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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**
12 **PHOENIX DIVISION**

13 **Thuc Vien Ho,**

14 *Petitioner,*

15 v.

16 **Gregory J. Archambeault, in his official**
17 **capacity as Field Office Director, San Diego**
18 **Field Office, U.S. Immigration and Customs**
19 **Enforcement,**

20 **David R. Rivas, in his official capacity as**
21 **Warden, San Luis Regional Detention Center,**

22 **United States Department of Homeland**
23 **Security,**

24 **United States Immigration and Customs**
25 **Enforcement,**

26 *Respondents.*

Case No.

PETITION FOR WRIT OF HABEAS
CORPUS

27 **INTRODUCTION**

28 1. This case challenges the unlawful detention of Thuc Vien Ho (“Petitioner” or “Mr. Ho”), who is currently in the custody of United States Immigration and Customs Enforcement (“ICE”) at the San Luis Regional Detention Center, Arizona. Petitioner is neither a flight risk nor a danger to the community. But on or about July 23, 2025, ICE detained him without notice or

1 opportunity to be heard, on the decision of an individual without authority to do so, without
2 findings required by law, and in violation of agency rules. Petitioner asks this Court for an order
3 directing Respondents to immediately release him and restore his conditions of supervised release.
4
5 See *Van Tran v. Noem*, 25-cv-2334-JES-MSB, 2025 U.S. Dist. LEXIS 191834, 7-8 (S.D. Cal.
6 September 29, 2025) (ordering release after examining nearly identical facts).

7 2. ICE may only revoke release and re-detain a person who is compliant with the
8 terms of their supervision under governing regulations and due process “if, on account of changed
9 circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be
10 removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). Removal to Vietnam is
11 not reasonably foreseeable. ICE has not obtained a travel document from Vietnam, nor has
12 Vietnam agreed to accept Mr. Ho. Vietnam has historically accepted few pre-1995 arrivals for
13 repatriation, and there is no evidence that policy has changed or been excused for Mr. Ho, who
14 arrived in the United States in 1990.
15

16 3. What has changed, however, is the U.S. government policy and practice of
17 deporting individuals to third countries, including countries where deportees are imprisoned upon
18 arrival, often in abhorrent conditions. The Trump Administration, in its first eight months in office,
19 has reportedly negotiated with more than 50 countries to accept deportees from other countries,
20 and has carried out deportations to El Salvador, South Sudan, Eswatini, Ghana, Panama, and
21 Costa Rica, where deportees have been indefinitely and arbitrarily imprisoned or detained upon
22 arrival, often incommunicado. It has carried out these removals without following any of the
23 required statutory, regulatory, and constitutional procedures mandated before deporting an
24 individual to a third country. Now, as of October 8, 2025, ICE has adopted a new policy,
25 permitting removals to third countries with as little as six hours of notice to the individual, and
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1 without following the statutory procedures and requirements of due process that ensure an
2 individual has a meaningful opportunity to make a fear-based claim against removal to that
3 country.

4
5 4. Mr. Ho files this habeas petition to seek his release from custody due to ICE's
6 unlawful revocation of his supervised release, and because his removal is not reasonably
7 foreseeable. Petitioner also seeks to enjoin Respondents from removing him to a third country
8 without the notice and opportunity to be heard that is required by the Constitution, and the
9 immigration statute requiring that his case be reopened for removal proceedings, and to enjoin
10 Respondents from removing him to a third country for a punitive purpose and effect.
11

12 5. ICE found that Petitioner was neither a flight risk nor danger to the community
13 when it previously released Petitioner from ICE detention, twenty-five years ago, under an order
14 of supervision. Since then, Petitioner has fully abided by the order's terms, including attending
15 regularly scheduled check-ins with ICE.
16

17 6. Petitioner most recently reported to his ICE check-in on March 27, 2025, where
18 he was scheduled for a follow-up check-in appointment for March 27, 2026.

19 7. Along with the order of supervision, ICE issued Petitioner a release notification
20 which stated that once the agency obtained a travel document for Petitioner, he would "be given
21 the opportunity to prepare for an orderly departure."
22

23 8. On July 23, 2025, Respondents suddenly revoked Petitioner's order of supervision
24 and arrested him. Petitioner has been detained at San Luis Regional Detention Center in Arizona
25 ever since.
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1 9. Respondents have no travel documents that would allow for the execution of
2 Petitioner's removal to Vietnam, and any attempt to remove Petitioner to a third country would
3 be unlawful.

