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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**
12 **PHOENIX DIVISION**
13

14 **Chi Thien Bui,**

15 *Petitioner,*

16 v.

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

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

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

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

27 *Respondents.*
28

Case No.

**PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1. This case challenges the unlawful detention of Chi Thien Bui (“Petitioner” or “Mr. Bui”), 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. On or about April 17, 2025, ICE detained Mr. Bui 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 regarding orders of supervision
3 (“OSUP”). Petitioner asks this Court for an order directing Respondents to immediately release
4 him and restore his conditions of supervised release. *See Van Tran v. Noem*, 25-cv-2334-JES-
5 MSB, 2025 U.S. Dist. LEXIS 191834, 7-8 (S.D. Cal. September 29, 2025) (ordering release after
6 examining nearly identical facts).
7

8 2. ICE may only revoke release and re-detain a person who is compliant with the
9 terms of their supervision under governing regulations and due process “if, on account of changed
10 circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be
11 removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). Prior to detaining Mr. Bui,
12 ICE did not provide him with notice of his OSUP was revoked.
13

14 3. Removal to Vietnam is not reasonably foreseeable. ICE has not obtained a travel
15 document from Vietnam, nor has Vietnam agreed to accept Mr. Bui. Vietnam has historically
16 accepted few pre-1995 arrivals for repatriation, and there is no evidence that policy has changed
17 or been excused for Mr. Bui, who arrived in the United States on June 15, 1984.
18

19 4. What has changed, however, is the U.S. government policy and practice of
20 deporting individuals to third countries, including countries where deportees are imprisoned upon
21 arrival, often in abhorrent conditions. The Trump Administration, in its first eight months in office,
22 has reportedly negotiated with more than 50 countries to accept deportees from other countries,
23 and has carried out deportations to El Salvador, South Sudan, Eswatini, Ghana, Panama, and
24 Costa Rica, where deportees have been indefinitely and arbitrarily imprisoned or detained upon
25 arrival, often incommunicado. It has carried out these removals without following any of the
26 required statutory, regulatory, and constitutional procedures mandated before deporting an
27

1 individual to a third country. Now, as of October 8, 2025, ICE has adopted a new policy,
2 permitting removals to third countries with as little as six hours of notice to the individual, and
3 without following the statutory procedures and requirements of due process that ensure an
4 individual has a meaningful opportunity to make a fear-based claim against removal to that
5 country.

6
7 5. Mr. Bui files this habeas petition to seek his release from custody due to ICE's
8 unlawful revocation of his order of supervised release. Petitioner also seeks to enjoin Respondents
9 from removing him to a third country without the notice and opportunity to be heard that is
10 required by the Constitution, and the immigration statute requiring that his case be reopened for
11 removal proceedings.

12
13 6. ICE found that Petitioner was neither a flight risk nor danger to the community
14 when it previously released Petitioner from ICE detention in January 2015, under an order of
15 supervision. Since then, Petitioner has fully abided by the order's terms, including attending
16 regularly scheduled check-ins with ICE.

17
18 7. Respondents' punitive detention of Petitioner violates the Due Process Clause of
19 the Fifth Amendment of the U.S. Constitution, the Immigration and Nationality Act and
20 implementing regulations, and the Administrative Procedure Act.

21 **PARTIES**

22 8. Petitioner, Mr. Chi Thien Bui, has lived in the United States since June 15, 1984,
23 a period of thirty nine years. Prior to Petitioner's detention on or about April 17, 2025, he was
24 residing in San Diego, California. Petitioner is currently detained at the San Luis Regional
25 Detention Center in Arizona.
26

1 17. After living in a refugee camp in Indonesia, Mr. Bui and his family emigrated to
2 the United States on June 15, 1984.

3 18. On January 10, 1991, Petitioner became a lawful permanent resident.

4 19. Regrettably, Petitioner was ordered removed on January 21, 2015 due to a federal
5 conviction.
6

7 20. Mr. Bui was released on an OSUP once the immigration judge ordered him
8 removed to Vietnam.

