the original § 1231 custody and release. *Pao M.*'s full-removal analysis and *Ansumana S.*'s no-categorical-new-warrant holding do not answer that narrower function-specific question; *Kong v. United States* demonstrates why the question matters.

If neither the 2026 I-205 nor the 2005 warrant supplies valid arrest authority, the Government's fallback is the narrow warrantless-arrest authority of 8 U.S.C. § 1357(a)(2). Petitioner preserved that issue as well. ECF No. 9 at 15-16. Kong appeared voluntarily at the scheduled check-in; ICE knew exactly where and when he would be present; and the alleged travel document had existed for two months. ECF No. 8 ¶¶ 13-14; ECF No. 8-1 at 2. Nothing in the record supports probable cause to believe that he was "likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2). The Court did not reach that alternative because it treated the 2005 I-205 as valid present arrest authority. ECF No. 10 at 5. Reconsideration of the old-warrant ruling therefore matters to the disposition of Count I.

## III. THE SAME ERRORS REQUIRE ALTERATION OF THE DUE-PROCESS AND REMEDY RULINGS.

The regulatory errors are independently dispositive under habeas because an agency must follow the rules governing its own exercise of detention authority. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). They also bear directly

on procedural due process. "Freedom from imprisonment" lies at the core of the liberty protected by the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Kong did not enter this case as a newly detained person at the beginning of the ninety-day removal period. The Government had already allowed him to live under an OSUP for approximately twenty-one years because removal could not be effected. ECF No. 8 ¶ 11; ECF No. 7 at 2.

The Order rejected the due-process claim in part because the regulatory scheme affords a later, more fulsome custody review. ECF No. 10 at 10. But a later review does not establish that the process expressly required at revocation occurred. The distinction is particularly important where the regulation itself requires the post-interview revocation custody review before continued denial of release is justified on the facts as found. 8 C.F.R. § 241.13(i)(3). The question is not whether ICE possesses detention authority in the abstract. It is whether ICE lawfully exercised that authority when it extinguished an established conditional liberty interest and continued detention thereafter.

The *Mathews* factors reinforce the regulatory text. Kong's private interest after twenty-one years of supervised liberty is substantial. The risk of error is materially reduced by requiring the agency to document the individualized determination and evaluate the supervisee's actual response. And the Government's burden is slight because these are procedures ICE itself promulgated. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Kong's reporting history also substantially reduces any Government interest in immediate detention without those safeguards: he was arrested precisely because he appeared when ICE ordered him to appear. ECF No. 8-1 at 2.

This Court's own decision in *Roble* demonstrates the appropriate consequence when § 241.13 is not followed. There, the Court held that ICE could not alter an existing supervised-release status without carrying its changed-circumstances burden and providing the process its regulations require. 803 F. Supp. 3d at 771-74. It granted habeas relief and ordered release. *Id.* at 774. Judge Bryan ordered the same remedy in *Khounxai P.* after finding the same type of § 241.13 defects involving the same Lao travel-document development: immediate release under the prior conditions of supervision. No. 26-cv-3748, ECF No. 10 at 9-10.

Immediate restoration to the preexisting OSUP does not invalidate Kong's removal order or prevent lawful future action by ICE. It restores the status quo that existed before the challenged revocation. If ICE presently possesses a lawful new basis for detention supported by a valid arrest predicate and full compliance with § 241.13, it may proceed according to law. What habeas does not permit is continued detention based on an agency process the existing record does not show occurred and a September 16 removal premise that had already failed when judgment entered.

**a. The expiration of the only asserted travel document independently requires reconsideration under *Zadvydas*.**

The judgment's foreseeability conclusion also rested on a factual premise that had ceased to exist before judgment was entered. ICE told Kong that Laos had issued a travel document "valid through September 16, 2026" and that his removal had been "scheduled . . . to take place no later than 09/16/2026." ECF No. 8-6 at 1. September 16 passed without removal. Judgment was not entered until September 21. The record presently

before the Court contains no unexpired travel document, no extension or replacement document, and no subsequent removal date.