4
5 10. Respondents' punitive detention of Petitioner violates the Due Process Clause of
6 the Fifth Amendment of the U.S. Constitution, the Immigration and Nationality Act and
7 implementing regulations, and the Administrative Procedure Act.

8 11. Petitioner seeks an order directing Respondents to release him.

9
10 **PARTIES**

11 12. Petitioner, Mr. Thuc Vien Ho, has lived in the United States since 1990, a period
12 of over thirty five years.

13 13. Prior to Petitioner's detention on or about July 23, 2025, he was residing in San
14 Diego, California. Petitioner is currently detained at the San Luis Regional Detention Center in
15 Arizona.

16
17 14. Respondent, Gregory J. Archambeault, is sued in his official capacity as the ICE
18 Field Office Director for San Diego, where he oversees the San Luis Regional Detention Center.
19 Upon information and belief, Mr. Archambeault ordered the revocation of Petitioner's order of
20 supervision.

21
22 15. Respondent, David R. Rivas, is sued in his official capacity as Warden of the San
23 Luis Regional Detention Center in Arizona, where Petitioner is currently detained.

24 16. Respondent, United States Department of Homeland Security ("DHS"), is a
25 federal agency headquartered in Washington, D.C. and the parent agency of ICE.

26
27 17. Respondent, United States Immigration and Customs Enforcement is a component
28 agency of DHS.

1 26. From 2000 until ICE detained Mr. Ho on July 23, 2025, Petitioner complied with
2 the conditions of his release and supervision.

3 27. Prior to his detention, ICE did not provide Petitioner with advance notice that his
4 order of supervision was revoked.

5 28. ICE previously provided Petitioner with notice that the agency would provide him
6 with an opportunity to prepare and orderly depart the United States.

7 29. Petitioner has complied with all conditions of the order, including periodic check-
8 ins with ICE. No circumstances have changed in 2025 which would make the Petitioner a flight
9 risk or danger to the community.

10 30. For the last twenty-five years, Petitioner understood from a release notification
11 accompanying the order of supervision, that ICE would give "the opportunity to prepare for an
12 orderly departure" after securing Petitioner's travel documents.

13 31. On July 23, 2025, ICE arrested Petitioner outside his mother's house.

14 32. Masked officers, armed with guns, surrounded Petitioner's car and dragged
15 Petitioner from the passenger seat as his mother watched from their house.

16 33. ICE did not provide any warnings or reason for the arrest.

17 34. At the time, Mr. Ho had custody of his teenage son.

18 35. Upon information and belief, the official responsible for revoking Petitioner's
19 order of supervision did not first refer the case to the ICE Executive Associate Director, did not
20 make findings that revocation was in the public interest and that circumstances did not reasonably
21 permit referral to the Executive Associate Director, and had not been delegated authority to
22 revoke an order of supervision.

1 36. Upon arrest, ICE transferred Petitioner to the San Luis Regional Detention Center,
2 where he is currently detained.

3 37. Respondents have been unable to obtain travel documents for Vietnam.

4 38. At no time following Petitioner's arrest did ICE explain why it revoked
5 Petitioner's order of supervision, or give him an opportunity to respond.
6

7 39. Regrettably, Mr. Ho and his wife have agreed to divorce, and the trial court has set
8 a hearing date in February 2026.

9 40. Mr. Ho cannot attend the hearing in San Diego if he remains detained in Arizona.
10

11 **B. Repatriation To Vietnam**

12 41. Before a Vietnamese immigrant without a passport or other travel document can
13 be repatriated, Vietnam must issue a passport or other travel document in response to a request
14 from ICE. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020).

15 42. Between the end of the Vietnam War and 2008, Vietnam refused to repatriate any
16 Vietnamese immigrant who had been ordered removed from the U.S. *See id.*

17 43. In 2008, Vietnam agreed to consider repatriation requests for Vietnamese
18 immigrants who had arrived in the U.S. after July 12, 1995, but not those who arrived before July
19 12, 1995. *See id.*

20 44. Between 2017 and 2019, ICE requested travel documents for pre-1995 Vietnamese
21 immigrants 251 times; Vietnam granted those requests only 18 times. *Id.* at 1087-88.