9 21. Petitioner is married to a United States citizen, and Mr. Bui has one United States
10 citizen daughter and one United States children stepdaughter.
11

12 22. Mr. Bui's six siblings: two are lawful permanent residents and four siblings are
13 United States citizens.

14 23. Mr. Bui's parents are also United States citizens.

15 24. From 2015 until ICE detained Mr. Bui on April 17, 2025, he complied with the
16 conditions of his release and supervision.
17

18 25. In 2022, ICE began allowing Mr. Bui to electronically check-in using a kiosk at
19 the San Diego Field Office.

20 26. While using this system on April 17, 2025, officers apprehended him.

21 27. Prior to his detention, ICE did not provide Petitioner with advance notice that his
22 order of supervision was revoked.
23

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

26 29. No circumstances had changed that would make the Petitioner a flight risk or
27 danger to the community.
28

1 30. For the last decade, Petitioner understood from a release notification
2 accompanying the order of supervision, that ICE would give “the opportunity to prepare for an
3 orderly departure” after securing Petitioner’s travel documents.

4 31. Upon information and belief, the official responsible for revoking Petitioner’s
5 order of supervision did not first refer the case to the ICE Executive Associate Director, did not
6 make findings that revocation was in the public interest and that circumstances did not reasonably
7 permit referral to the Executive Associate Director, and had not been delegated authority to
8 revoke an order of supervision.
9

10 32. Upon arrest, ICE transferred Petitioner to the Otay Mesa Detention Center until
11 August 15, 2025, when ICE transferred him to San Luis Regional Detention Center, where he is
12 currently detained.
13

14 33. Respondents forced Mr. Bui to request travel documents for Vietnam.

15 34. Vietnam refused Mr. Bui’s request.
16

17 **B. Repatriation To Vietnam**

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

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

23 37. In 2008, Vietnam agreed to consider repatriation requests for Vietnamese
24 immigrants who had arrived in the U.S. after July 12, 1995, but not those who arrived before July
25 12, 1995. *See id.*

26 38. Between 2017 and 2019, ICE requested travel documents for pre-1995 Vietnamese
27 immigrants 251 times; Vietnam granted those requests only 18 times. *Id.* at 1087-88.
28

1 39. In November 2020, the U.S. and Vietnam signed a Memorandum of
2 Understanding (“MOU”) that creates a process for deporting pre-1995 immigrants.

3 40. Section 4 of the MOU obliges the U.S. and Vietnam to consider specific factors
4 prior to deciding to remove a Vietnamese citizen, and prior to deciding to accept for repatriation
5 a Vietnamese citizen.

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

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

14 43. Between September 2021 to September 2023, Vietnam issued travel documents to
15 only four pre-1995 Vietnamese immigrants whom ICE sought to deport.

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

19 45. On June 23 and July 3, 2025, the Supreme Court issued a stay of a national class-
20 wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV
21 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), pending appeal, that
22 requires ICE to follow the statutory and constitutional requirements before removing an
23 individual to a third country. *U.S. Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025)
24 (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).

25 46. On July 9, 2025, ICE issued a new memo to staff, instructing that ICE may deport
26 a person to a third country not designated on the removal order, without any procedures for notice
27

1 or an opportunity to be heard, if the State Department confirms that it has received diplomatic
2 assurances that individuals will not be persecuted or tortured.

3 47. If no diplomatic assurances are received, the memo instructs officers to serve on
4 the individual a Notice of Removal that includes the intended country of removal.

5 48. It tells officers not to ask whether the individual is afraid of removal to that
6 country, and states that officers should “generally wait at least 24 hours following service of the
7 Notice of Removal before effectuating removal.”

8 49. But states that “[i]n exigent circumstances, [ICE] may execute a removal order
9 six (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided
10 reasonable means and opportunity to speak with an attorney prior to removal.”

