UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Emma Cecilia SIGUENCIA-ROMERO, Evelyn SAETEROS SIGUENCIA E.S.S. (A Minor) ***Petitioners-Plaintiffs,*** **v.** **William JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Todd LYONS, in his official capacity as Acting Director U.S. Immigration and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; U.S. Department of Homeland Security; U.S. Immigration and Customs Enforcement.** ***Respondents.***	**Case No. 1:25-cv-08975** **AMENDED VERIFIED PETITION FOR EMERGENCY WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE RELIEF** ***ORAL ARGUMENT REQUESTED***

INTRODUCTION

1. This case challenges the unlawful detention of "Petitioners", Ms. Emma Siguencia Romero ("Lead Petitioner") and her two children, E[redacted] (age 18), and E.S.S. (age 9) (both "Minor Petitioners"). This family was abruptly detained at 26 Federal Plaza in New York, New York and are currently in the custody of Immigration and Customs Enforcement ("ICE") at the Dilley Immigration Processing Center in Texas ("Dilley Detention Center"). Petitioners are neither a flight risk nor a danger to the community. Nevertheless, on October 29, 2025, ICE detained them without notice or opportunity to be heard, and without findings required by law.

2. ICE found that Petitioners were neither a flight risk nor danger to the community when it initially released Petitioners from ICE detention in July 2021 and placed them, upon

information and belief, under the Intensive Supervision Appearance Program ("ISAP"). Petitioners fully abided by the terms of this supervision, including checking in electronically and in person at the local ISAP office as required. Following the Board of Immigration Appeals' ("BIA") dismissal of Petitioners' appeal of the denial of their application for asylum, withholding and relief under CAT, Petitioners received a final order of removal on September 29, 2023. Subsequent to this BIA order, ICE declined to detain Petitioners during the 90 day removal period. ICE further failed to place Petitioners on an Order of Supervision ("OSUP"), as required by 8 U.S.C. § 1231(a)(3). Instead, ICE maintained the same conditions of release, and subjected Petitioners to ongoing ISAP check-ins. In so doing, ICE continued to determine that Petitioners were neither a flight risk nor danger to the community.

3. Upon information and belief, ICE instructed Lead Petitioner to attend an in-person check-in at 26 Federal Plaza, New York, New York on August 27, 2025. At this appointment, ICE informed Ms. Siguencia Romero and her accompanying attorney, Daria Campion, that she would not be detained because she had a motion to reopen pending at the BIA.

4. However, at the following scheduled check-in with ICE on October 29, 2025, Respondents-Defendants suddenly revoked Petitioners' release and detained Ms. Siguencia Romero and her two children. Respondents-Defendants made no allegation that changed circumstances warranted a revocation of release, and refused to consider evidence provided by the attorney indicating that Petitioners were in the process of applying for humanitarian immigration relief: for Ms. Siguencia Romero, U nonimmigrant status ("U visa"), and for the Minor Petitioners, Special Immigrant Juvenile Status ("SIJS").

5. Ms. Siguencia Romero has suffered severe abuse [redacted] for twenty years.

[redacted] Ms. Siguencia Romero reported this incident to the police, and the New York City Police Department has signed a certification form, making Ms. Siguencia Romero and her children eligible for U nonimmigrant status.

6. [redacted] Minor Petitioners are therefore eligible for SIJS.

7. ICE detained this family of domestic violence victims at 26 Federal Plaza, New York, NY on Wednesday, October 29, 2025, and at some time later that day, transferred them to the Dilley Detention Center. As of November 4, 2025, Petitioners are in ICE Custody at the Dilley Detention Center. Upon information and belief, Lead Petitioner Ms. Siguencia Romero is detained together with her 9-year-old son but has been separated from her 18-year-old daughter, E[redacted] who is detained elsewhere at the Dilley Detention Center.

8. Respondents-Defendants' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

9. Petitioners bring this action for injunctive, habeas, and declaratory relief ordering Respondents to release them.

10. Petitioners also seek a temporary restraining order preventing Respondents from removing Petitioners from the United States until the resolution of this habeas petition.