22 45. In November 2020, the U.S. and Vietnam signed a Memorandum of
23 Understanding ("MOU") that creates a process for deporting pre-1995 immigrants.

24 46. Section 4 of the MOU obliges the U.S. and Vietnam to consider specific factors
25 prior to deciding to remove a Vietnamese citizen, and prior to deciding to accept for repatriation
26 a Vietnamese citizen.

1 47. These factors are not publicly known, because the U.S. government redacted them
2 in Freedom of Information Act (“FOIA”) disclosures of the MOU, yet they appear to dictate
3 which categories of people may be deported to Vietnam.

4 48. Under Section 8 of the MOU, if a person meets the designated criteria, ICE is
5 expected to put together a documentation package for Vietnam to include, inter alia, a self-
6 declaration form of the individual to be removed (using a form attached to the MOU), copies of
7 identity and citizenship documents, and copies of the final order of removal and any criminal
8 records.

9 49. Between September 2021 to September 2023, Vietnam issued travel documents to
10 only four pre-1995 Vietnamese immigrants whom ICE sought to deport.

11 50. The process to secure a travel document from Vietnam for a pre-1995 immigrant
12 is multilayered and lengthy, requiring interviews and verification by authorities in Vietnam. The
13 only known change has been ICE’s policy and practice of deporting individuals to third countries.

14 51. On June 23 and July 3, 2025, the Supreme Court issued a stay of a national class-
15 wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV
16 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), pending appeal, that
17 requires ICE to follow the statutory and constitutional requirements before removing an
18 individual to a third country. *U.S. Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025)
19 (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).

20 52. On July 9, 2025, ICE issued a new memo to staff, instructing that ICE may deport
21 a person to a third country not designated on the removal order, without any procedures for notice
22 or an opportunity to be heard, if the State Department confirms that it has received diplomatic
23 assurances that individuals will not be persecuted or tortured.

24 53. If no diplomatic assurances are received, the memo instructs officers to serve on
25 the individual a Notice of Removal that includes the intended country of removal.
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1 60. Under substantive due process doctrine, a restraint on liberty like revocation of a
2 non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive
3 objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only
4 recognized two legitimate objectives of immigration detention: preventing danger to the
5 community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92
6 (discussing constitutional limitations on civil detention).
7

8 61. "Procedural due process imposes constraints on governmental decisions which
9 deprive individuals of liberty," like the decision to revoke a non-citizen's order of supervision.
10 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental
11 requirement of [procedural] due process is the opportunity to be heard at a meaningful time and
12 in a meaningful manner." *Id.* at 333 (citation modified).
13

14 **B. Procedure for Revoking an Order of Supervision And Removal To Third**
15 **Countries Without Due Process**

16 62. A non-citizen with a final order of removal "who is not removed within the [90-
17 day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed
18 by the Attorney General." 8 U.S.C. § 1231(a)(3) (titled "Supervision after 90-day period").
19

20 63. A non-citizen may only be detained past the 90-day removal period following a
21 removal order if found to be "a risk to the community or unlikely to comply with the order of
22 removal" or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).
23

24 64. But even where initial detention past the 90-day removal period is authorized, if
25 "removal is not reasonably foreseeable, the court should hold continued detention unreasonable
26 and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien's release may and
27 should be conditioned on any of the various forms of supervised release that are appropriate in
28 the circumstances" *Zadvydas*, 533 U.S. at 699-700.

1 65. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6),
2 that an order of supervision may be revoked and a non-citizen may be re-detained past the removal
3 period: “(1) the purposes of release have been served; (2) the alien violates any condition of
4 release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any
5 other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2);
6 *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen
7 “violates any of the conditions of release”). Because “[r]egulations cannot circumvent the plain
8 text of the statute[,]” courts question whether these regulations are ultra vires of statutory
9 authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018) (comparing
10 regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if
11 person is a risk to the community, unlikely to comply with the order of removal, or was ordered
12 removed on specified grounds).

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14
15 66. The governing regulations permit only certain officials to revoke an order of
16 supervision: the ICE Executive Associate Director, a field office director, or an official “delegated
17 the function or authority . . . for a particular geographic district, region, or area.” *Ceesay v.*
18 *Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and
19 explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4).
20 If the field office director or a delegated official intend to revoke an order of supervision, they
21 must first make findings that “revocation is in the public interest and circumstances do not
22 reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. §
23 241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the
24 delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161
25 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not
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1 include the power to revoke release” insufficient to grant authority to revoke an order of
2 supervision).