11 50. The memo further instructs that if the noncitizen “does not affirmatively state a
12 fear of persecution or torture if removed to the country of removal listed on the Notice of Removal
13 within 24 hours, [ICE] may proceed with removal to the country identified on the notice.” If the
14 noncitizen “does affirmatively state a fear if removed to the country of removal,” then ICE will
15 refer the case to U.S. Citizenship and Immigration Services (“USCIS”) for a screening for
16 eligibility for withholding of removal and protection under the Convention Against Torture.
17

18 51. “USCIS will generally screen within 24 hours.” *Id.*

19 52. If USCIS determines that the [noncitizen] does not meet the standard, the
20 individual will be removed. *Id.* If USCIS determines that they have met the standard, then the
21 policy directs ICE to either move to reopen removal proceedings “for the sole purpose of
22 determining eligibility for [withholding of removal protection] and [Convention Against Torture
23 (‘CAT’)] or designate another country for removal.” *Id.*

24 LEGAL BACKGROUND

25 **A. Due Process Governs Decisions to Revoke an Order of Supervision**

26 53. “The Due Process Clause applies to all persons within the United States, including
27 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v.*
28

1 *Davis*, 533 U.S. 678, 693 (2001) (citation modified). “Freedom from imprisonment—from
2 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty
3 that Clause protects.” *Id.* at 690 (2001).

4 54. Under substantive due process doctrine, a restraint on liberty like revocation of a
5 non-citizen’s order of supervision is only permissible if it serves a “legitimate nonpunitive
6 objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only
7 recognized two legitimate objectives of immigration detention: preventing danger to the
8 community or preventing flight prior to removal. *See Zadvydas*, 533 U.S. at 690-92 (discussing
9 constitutional limitations on civil detention).
10

11 55. “Procedural due process imposes constraints on governmental decisions which
12 deprive individuals of liberty,” like the decision to revoke a non-citizen’s order of supervision.
13 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental
14 requirement of [procedural] due process is the opportunity to be heard at a meaningful time and
15 in a meaningful manner.” *Id.* at 333 (citation modified).
16

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

19 56. A non-citizen with a final order of removal “who is not removed within the [90-
20 day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed
21 by the Attorney General.” 8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day period”).
22

23 57. A non-citizen may only be detained past the 90-day removal period following a
24 removal order if found to be “a risk to the community or unlikely to comply with the order of
25 removal” or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).
26

27 58. But even where initial detention past the 90-day removal period is authorized, if
28 “removal is not reasonably foreseeable, the court should hold continued detention unreasonable
PETITION FOR WRIT OF HABEAS CORPUS - 9

1 and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien's release may and
2 should be conditioned on any of the various forms of supervised release that are appropriate in
3 the circumstances" *Zadvydus*, 533 U.S. at 699-700.

4 59. Regulations provide the following additional circumstances, beyond those listed
5 at § 1231(a)(6), that allow for the revocation of an order of supervision and re-detention of a non:
6 "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3)
7 "it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other
8 circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); *see*
9 *also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen
10 "violates any of the conditions of release").

11 12
13 60. Because "[r]egulations cannot circumvent the plain text of the statute[.]" these
14 regulations are *ultra vires* of statutory authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d 451,
15 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention
16 past the removal period only if person is a risk to the community, unlikely to comply with the
17 order of removal, or was ordered removed on specified grounds).

18 19 61. The governing regulations permit only certain officials to revoke an order of
20 supervision: the ICE Executive Associate Director, a field office director, or an official "delegated
21 the function or authority . . . for a particular geographic district, region, or area." *Ceesay v.*
22 *Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and
23 explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4).
24 If the field office director or a delegated official intend to revoke an order of supervision, they
25 must first make findings that "revocation is in the public interest and circumstances do not
26 reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. §
27

1 241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the
2 delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161
3 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not
4 include the power to revoke release” insufficient to grant authority to revoke an order of
5 supervision).

6
7 62. Upon revocation of an order of supervision, ICE must give a non-citizen notice of
8 the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

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

10 63. To remove a foreign national to a third country, the INA requires that the Attorney
11 General—by an through a delegate, such as an immigration judge—first determine that it is
12 “impracticable, inadvisable, or impossible” to remove Petitioner to Vietnam and that the
13 designated third country “will accept [Petitioner] into that country.” 8 U.S.C. §
14 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. §
15 1231(b)(E)(vii) “indisputably requires the Attorney General to prove that the proposed country
16 of removal is willing to accept the alien”); *see also Jama v. Immigr. & Customs Enf’t*, 543 U.S.
17 335, 344 (2005).