PARTIES

11. Petitioner, Ms. Siguencia Romero, and her two children have lived in the United States for more than four years. Prior to Petitioners' detention on October 29, 2025, they were residing in Queens, New York. Petitioners are currently detained at the Dilley Detention Center but were in ICE custody at 26 Federal Plaza, New York, New York at the time this Petition was initially filed on October 29, 2025.

12. Respondent-Defendant William Joyce is sued in his official capacity as the ICE Acting Field Office Director of New York, Immigration and Customs Enforcement, which includes 26 Federal Plaza, New York. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Joyce's address is New York ICE Field Office Director, 26 Federal Plaza, 7th Floor, New York, New York 10278. The decision to revoke Petitioner's Release on Recognizance and detain Petitioners was made the office he oversees.

13. Respondent Todd Lyons is sued in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

14. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); routinely

transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such, is a legal custodian of the Petitioner.

15. Respondent-Defendant U.S. Department of Homeland Security ("DHS") is a federal agency headquartered in Washington, D.C. and the parent agency of ICE.

16. Respondent-Defendant ICE is a component agency of DHS.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, and Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*

18. Venue is proper in Southern District of New York under 28 U.S.C. § 1391(e)(1) because Respondents-Defendants are officers of United States agencies, Petitioners were physically held in ICE custody at 26 Federal Plaza, New York at the time of the filing of the initial Petition, and there is no real property involved in this action.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

19. Lead Petitioner is a forty-one year old woman who fled Ecuador in 2021. Petitioners arrived in the United States on July 26, 2021 and have continuously resided in Queens, New York since then.

20. Petitioners have never been arrested in Ecuador or in the United States. Lead Petitioner is the sole caregiver for her two children. E[redacted] is 18 years old, and is attending her first year of college at [redacted] E[redacted] is studying International Trade and hopes to work in that field when she graduates. Lead Petitioner's son is nine years old and a third grader at [redacted] He hopes to become a writer and a scientist who can travel to

the moon someday with his mother. They both love their mother and their lives in the United States and hope to remain here.

Arrival in United States and Release

21. Petitioners arrived in the United States on July 21, 2021 and were apprehended near the border in California. The family was detained at the border for approximately 24 hours, then released to travel to New York City.

22. Petitioner was placed on ISAP and frequently checked in with the local office in Jamaica, Queens, both electronically and in person. She was always fully compliant with all the requirements of the program. Petitioners were not required to attend any check-ins with ICE from their entry in 2021 until August 2025.

23. Petitioner's asylum case was denied by an Immigration Judge on January 23, 2023. Petitioners timely appealed to the BIA. The BIA upheld the denial of asylum on September 29, 2023, making the Petitioners' order of removal administratively final. *See* Exhibit A, Automated Case Information of Ms. Siguencia Romero.

24. In the 22 months that followed, the terms of Ms. Siguencia Romero and her family's release did not change. They were not placed on an Order of Supervision ("OSUP"). They continued to check in with ISAP as usual until August 2025, when they were informed that she had to attend an ICE check-in at 26 Federal Plaza for the first time. Ms. Siguencia Romero was also fitted with an electronic ankle monitor at that time. Based on this monitor, Lead Petitioner reasonably believed that ICE contemplated her remaining in the United States for the foreseeable future.

25. Ms. Siguencia Romero was given a document reflecting an ICE check-in date of August 27, 2025. This document was labeled "Order of Release on Recognizance (Continuation Page)." Exhibit B, Continuation Page of Order of Release on Recognizance.

ICE Check-Ins at 26 Federal Plaza

26. Petitioners appeared at 26 Federal Plaza, New York, as instructed, on the morning of August 27, 2025, together with their attorney, Daria Campion. Ms. Campion brought with her a letter explaining that Ms. Siguencia Romero was likely eligible for a U visa, and proof that her children's SIJS proceedings were underway in Queens Family Court. The ICE officer informed Ms. Campion that he was not interested in seeing these materials, because he could see that Ms. Siguencia Romero had filed a motion to reopen with the BIA on June 26, 2025. The officer told Petitioner and Ms. Campion that Petitioners would not be detained and were not at risk of detention or removal because the motion to reopen was pending. At no time did ICE ask the Petitioners to provide their passports. ICE informed Petitioners that they were required to return for their next check-in at 26 Federal Plaza on October 29, 2025, and wrote this date down on Lead Petitioner's ROR continuation page.