That development matters independently under *Zadvydas*. Section 1231(a)(6) permits post-removal-period detention only for the time "reasonably necessary to bring about" removal and "does not permit indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The relevant inquiry is functional: detention exists to "assur[e] the alien's presence at the moment of removal," and "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized." *Id.* at 699–700. The question therefore is not whether Laos once issued a document. It is whether, now, there remains a significant likelihood that Kong can actually be removed in the reasonably foreseeable future.

Nor does Kong receive a new six-month presumption of lawful detention merely because ICE returned him to custody on August 18. The Government already detained Kong following his 2005 removal order, failed to effect removal, and released him under § 241.13 because removal could not be accomplished. As Petitioner previously explained, the ordinary *Zadvydas* presumption does not "grant ICE a fresh six-month period of detention every time it chooses to revoke an OSUP twenty-one years later.". Courts considering that precise issue overwhelmingly recognize the danger of the contrary approach. *Chumachenko v. Noem*, No. 2:26-cv-344, ECF No. 6 at 5–6 (M.D. Fla. Feb. 27, 2026), rejected the Government's argument that the six-month period resets upon each re-detention because doing so "would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every 180 days." *See also Zarate v. Bondi*, No. 2:26-cv-320, ECF No. 13 at 7 (D. Nev. 2026)

(collecting cases holding that the six-month period does not reset following release and re-detention).

Judge Provinzino's decision in *Chay T.* illustrates the factual showing that can sustain detention after a Lao travel document expires. There, although the document had expired, ICE had previously obtained Lao documentation, had been ready to remove the petitioner before court-issued injunctions prevented removal, and had already submitted multiple requests to renew the document. *Thao v. Mullin*, No. 26-cv-2908 (LMP/ECW), ECF No. 8 at 4–6 (D. Minn. June 30, 2026). The Court therefore concluded that the Government's renewed efforts were likely to succeed. *Id.* Here, the present record contains no comparable evidence. The only asserted document expired September 16; the removal promised for that date did not occur; and Respondents have identified no renewed document, renewal request, new Lao authorization, or new removal arrangement.

At minimum, those facts provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. The burden therefore rests with Respondents to produce evidence sufficient to rebut that showing. *Id.* If Respondents have since obtained a renewed Lao travel document or concrete removal arrangements, they can produce them. If they have not, continued detention cannot be sustained by reliance on a document that expired before judgment and a removal date that came and went.

## CONCLUSION

Rule 59(e) relief is warranted because the Judgment rests on a premise that does not resolve the legality of Kong's present detention: that the 2005 I-205 remained "unexecuted" because Kong was never physically removed. Even if that proposition is accepted, it answers only whether the warrant remained incomplete as an instrument of removal. It does not answer whether the warrant's custody authority remained perpetually reusable after ICE exercised post-order custody authority, determined that removal could not be accomplished, and affirmatively released Kong under the distinct regulatory regime Congress and the agency established for that circumstance.

That intervening release matters. Section 241.13 did not merely permit ICE to allow Kong out of a detention facility as a matter of grace. It governed his legal custody status after removal ceased to be reasonably foreseeable. And when ICE sought twenty-one years later to "return" him to custody, the same regulation prescribed the substantive showing and procedural protections required to accomplish that new deprivation of liberty. 8 C.F.R. § 241.13(i)(2)–(3). Treating the original I-205 as unrestricted arrest authority notwithstanding that intervening legal regime would permit the warrant to swallow the very limitations § 241.13 places on re-detention. It would also permit an administrative warrant to accomplish what *Zadvydas* forbids the underlying statute from accomplishing: detention untethered from a presently reasonable prospect of removal. See *Zadvydas v. Davis*, 533 U.S. 678, 689, 699–701 (2001).

The record does not establish lawful compliance with that re-detention regime. It does not show that ICE made the individualized determination contemplated by §§ 241.13(i)(2) and 241.13(f); it contains no post-interview "revocation custody review" evaluating Kong's written response and determining whether the facts warranted "further denial of release"; and the Government never produced the Lao document on which the revocation depended. Those are not harmless procedural imperfections. They are the regulatory conditions governing ICE's authority to undo Kong's supervised release and return him to incarceration. Kong raised those defects before judgment. His Reply specifically argued that § 241.13 requires an individualized foreseeability determination, meaningful reasons, an opportunity to respond, and a subsequent revocation custody review, and it identified the absence of each from Respondents' evidentiary record. The record further shows that Kong actually submitted a written statement, yet Respondents produced "no post-interview custody decision, no factual findings, no evaluation of that submission, and no determination explaining why the facts as determined warranted continued detention."