18
19
20 64. The statute delegates the authority to the Attorney General, not DHS. 8 U.S.C. §
21 1231(b)(2)(E)(vii) (“the Attorney General shall remove the alien to. . .”); *see also* 8 C.F.R. §
22 1240.10(f) (in removal proceedings the immigration judge “shall. . . identify for the record a
23 country, or countries in the alternative, to which the alien’s removal may be made”).

24
25 65. In order to remove a foreign national to a third country, the Attorney General
26 would need to move to reopen removal proceedings to designate a third country for removal under
27 the statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014)

1 (unpublished) (holding that should a new country of removal be designated, “the agency must
2 provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of
3 his claim of withholding of removal from” the third country); *Aden v. Nielsen*, 409 F. Supp. 3d
4 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings “shall be reopened and a
5 hearing shall be held before the immigration judge so that petitioner may apply for relief from
6 removal” as to a country not designated in prior proceedings).

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

15 67. At a minimum, Due Process guarantees meaningful notice of a third country
16 removal and an opportunity to respond. *See D.V.D.*, 145 S. Ct. at 2163 (Sotomayor, J., dissenting)
17 (“[t]he Fifth Amendment unambiguously guarantees that right” to notice of a third country
18 removal so that a noncitizen “learn[s] about it in time to seek an immigration judge’s review”).
19 Notice cannot be “last minute” because that would deprive an individual of a meaningful
20 opportunity to apply for fear-based protection from removal. *Andriasian v. INS*, 180 F.3d 1033,
21 1041 (9th Cir. 1999).

24 68. Individuals must have time to prepare and present relevant arguments and
25 evidence and to seek reopening of their removal case. “[W]ritten notice of the country being
26 designated” is required and “the statutory basis for the designation, i.e., the applicable subsection
27 of § 1231(b)(2)” must be specified. *Aden*, 409 F. Supp. 3d at 1019; *see also D.V.D. v. U.S. Dep’t*
28

1 of *Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025)
2 (“All removals to third countries, *i.e.*, removal to a country other than the country or countries
3 designated during immigration proceedings as the country of removal on the non-citizen’s order
4 of removal, must be preceded by written notice to both the non-citizen and the non-citizen’s
5 counsel in a language the non-citizen can understand.” (internal citation omitted)); *Andriasian*,
6 180 F.3d at 1041 (due process requires notice to the noncitizen of the right to apply for asylum
7 and withholding to the country where they will be removed).
8

9 69. Due process also demands that the government “ask the noncitizen whether he or
10 she fears persecution or harm upon removal to the designated country and memorialize in writing
11 the noncitizen’s response. This requirement ensures DHS will obtain the necessary information
12 from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and
13 noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019.
14

15 70. Any unannounced attempt at a third country removal would violate these statutory
16 and constitutional procedural protections.
17

18 71. According to ICE’s July 7 guidance, individuals can be removed to third countries
19 “without the need for further procedures,” so long as “the [U.S.] has received diplomatic
20 assurances.”
21

22 72. The policy instructs officers to violate their statutory and constitutional
23 requirements.
24

25 73. The same is true of the minimal procedures ICE offers when no diplomatic
26 assurances are present.
27
28

1 74. The policy provides no meaningful notice (6-24 hours), instructs officers *not* to
2 ask about fear, and provides no actual opportunity to see counsel and prepare a fear-based claim
3 (6-24 hours), let alone reopen removal proceedings.

4 75. In sum, it directs ICE officers to violate the rights of those whom they seek to
5 subject to the third country removal program.