27. Despite assuring Lead Petitioner that they would not be detained or deported while a motion remained pending before the BIA, during the check-in on October 29, 2025, ICE suddenly revoked Petitioner's ROR and arrested her and her two children. Petitioners' motion before the BIA was pending at that time (and remains pending at the time of this filing).

28. At the time of her arrest, Lead Petitioner was accompanied by her two children and her immigration attorney, Kelly Becker-Smith. Ms. Becker-Smith presented ICE Officer Haynes with a Domestic Incident Report showing that Ms. Siguencio Romero had reported being the victim of a crime in August 2025 and informed him that she would be pursuing the U visa. Exhibit C,

NYPD Domestic Incident Report dated August 8, 2025. Ms. Becker-Smith also presented evidence that she had filed a case in Queens Family Court for the Minor Petitioners to obtain Special Immigrant Juvenile Status, for which a hearing was scheduled for November 10, 2025. Exhibit D, Notice of Appearance in Queens Family Court on November 10, 2025. Nevertheless, ICE Officer Haynes informed Petitioner and her children that they would be arrested and placed on a flight to Ecuador on that day, if possible. ICE offered no additional reasons for this other than that petitioners had been ordered removed. ICE did not allege any changed circumstances that would have made the Petitioners a flight risk or a danger to the community, and did not indicate that they were in possession of unexpired travel documents for Petitioners.

29. Upon information and belief, at no time during or following Petitioners' arrest did ICE explain why it suspended the ISAP release conditions or revoked Petitioners' release, and ICE never gave Petitioner an opportunity to respond to those reasons.

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

Ms. Siguencia Romero's Long History of Domestic Violence

31. Ms. Siguencia Romero has suffered [redacted] for twenty years. For the approximately fifteen years that she lived [redacted]

once again showed up at her apartment, and Ms. Siguencia Romero filed a complaint with the New York Police Department ("NYPD"). On October 29, 2025, the NYPD issued a U Nonimmigrant Status Certification (USCIS Form I-918B) to Ms. Siguencia Romero, attesting to her cooperation with the NYPD in investigating the crime committed against her by [redacted] In particular, the NYPD certified that Ms. Siguencia Romero has been the victim of a domestic violence crime in New York. Exhibit E, Signed Certification on Form I-918B. With this certification, Ms. Siguero Romero is eligible to apply for a U visa.

32. In connection with the domestic abuse she has suffered, Lead Petitioner has received clinical services through Sanctuary for Families' Clinical Program with Cinthia Prieto, MSW. Petitioner reported numerous symptoms of Post-Traumatic Stress Disorder to Ms. Prieto, including unwanted memories of the abuse which provoked physical reactions such as trouble breathing, difficulty sleeping and frequent nightmares. Exhibit F, Affidavit of Ms. Siguencia Romero's Counselor dated December 13, 2022.

33. Since the family's arrival to the United States in 2021, [redacted]

[redacted]

34. Ms. Siguencia Romero is a hard-working, loving mother who only wants to be safe and to create a life for her children free from violence and abuse.

Petitioners' Detention

35. Upon arrest, ICE held Petitioners at 26 Federal Plaza, and later transferred them to the Dilley Detention Center, where they are currently detained. Lead Petitioner has been separated from her daughter, Evelyn. Evelyn has not been able to make any contact with her mother since their arrival in Dilley. Lead Petitioner additionally suffers from symptoms of PTSD. Detention under these conditions is unduly punitive and harmful to Lead Petitioner and her children.

36. Upon information and belief, at the time ICE revoked Petitioners' order of supervision, the agency had not secured travel documents necessary for removal from the United States. Upon information and belief, Petitioners' passports that ICE had seized previously are all expired.

LEGAL FRAMEWORK

Due Process Governs Decisions to Revoke an Order of Release on Recognizance

37. "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690 (2001).

38. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).