3 67. Upon revocation of an order of supervision, ICE must give a non-citizen notice of
4 the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).
5

6 **C. Removal To Third Countries Without Due Process**

7 68. To remove a foreign national to a third country, the INA requires that the Attorney
8 General—by an through a delegate, such as an immigration judge—first determine that it is
9 “impracticable, inadvisable, or impossible” to remove Petitioner to Vietnam and that the
10 designated third country “will accept [Petitioner] into that country.” 8 U.S.C. §
11 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. §
12 1231(b)(E)(vii) “indisputably requires the Attorney General to prove that the proposed country
13 of removal is willing to accept the alien”); *see also Jama v. Immigr. & Customs Enf’t*, 543 U.S.
14 335, 344 (2005).
15

16 69. The statute delegates the authority to the Attorney General, not DHS. 8 U.S.C. §
17 1231(b)(2)(E)(vii) (“the Attorney General shall remove the alien to. . .”); *see also* 8 C.F.R. §
18 1240.10(f) (in removal proceedings the immigration judge “shall. . . identify for the record a
19 country, or countries in the alternative, to which the alien’s removal may be made”).
20

21 70. In order to remove a foreign national to a third country, the Attorney General
22 would need to move to reopen removal proceedings to designate a third country for removal under
23 the statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014)
24 (unpublished) (holding that should a new country of removal be designated, “the agency must
25 provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of
26 his claim of withholding of removal from” the third country); *Aden v. Nielsen*, 409 F. Supp. 3d
27

1 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings “shall be reopened and a
2 hearing shall be held before the immigration judge so that petitioner may apply for relief from
3 removal” as to a country not designated in prior proceedings).

4
5 71. Adherence to that process is necessary to ensure the foreign national has a statutory
6 right to claim protection in immigration court against removal to a third country where he may
7 be persecuted or tortured, a form of protection known as withholding of removal, 8 U.S.C.
8 § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of
9 removal under the Convention Against Torture (“CAT”). *See* 28 C.F.R. § 200.1 (“A removal
10 order. . . shall not be executed in circumstances that would violate [the CAT]”); 8 C.F.R. §§
11 208.17-18, 1208.17-1208.18.

12
13 72. At a minimum, Due Process guarantees meaningful notice of a third country
14 removal and an opportunity to respond. *See D.V.D.*, 145 S. Ct. at 2163 (Sotomayor, J., dissenting)
15 (“[t]he Fifth Amendment unambiguously guarantees that right” to notice of a third country
16 removal so that a noncitizen “learn[s] about it in time to seek an immigration judge’s review”).
17 Notice cannot be “last minute” because that would deprive an individual of a meaningful
18 opportunity to apply for fear-based protection from removal. *Andriasian v. INS*, 180 F.3d 1033,
19 1041 (9th Cir. 1999).

20
21 73. Individuals must have time to prepare and present relevant arguments and
22 evidence and to seek reopening of their removal case. “[W]ritten notice of the country being
23 designated” is required and “the statutory basis for the designation, i.e., the applicable subsection
24 of § 1231(b)(2)” must be specified. *Aden*, 409 F. Supp. 3d at 1019; *see also D.V.D. v. U.S. Dep’t*
25 *of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025)
26 (“All removals to third countries, i.e., removal to a country other than the country or countries
27
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1 designated during immigration proceedings as the country of removal on the non-citizen's order
2 of removal, must be preceded by written notice to both the non-citizen and the non-citizen's
3 counsel in a language the non-citizen can understand." (internal citation omitted); *Andriasian*,
4 180 F.3d at 1041 (due process requires notice to the noncitizen of the right to apply for asylum
5 and withholding to the country where they will be removed).
6

7 74. Due process also demands that the government "ask the noncitizen whether he or
8 she fears persecution or harm upon removal to the designated country and memorialize in writing
9 the noncitizen's response. This requirement ensures DHS will obtain the necessary information
10 from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and
11 noncitizen said]." *Aden*, 409 F. Supp. 3d at 1019.
12

13 75. Any unannounced attempt at a third country removal would violate these statutory
14 and constitutional procedural protections.
15

16 76. According to ICE's July 7 guidance, individuals can be removed to third countries
17 "without the need for further procedures," so long as "the [U.S.] has received diplomatic
18 assurances."
19

20 77. The policy instructs officers to violate their statutory and constitutional
21 requirements.
22

23 78. The same is true of the minimal procedures ICE offers when no diplomatic
24 assurances are present.
25

26 79. The policy provides no meaningful notice (6-24 hours), instructs officers *not* to
27 ask about fear, and provides no actual opportunity to see counsel and prepare a fear-based claim
28 (6-24 hours), let alone reopen removal proceedings.