6 76. Several courts have recently granted individual TROs against removal to third
7 countries under similar circumstances. *See generally J.R. v. Bostock*, 25-cv-01161-JNW, 2025
8 WL 1810210 (W.D. Wash. Jun. 30, 2025) (immediately enjoining removal to “Cuba, Libya, or
9 any third country in the world absent prior approval from this Court”); *Phan*, 2025 WL 1993735,
10 at *7 (enjoining Respondents from “re-detaining or removing Petitioner to a third country without
11 notice and an opportunity to be heard”); *Hoac*, 2025 WL 1993771, at *7 (same); *Vaskanyan v.*
12 *Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v. Kaiser*,
13 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025).

14 **D. The APA Sets Minimum Standards for Final Agency Action**

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

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

21 79. ICE’s revocation of an order of supervision is a final agency action subject to this
22 Court’s review.
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1 80. The revocation here marked the consummation of ICE's decisionmaking process
2 regarding Petitioner's custody.

3 81. The revocation was also an action by which rights or obligations have been
4 determined or from which legal consequences flowed, because it led ICE to detain Petitioner in
5 violation of his rights under the Constitution, statute, and regulation.

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

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

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

21 84. 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
26
27
28

1 *remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019);
2 *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an
3 opportunity to prepare for orderly departure).

4 **CLAIMS FOR RELIEF**

5 **Count One**

6 **Violation of the Fifth Amendment of the U.S. Constitution**
7 **Substantive Due Process**

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

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

11 87. 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 88. When Respondents revoked the order of supervision, it did not provide any notice
14 to Mr. Bui.

15 89. Mr. Bui had complied with every condition of the order.

16 90. No change in circumstances warranted the order's revocation.

17 91. Petitioner's surprise arrest and detention, therefore, did not bear a reasonable
18 relationship to the two regulatory purposes of immigration detention: preventing danger to the
19 community, or flight prior to removal.

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

1 and an opportunity for Petitioner to respond prior to revoking an order of supervision is of great
2 value, because it reduces the probability of needless detention of a person, like Mr. Bui, who is
3 neither dangerous nor a flight risk.

4 100. The third factor, the government's interest, also favors Petitioner.

5
6 101. When the government ignores law that ensures notice and an opportunity to
7 respond to a person at risk of revocation of an order of supervision, it is more likely to waste
8 limited financial and administrative resources on unnecessary detention of people who are neither
9 flight risks nor dangerous, as is the case with Petitioner. This waste drags down the efficiency of
10 the entire immigration system. And because the government must also spend resources defending
11 against a habeas corpus petition in federal court to compel Respondents to comply with law,
12 requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to
13 revoking an order of supervision reduces fiscal and administrative burdens on the government.

14
15 102. For these reasons, revoking Petitioner's order of supervision, without providing
16 notice and a meaningful opportunity to respond, violated procedural due process under the Fifth
17 Amendment to the U.S. Constitution.

18
19 **Count Three**
20 **Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)**
21 **Contrary to Law and Constitutional Right**

22 103. Petitioner realleges all paragraphs above as if fully set forth here.

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

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

4 106. Respondents' revocation of Petitioner's order of supervision violated the INA and
5 implementing regulations governing who may lawfully revoke an order of supervision and under
6 what circumstances, as cited and discussed in the Statutory Framework section above.

7 107. Petitioner's order of supervision was not revoked by the ICE Executive Associate
8 Director. The officer who revoked the order did not first make findings that revocation was in the
9 public interest and that circumstances did not reasonably permit referral to the Executive
10 Associate Director.
11

12 108. Before revoking the order, Respondents did not make findings that Petitioner is
13 dangerous or unlikely to comply with a removal order, as required by statute.
14

15 109. Even assuming that regulations purporting to offer additional justifications for
16 revocation of an order of supervision are not *ultra vires*, Respondents did not comply with them.
17 Respondents could not make findings that Petitioner's conduct indicated release would no longer
18 be appropriate or that Petitioner violated any condition of release, because he had not. Nor could
19 Respondents make findings that the purposes of release had been served or that it was appropriate
20 to enforce a removal order, because it had yet to make final arrangements for Petitioner's removal.
21

22 110. Nor did the Respondents give Petitioner notice of the reasons for revocation or
23 offer Petitioner an opportunity to be heard.
24

25 111. The revocation is unlawful, and must be set aside as contrary to the agency's
26 constitutional power and not in accordance with the INA and implementing regulations.
27

1 effectuate removal, including financial and administrative costs incurred by the agency due to
2 unnecessary detention.