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

Statute and Regulation Govern Procedures for Revoking an Order of Release to a Non-Citizen with a Final Order of Removal

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

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

42. But even where initial detention past the 90-day removal period is authorized, if "removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

43. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); *see*

also id. § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release"). Because "[r]egulations cannot circumvent the plain text of the statute[,]" courts question whether these regulations are ultra vires of statutory authority. *See, e.g.*, *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

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

45. Upon revocation of release "under an order of supervision or other conditions of release," ICE must give a non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

The APA Sets Minimum Standards for Final Agency Action

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

47. Final agency actions are those (1) that "mark the consummation of the agency's decision-making process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

48. ICE's revocation of Petitioners' release is a final agency action subject to this Court's review.

49. The revocation here marked the consummation of ICE's decision-making process regarding Petitioners' custody.

50. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Petitioners in violation of their rights under the Constitution, statute, and regulation.

The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

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

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

The U Visa Program

53. On October 28, 2000, Congress created the U Visa program. See Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA), Pub. L. No. 106-386, Title V, § 1513, 114 Stat. 1464, 1533 (2000); 8 U.S.C. § 1101(a)(15)(U); INA § 101(a)(15)(U).

54. Congress acted to establish the U Visa program in order to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute" certain serious crimes "while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States." See VTVPA § 1513(a), 114 Stat. 1533.

55. The U Visa program creates a mechanism for noncitizen victims of serious crime to safely engage law enforcement and, likewise, for law enforcement to engage immigrant communities to deter, prevent, and prosecute criminal activity for the betterment of the United States.

56. The U Visa was created to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. By providing victims of crime with an avenue for regularization of their immigrant status, the U Visa encourages victims to work and cooperate with law enforcement agencies. Congress also aimed to

strengthen relations between law enforcement and immigrant communities by increasing cooperation and removing some of the fear of deportation held by many undocumented migrants. *See*, e.g., U.S. Dep't Homeland Security, U Visa Law Enforcement Resource Guide, https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf, https://perma.cc/S25P-RTXZ (last visited Nov. 4, 2025).

57. A noncitizen is eligible for status under the U Visa program if (1) she suffered substantial physical or mental abuse as a result of having been a victim of one of the enumerated crimes; (2) she possesses or possessed information concerning the criminal activity; (3) she has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting the criminal activity; and (4) the criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States. See 8 U.S.C. § 1101(a)(15)(U); INA § 101(a)(15)(U).

58. Certain qualifying family members are eligible for derivative U Visas based on their relationship to the principal petitioner. Where the principal petitioner is at least 21 years of age, their spouse and children are eligible to apply for derivative U nonimmigrant status. See USCIS, Victims of Criminal Activity: U Nonimmigrant Status (last reviewed/updated May 16, 2025), available at https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status, https://perma.cc/46F6-S6Y2 (last visited Nov. 4, 2025).

59. The administrative processing to accord U nonimmigrant status to eligible petitioners and derivatives is tightly prescribed and regulated. As a first step, a petitioner must obtain a certification from a law enforcement official that she was the victim of a crime; that the

crime is a recognized crime under the U Visa program; and that the petitioner was, is, or is likely to be helpful in the investigation or prosecution of the criminal activity. The USCIS has prescribed that law enforcement officials make this certification on a particular form, USCIS Form I-918 Supplement B, U Nonimmigrant Status Certification. See 8 C.F.R. § 214.14(a)(12).

Special Immigrant Juvenile Status

60. In 1990, Congress created SIJ status to protect vulnerable immigrant children and provide them a pathway to lawful permanent residence. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978 (1990) (amending various sections of the INA); Special Immigrant Status, 58 Fed. Reg. 42843, 43844 (Aug. 12, 1993) ("This rule alleviates hardships experienced by some dependents of United States juvenile courts by providing qualified [noncitizens] with the opportunity to apply for special immigrant classification and lawful permanent resident status, with [the] possibility of becoming citizens of the United States in the future."). Since 1990, Congress has amended the INA multiple times to expand the protections of SIJ status, most recently in 2008, through the Trafficking Victims Protection Reauthorization Act, Pub. L. 110-457, § 235(d), 122 Stat. 5044 (2008).