1 80. In sum, it directs ICE officers to violate the rights of those whom they seek to
2 subject to the third country removal program.

3 81. Several courts have recently granted individual TROs against removal to third
4 countries under similar circumstances. *See generally J.R. v. Bostock*, 25-cv-01161-JNW, 2025
5 WL 1810210 (W.D. Wash. Jun. 30, 2025) (immediately enjoining removal to “Cuba, Libya, or
6 any third country in the world absent prior approval from this Court”); *Phan*, 2025 WL 1993735,
7 at *7 (enjoining Respondents from “re-detaining or removing Petitioner to a third country without
8 notice and an opportunity to be heard”); *Hoac*, 2025 WL 1993771, at *7 (same); *Vaskanyan v.*
9 *Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v. Kaiser*,
10 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025).

11
12
13 **D. The APA Sets Minimum Standards for Final Agency Action**

14 82. The Administrative Procedure Act authorizes judicial review of final agency
15 action. 5 U.S.C. § 704.

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

20
21 84. ICE’s revocation of an order of supervision is a final agency action subject to this
22 Court’s review.

23 85. The revocation here marked the consummation of ICE’s decisionmaking process
24 regarding Petitioner’s custody.
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1 86. The revocation was also an action by which rights or obligations have been
2 determined or from which legal consequences flowed, because it led ICE to detain Petitioner in
3 violation of his rights under the Constitution, statute, and regulation.
4

5 **E. Agencies Must Follow Lawful Rules And Policy**

6 87. Under the *Accardi* doctrine, a foundational principle of administrative law,
7 agencies must follow their own procedures, rules, and instructions. See *United States ex rel.*
8 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where
9 the Board of Immigration Appeals failed to follow procedures governing deportation
10 proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals
11 are affected, it is incumbent upon agencies to follow their own procedures . . . even where the
12 internal procedures are possibly more rigorous than otherwise would be required.”).
13

14 88. *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla*
15 *v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of
16 unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 235
17 (affirming reversal of agency denial of public assistance made in violation of internal agency
18 manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to
19 admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).
20

21 89. Where a release notification issued alongside an order of supervision instructs that
22 a non-citizen with a final order of removal will be given an opportunity to prepare for an “orderly
23 departure,” ICE’s failure to follow that instruction is an *Accardi* violation. See *Ceesay*, 781 F.
24 Supp. 3d at 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and*
25 *remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019);
26
27
28

1 *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an
2 opportunity to prepare for orderly departure).

3 **CLAIMS FOR RELIEF**

4
5 **Count One**
6 **Violation of the Fifth Amendment of the U.S. Constitution**
7 **Substantive Due Process**

8 90. Petitioner realleges all paragraphs above as if fully set forth here.

9 91. The Due Process Clause of the Fifth Amendment Protects against punitive
10 detention and similar restrictions on a person's liberty.

11 92. When ICE issued Petitioner an order of supervision, it found that he is neither a
12 danger to the community nor a flight risk.

13 93. When Respondents revoked the order of supervision, Petitioner had complied with
14 every condition of the order. No change in circumstances warranted the order's revocation.

15 94. Petitioner's detention, therefore, does not bear a reasonable relationship to the two
16 regulatory purposes of immigration detention: preventing danger to the community, or flight prior
17 to removal.

18 95. Because Respondents had no legitimate, non-punitive objective in revoking
19 Petitioner's order of supervision, Petitioner's detention violates substantive due process under the
20 Fifth Amendment to the U.S. Constitution.
21

22
23 **Count Two**
24 **Violation of the Fifth Amendment of the U.S. Constitution**
25 **Procedural Due Process**

26 96. Petitioner realleges all paragraphs above as if fully set forth here.