3 120. Third, Respondents failed to consider reasonable alternatives to revoking
4 Petitioner's order of supervision, like simply continuing release under the order of supervision
5 and scheduling a future time and date to appear for removal. This alternative would vindicate the
6 government's interests in effectuating a removal order and save it the expense of detention not
7 needed to guarantee Petitioner's appearance.
8

9 121. Fourth, Respondents failed to consider Petitioner's substantial reliance interest,
10 created by its instruction on Petitioner's release notification, the agency would give an
11 opportunity to arrange for an orderly departure once it obtained travel documents.
12

13 122. For these and other reasons, Respondents' revocation of Petitioner's order of
14 supervision was arbitrary and capricious and must be held unlawful and set aside.
15

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

19 123. Petitioner realleges all paragraphs above as if fully set forth here.

20 124. Under the APA, a court shall "hold unlawful and set aside agency action . . . found
21 to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."
22 5 U.S.C. § 706(2)(C).
23

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

26 126. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period
27 for a person who is found to be a danger to the community, unlikely to comply with a removal
28

1 order, or whose removal order is on certain grounds specified in the statute. Even then, if removal
2 “is not reasonably foreseeable, the court should hold continued detention unreasonable and no
3 longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and should be
4 conditioned on any of the various forms of supervised release that are appropriate in the
5 circumstances” *Zadvydas*, 533 U.S. at 699-700.

7 127. Regulations that purport to give Respondents authority to revoke an order of
8 supervision on grounds other than those listed in § 1231(a)(6) are *ultra vires* and in excess of
9 statutory authority, because “[r]egulations cannot circumvent the plain text of the statute.” *You*,
10 321 F. Supp. 3d. at 463.

11 128. Respondents’ revocation of Petitioner’s order of supervision was based on *ultra*
12 *vires* regulations and actions taken in excess of statutory authority.

14 **Count Six**
15 **Ultra Vires Action**

16 129. Petitioner realleges all paragraphs above as if fully set forth here.

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

21 131. Respondents violated agency regulations governing who and upon what findings
22 may properly revoke an order of supervision, when it revoked Petitioner’s order. “As a result, this
23 Court cannot conclude that [the revoking officer] had the authority to revoke release[,]” and
24 Petitioner “is entitled to release on that basis alone.” *Ceesay*, 781 F. Supp. 3d at 162 (*citing*
25 *Rombot*, 296 F. Supp. 3d at 386-89); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y.
26 Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas
27

1 petitioner where revocation of an ICE order of supervision was ordered by someone without
2 regulatory authority to do so).

3 132. Respondents also violated agency instructions in Petitioner's release notification
4 to give an opportunity to prepare for an orderly departure when they revoked Petitioner's order
5 without advance notice.
6

7 133. Under *Accardi*, Respondents' revocation of the order of supervision and decision
8 to ignore instructions in the release notification should be set aside for violating agency
9 procedures, rules, or instructions.
10

11 **PRAAYER FOR RELIEF**

12 WHEREFORE, Petitioner requests that this Court:

- 13 A. Exercise jurisdiction over this matter;
- 14 B. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and
15 the United States pending its adjudication of this petition;
- 16 C. Declare that Petitioner's detention violates the Due Process Clause of the Fifth
17 Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;
- 18 D. Order Petitioner's immediate release;
- 19 E. Award Petitioner costs and reasonable attorneys' fees; and
- 20 F. Order such other relief as this Court may deem just and proper.
21

22 October 14, 2025

Respectfully Submitted,

23 /s/Jesse M. Bless

24 Jesse M. Bless

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28

Admitted Pro Hac Vice
Attorney for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. On the basis of documents, discussions with Petitioner's counsel, and Petitioner's family, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

/s/Jesse M. Bless
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