The factual basis for continued detention has also materially changed—or, more precisely, had already failed by the time judgment entered. ICE represented that the Lao travel document was valid only through September 16, 2026, and that Kong's removal had been scheduled to occur "no later than" that date. Yet Kong was not removed by September 16, and the Court entered judgment on September 21 while he remained detained. The present record identifies no renewed travel document, extension, new Lao authorization, or new removal date. *Zadvydas* directs that "if removal is not reasonably

foreseeable, the court should hold continued detention unreasonable and no longer authorized." 533 U.S. at 699–700. And Kong does not receive an endlessly renewable six-month period of presumptively lawful detention simply because ICE once again placed him in custody after previously releasing him when removal could not be effectuated. The Government must be able to identify what, **now**, makes his removal significantly likely in the reasonably foreseeable future.

The proper remedy is therefore restoration of the last lawful custody status. Courts in this District confronting violations of § 241.13 have not left petitioners incarcerated while permitting ICE to reconstruct the missing regulatory analysis after the fact; they have ordered release to the existing conditions of supervision. *Khounxai P. v. Easterwood*, No. 26-cv-3748 (JMB/ECW), ECF No. 10 at 9–10 (D. Minn. Aug. 27, 2026). There, after finding both an inadequate § 241.13 determination and no evidence of the required post-interview revocation custody review, the Court concluded that "release is the appropriate remedy" and ordered immediate release "subject to the same terms and conditions previously ordered." That relief does not invalidate Kong's removal order or prevent ICE from pursuing removal. It requires only that the Government comply with the law before taking away the liberty it previously restored.

For those reasons, Petitioner respectfully requests that the Court alter or amend the Judgment under Federal Rule of Civil Procedure 59(e), vacate the September 21, 2026 Order to the extent it denies habeas relief, grant the Petition, and order Kong's immediate release in Minnesota subject to the terms and conditions of his preexisting Order of Supervision. In the alternative, if the Court concludes that the present record is

insufficient to order immediate release, Petitioner respectfully requests that the Court reopen the Judgment, require Respondents immediately to produce any currently valid Lao travel document, renewal or extension request, Lao acceptance or authorization, and concrete current removal arrangements, and reconsider the legality of Kong's continued detention on that complete and current record. In all events, the Court should grant such further relief as "law and justice require." 28 U.S.C. § 2243.

Dated: September 22, 2026

Respectfully submitted,

/s/ Stacey R. Rogers
Stacey R. Rogers (WSBA 61754)
SRR Law Group LLC
600 25th Avenue S, Ste. 201
St. Cloud, MN 56301
(507) 271-9405
stacey@srrlawgroup.com
*Attorney for Petitioner*

**CERTIFICATE OF COMPLIANCE**

I, Stacey R. Rogers, certify that the foregoing Petitioner's Memorandum in Support of Motion to Alter or Amend Judgment Pursuant to Federal Rule of Civil Procedure 59(e) complies with Local Rule 7.1(f).

I further certify that, in preparation of the foregoing memorandum, I used Microsoft Word, and that the word-processing program was applied to include all text, including headings, footnotes, and quotations, in the word count, except for those portions excluded by Local Rule 7.1(f)(1)(C).

The foregoing memorandum contains 8053 words.

Dated: September 22, 2026

Respectfully submitted,

/s/ Stacey R. Rogers
Stacey R. Rogers (WSBA 61754)
SRR Law Group LLC
600 25th Avenue S, Ste. 201
St. Cloud, MN 56301
(507) 271-9405
stacey@srrlawgroup.com
*Attorney for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 22, 2026, I electronically filed the foregoing Petitioner's Motion to Alter or Amend Judgment Pursuant to Federal Rule of Civil Procedure 59(e) with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

Dated: September 22, 2026

Respectfully submitted,

/s/ Stacey R. Rogers
Stacey R. Rogers (WSBA 61754)
SRR Law Group LLC
600 25th Avenue S, Ste. 201
St. Cloud, MN 56301
(507) 271-9405
stacey@srrlawgroup.com
*Attorney for Petitioner*