

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

KAW B. H.,

Case No. 26-CV-483 (NEB/SGE)

Petitioner,

v.

ORDER ON
PETITION FOR
WRIT OF HABEAS CORPUS

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 their official capacity as Attorney General of the United States; DAVID EASTERWOOD, in his official capacity as Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement; DAREN K. MARGOLIN, Acting Deputy Director of Executive Office For Immigration Review,

Respondents.

Kaw H. was released from ICE custody on an Order of Supervision in December 2025, only to be re-detained by ICE within two months. Kaw H. petitions for his release. (ECF No. 1 (“Pet.”)) Because ICE failed to comply with Department of Homeland Security regulations in re-detaining Kaw H., the Court grants his Petition in part and orders his release.

BACKGROUND¹

Kaw H. is a 26-year-old refugee from Myanmar who entered the United States in 2011. (Pet. ¶¶ 2, 12, 44.) He left Myanmar to flee persecution and violence inflicted against his ethnic group the Karen. (*Id.* ¶ 44.)

Kaw H. was convicted of several crimes in 2022, including second-degree assault and first-degree attempted robbery. (*Id.* ¶ 3.) He was imprisoned for these crimes through April 2025. (*Id.* ¶ 5.)

While Kaw H. was imprisoned, the DHS initiated removal proceedings. (*Id.* ¶ 4.) An immigration judge found Kaw H. removable but granted Deferral of Removal under the Convention Against Torture with respect to Myanmar, concluding that he will more likely than not be tortured if he is deported there. (*Id.*; ECF No. 7-2 at 1.)

On April 24, 2025, Kaw H. completed his prison sentence for his state crimes and was immediately detained by ICE. (Pet. ¶ 5.) Seven months later, Kaw H. brought a Petition for Writ of Habeas Corpus challenging his detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001). *Kaw B. H. v. Bondi*, 25-CV-4402 (ECT/ECW) (D. Minn. Nov. 21, 2025), ECF No. 1. After a stipulation by the parties, Judge Eric C. Tostrud of the United States District Court for the District of Minnesota ordered Kaw H.'s immediate release. (Pet. ¶ 7; ECF

¹ Much of the factual recitation comes from the facts alleged in the Petition; Respondents do not contest the Petition's factual accuracy.

No. 1-1.) ICE released him on December 1, 2025, on an Order of Supervision. (Pet. ¶¶ 8, 49; ECF No. 1-2.)

On January 20, 2026, Kaw H. attended a biometrics appointment with his attorney. (Pet. ¶ 9.) The appointment proceeded normally, but less than two hours after returning home from the appointment, ICE agents entered Kaw H.'s home and arrested him. (*Id.*) Kaw H. was on the phone with his attorneys during the arrest; his attorneys asked for an explanation for his arrest, and none was provided. (*Id.*)

Since the Order of Supervision was issued, his circumstances have not changed, and he has complied with the Order of Supervision. (*Id.* ¶ 51.) Kaw H. never received notice that his Order of Supervision had been revoked. (*Id.*)

Kaw H. filed a Petition for Writ of Habeas Corpus. (ECF No. 1.) The Petition seeks immediate release, alleging violations of the Fifth Amendment, Immigration and Nationality Act, Administrative Procedure Act, and *Accardi* doctrine. The Court grants Kaw H.'s petition on the grounds that ICE violated its own regulations.

ANALYSIS

An agency must follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). DHS regulations limit revocation of release to two circumstances—(1) on violation of conditions of release, 8 C.F.R. § 241.13(i)(1), or (2) “on account of changed circumstances, the Service determines that there is a significant

likelihood that the alien may be removed in the reasonably foreseeable future,” § 241.13(i)(2). The burden is with Respondents to establish a lawful basis for revoking release. *Yee S. v. Bondi*, --- F. Supp. 3d ---, No. 25-CV-2782 (JMB/DLM), 2025 WL 2879479, at *4 (D. Minn. Oct. 9, 2025); *Roble v. Bondi*, --- F. Supp. 3d ---, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025); *Ban S. v. Bondi*, 25-CV-4750 (PJS/ECW) (D. Minn. Jan. 26, 2026), ECF No. 12 at 2. Upon revocation, the noncitizen must be notified, then there will be an initial interview promptly upon return to custody to allow the noncitizen to respond to the reasons for revocation stated in the notification. 8 C.F.R. § 241.13(i)(3).²