27 97. The Supreme Court's decision in *Matthews*, 424 U.S. at 333, instructs courts to
28 balance three factors to determine whether procedural due process is satisfied: (1) the private

1 interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used,
2 and the probable value, if any, of additional procedural safeguards; and (3) the government's
3 interest, including fiscal and administrative burdens that additional or substitute procedural
4 requirements entail.

5
6 98. All three demonstrate Respondents have violated Mr. Ho's rights to due process.

7 99. The first factor, the private interest at issue, favors Petitioner. "Freedom from
8 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
9 the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects."
10 *Zadvydas*, 533 U.S. at 690.

11
12 100. The second factor, the risk of erroneous deprivation of liberty and the probable
13 value of procedural safeguards, favors Petitioner.

14 101. To safeguard against erroneous deprivations of liberty, statute specifies the limited
15 number of reasons that an order of supervision can be revoked. Regulations specify who may
16 lawfully revoke the order and the procedures that must be followed when doing so, including
17 giving notice and an opportunity to be heard. Here, Respondents violated those laws, leaving the
18 risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give
19 notice and an opportunity for Petitioner to respond prior to revoking an order of supervision is of
20 great value, because it reduces the probability of needless detention of a person, like Mr. Ho, who
21 is neither dangerous nor a flight risk.

22
23
24 102. The third factor, the government's interest, also favors Petitioner.

25 103. When the government ignores law that ensures notice and an opportunity to
26 respond to a person at risk of revocation of an order of supervision, it is more likely to waste
27 limited financial and administrative resources on unnecessary detention of people who are neither
28

1 flight risks nor dangerous, as is the case with Petitioner. This waste drags down the efficiency of
2 the entire immigration system. And because the government must also spend resources defending
3 against a habeas corpus petition in federal court to compel Respondents to comply with law,
4 requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to
5 revoking an order of supervision reduces fiscal and administrative burdens on the government.
6

7 104. For these reasons, revoking Petitioner's order of supervision, without providing
8 notice and a meaningful opportunity to respond, violated procedural due process under the Fifth
9 Amendment to the U.S. Constitution.

10
11 **Count Three**
12 **Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)**
13 **Contrary to Law and Constitutional Right**

14 105. Petitioner realleges all paragraphs above as if fully set forth here.

15 106. Under the APA, a court shall "hold unlawful and set aside agency action . . . found
16 to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or
17 immunity." 5 U.S.C. § 706(2)(A), (B).

18 107. The APA's reference to "law" in the phrase "not in accordance with law," "means,
19 of course, *any* law, and not merely those laws that the agency itself is charged with administering."
20 *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

21 108. Respondents' revocation of Petitioner's order of supervision was contrary to the
22 agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained
23 above.
24

25 109. The revocation was also not in accordance with the INA and implementing
26 regulations governing who may lawfully revoke an order of supervision and under what
27 circumstances, as cited and discussed in the Statutory Framework section above.
28

1 110. Petitioner's order of supervision was not revoked by the ICE Executive Associate
2 Director. The officer who revoked the order did not first make findings that revocation was in the
3 public interest and that circumstances did not reasonably permit referral to the Executive
4 Associate Director.

5
6 111. Before revoking the order, Respondents did not make findings that Petitioner is
7 dangerous or unlikely to comply with a removal order, as required by statute.

8 112. Even assuming that regulations purporting to offer additional justifications for
9 revocation of an order of supervision are not ultra vires, Respondents did not comply with them.
10 Respondents could not make findings that Petitioner's conduct indicated release would no longer
11 be appropriate or that Petitioner violated any condition of release, because he had not. Nor could
12 Respondents make findings that the purposes of release had been served or that it was appropriate
13 to enforce a removal order, because it had yet to make final arrangements for Petitioner's removal.
14

15 113. Nor did the Respondents give Petitioner notice of the reasons for revocation or
16 offer Petitioner an opportunity to be heard.
17

18 114. The revocation is unlawful, and should be set aside as contrary to the agency's
19 constitutional power and not in accordance with the INA and implementing regulations.

20 **Count Four**
21 **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)**
22 **Arbitrary and Capricious**

23 115. Petitioner realleges all paragraphs above as if fully set forth here.