Respondents wholly failed to comply with DHS regulations. Starting with their justification of detention, Respondents do not establish changed circumstances or a significant likelihood of removal. The only justification comes in one sentence in an affidavit: “There is a likelihood of removal in the foreseeable future as ICE Headquarters and Removal Operations is actively working with the Department of State and the Department of Homeland Security on third country removal logistics for [Kaw H].” (ECF No. 7 ¶ 7.) This statement does not explain—as required by DHS regulations—the changed circumstances that preceded Kaw H.’s detention, including Kaw H.’s

² For a thorough recitation of the relevant regulatory framework, see *K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, at *3–4 (W.D. Ky. Sept. 4, 2025).

compliance history, ICE's efforts to secure removal to a third country, the reasonably foreseeable results of those efforts, and the Department of State's views regarding the prospects for removal. 8 C.F.R. § 241.13(f). The Court is especially skeptical of such a generic statement given that the changed circumstances necessarily must have occurred in the last two months; Respondents do not point to any evidence, much less evidence within the last two months. Without records to support ICE's decision, ICE has failed to meet its burden. *Yee S.*, 2025 WL 2879479, at *5–6; *Roble*, 2025 WL 2443453, at *5 (“Courts faced with similarly paltry evidence of changed circumstances have likewise concluded that the government failed to meet its burden under 8 C.F.R. § 241.13(i)(2).”); *Sarail A. v. Bondi*, --- F. Supp. 3d ---, No. 25-CV-2144 (ECT/JFD), 2025 WL 2533673, at *7 (D. Minn. Sept. 3, 2025); *Ban S.*, ECF No. 12 at 2.

ICE also failed to comply with procedural requirements of the DHS regulations. In violation of DHS regulations, ICE did not notify Kaw H. that his Order of Supervision was revoked. 8 C.F.R. § 241.13(i)(3). This notice precedes an opportunity to be heard, including the right to submit evidence, to ensure compliance with Due Process. Without notice, the opportunity to be heard becomes meaningless.³

³ There is no evidence on the record that ICE “conduct[ed] an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3). But the Petition does not allege such a failure (likely because the Petition was filed the

The substantive and procedural deficiencies in Kaw H.'s detention are independent grounds for release. Because ICE failed to comply with its own regulations, Kaw H.'s detention is unlawful, and immediate release is warranted. *Yee S.*, 2025 WL 2879479, at *6; *Roble*, 2025 WL 2443453, at *5–6; *Ban S.*, ECF No. 12 at 2–3. The Court declines to reach other arguments supporting Kaw H.'s release. *See United States v. Turechek*, 138 F.3d 1226, 1229 (8th Cir. 1998).

CONCLUSION

Based on the foregoing and on all the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. The Petition for Writ of Habeas Corpus (ECF No. 1) is GRANTED IN PART.

The Court:

- a. ENJOINS Respondents from moving Petitioner outside of Minnesota prior to his release. If Petitioner has already been removed from Minnesota, Respondents are ORDERED to immediately return and release Petitioner in Minnesota;
- b. ORDERS that Respondents must **immediately release** Petitioner from custody in Minnesota subject to the conditions of Petitioner's

same day as Kaw H.'s detention), so the Court does not make any findings related to this procedural requirement.

Order of Supervision. Respondents must release Petitioner from custody in Minnesota as soon as practicable with coordination or at least two hours' advance notice to counsel, but not later than 24 hours after entry of this Order; and

- c. ORDERS that, within two days of release, the Respondents shall file notice on the docket confirming that release within Minnesota has occurred.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 27, 2026
Time: 11:55 a.m.

BY THE COURT:
s/Nancy E. Brasel
Nancy E. Brasel
United States District Judge