24 116. Under the APA, a court shall "hold unlawful and set aside agency action . . . found
25 to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

26 117. Respondents' revocation of Petitioner's order of supervision was arbitrary and
27 capricious because it violated statute, regulation, and the Constitution, as described above.
28

1 118. An agency decision that “runs counter to the evidence before the agency” is also
2 arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29,
3 43 (1983).

4 119. Respondents’ decision to revoke Petitioner’s order of supervision ran counter to
5 the evidence before the agency that Petitioner would comply with a demand to appear for removal
6 without detention. Petitioner has never violated a condition of his order of supervision, and no
7 new facts or changed circumstances suggest he would.

8 120. The revocation also “failed to consider important aspects of the problem” before
9 Respondents, making it arbitrary and capricious for multiple other reasons. *Dep’t of Homeland*
10 *Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

11 121. First, Respondents failed to consider the serious constitutional concerns raised by
12 revoking Petitioner’s order of supervision, without notice and opportunity to respond.

13 122. Second, Respondents failed to consider the increased administrative burden to the
14 agency caused by revoking the order of supervision of Petitioner, who is neither a flight risk nor
15 a danger to the community, and for whom the agency does not have travel documents needed to
16 effectuate removal, including financial and administrative costs incurred by the agency due to
17 unnecessary detention.

18 123. Third, Respondents failed to consider reasonable alternatives to revoking
19 Petitioner’s order of supervision, like simply continuing release under the order of supervision
20 and scheduling a future time and date to appear for removal. This alternative would vindicate the
21 government’s interests in effectuating a removal order and save it the expense of detention not
22 needed to guarantee Petitioner’s appearance.

1 124. Fourth, Respondents failed to consider Petitioner's substantial reliance interest,
2 created by its instruction on Petitioner's release notification, the agency would give an
3 opportunity to arrange for an orderly departure once it obtained travel documents.

4
5 125. For these and other reasons, Respondents' revocation of Petitioner's order of
6 supervision was arbitrary and capricious and should be held unlawful and set aside.

7 **Count Five**
8 **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)**
9 **In Excess of Statutory Authority**

10 126. Petitioner realleges all paragraphs above as if fully set forth here.

11 127. Under the APA, a court shall "hold unlawful and set aside agency action . . . found
12 to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."
13 5 U.S.C. § 706(2)(C).

14 128. "An agency . . . literally has no power to act—including under its regulations—
15 unless and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301 (2022)
16 (internal quotation marks and citation omitted).

17
18 129. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period
19 for a person who is found to be a danger to the community, unlikely to comply with a removal
20 order, or whose removal order is on certain grounds specified in the statute. Even then, if removal
21 "is not reasonably foreseeable, the court should hold continued detention unreasonable and no
22 longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien's release may and should be
23 conditioned on any of the various forms of supervised release that are appropriate in the
24 circumstances . . ." *Zadvydas*, 533 U.S. at 699-700.

25
26 130. Regulations that purport to give Respondents authority to revoke an order of
27 supervision on grounds other than those listed in § 1231(a)(6) are ultra vires and in excess of
28

1 statutory authority, because “[r]egulations cannot circumvent the plain text of the statute.” *You*,
2 321 F. Supp. 3d, at 463.

3 131. Respondents’ revocation of Petitioner’s order of supervision was based on ultra
4 vires regulations and actions taken in excess of statutory authority.

5
6 **Count Six**
7 **Ultra Vires Action**

8 132. Petitioner realleges all paragraphs above as if fully set forth here.

9 133. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that
10 violated agency procedures, rules, or instructions. *See Accardi*, 347 U.S. at 260 (“If petitioner can
11 prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new
12 hearing”).

13 134. Respondents violated agency regulations governing who and upon what findings
14 may properly revoke an order of supervision, when it revoked Petitioner’s order. “As a result, this
15 Court cannot conclude that [the revoking officer] had the authority to revoke release[,]” and
16 Petitioner “is entitled to release on that basis alone.” *Ceesay*, 781 F. Supp. 3d at 162 (*citing*
17 *Rombot*, 296 F. Supp. 3d at 386-89); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y.
18 Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas
19 petitioner where revocation of an ICE order of supervision was ordered by someone without
20 regulatory authority to do so).
21

22 135. Respondents also violated agency instructions in Petitioner’s release notification
23 to give an opportunity to prepare for an orderly departure when they revoked Petitioner’s order
24 without advance notice.
25
26
27
28