61. Specifically, the INA provides that those eligible for SIJ designation, as relevant here, are noncitizen youth who are present in the United States; who have been declared dependent on a state juvenile court; who cannot be reunified with one or more parents because of abuse, neglect, or abandonment; and for whom it has been determined that it is not in their best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

62. Crucially, a noncitizen youth may only maintain SIJ status if he or she is "*present* in the United States." 8 U.S.C. § 1101(a)(27)(J) (emphasis added). This requirement makes perfect sense in light of the purpose of the SIJ statute. SIJ status is predicated on a state court finding that

the youth cannot be safely reunited with one or more parent(s), nor safely sent back to their country of origin. The design of this program, then, "show[s] a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for LPR status." *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011) (abrogated on other grounds).

63. Young people residing in New York can apply for SIJ status upon receipt of New York State Family Court orders of guardianship and Special Findings.

Removal of Protections for Noncitizen Victims of Crime

64. On December 2, 2021, ICE issued ICE Directive 11005.3, Using a Victim-Centered Approach with Noncitizen Crime Victims. ICE Directive 11005.3, *available at* https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVictims.pdf. ICE Directive 11005.3 directed that "applying a victim-centered approach minimizes any chilling effect that civil immigration enforcement actions may have on the willingness and ability of noncitizen crime victims to contact law enforcement, participate in investigations and prosecutions, pursue justice, and seek benefits." This directive applied to noncitizens who were eligible for relief under T nonimmigrant status, U nonimmigrant status, relief under the Violence Against Women Act, and SIJS classification.

65. Under ICE Directive 11005.3, absent exceptional circumstances, ICE's policy was to "refrain from taking civil immigration enforcement action against known beneficiaries of victim-based immigration benefits and those known to have a pending application for such benefits." Further, under this policy, "[t]he fact that someone is a victim of crime and, where applicable, may be eligible for victim-based immigration benefits for which they have not yet applied, is a positive discretionary factor that must be considered in deciding whether to take civil immigration

enforcement against the noncitizen or to exercise discretion, including but not limited to release from detention."

66. On January 31, 2025, ICE issued ICE Directive 11005.4: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits, purporting to rescind and supersede ICE Directive 11005.3.

CLAIMS FOR RELIEF

Count One
Violation of the Fifth Amendment of the U.S. Constitution
Substantive Due Process

67. Petitioner re-alleges all paragraphs above as if fully set forth here.

68. When ICE released Petitioners initially in 2021, and continued to maintain the same release conditions after Petitioners received a final order of removal in September of 2023, it found that the Petitioners were neither a danger to the community nor a flight risk.

69. At the time Respondents revoked their release, Petitioners had complied with every condition of the order. No change in circumstances warranted the revocation of release. Further, upon information and belief, at the time that Petitioners were detained, Respondents were not in possession of valid travel documents for them.

70. Petitioners' detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

71. Because Respondents had no legitimate, non-punitive objective in revoking Petitioner's release, Petitioners' detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

Count Two

Violation of the Fifth Amendment of the U.S. Constitution
Procedural Due Process

72. Plaintiffs re-allege all paragraphs above as if fully set forth here.

73. Revoking Petitioners' order of release without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

74. *Mathews v. Eldridge*, 424 U.S. 319, 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

75. The first factor, the private interest at issue, favors Petitioners. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690.

76. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioners. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that ICE can revoke release under an order of supervision or other conditions of release. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of release is of great value because it reduces the

probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.

77. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond for a person at risk of revocation of an order of release, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking release reduces fiscal and administrative burdens on the government.

78. For these reasons, Respondents' decision to revoke Petitioners' order of release without notice or an opportunity to respond does not satisfy the requirements of procedural due process.

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

79. Plaintiffs re-allege all paragraphs above as if fully set forth here.

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

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

82. Respondents' revocation of Petitioner's order of release was contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

83. The revocation was also not in accordance with the INA and implementing regulations governing orders of supervision.

84. Respondents violated the INA statute which provides that a non-citizen with a final order of removal who is not removed within the 90-day removal period "**shall be subject** to [an order of] supervision under regulations [8 CFR § 241.4]." (*emphasis added*). 8 U.S.C. § 1231(a)(3). Respondents did not comply with this requirement. Instead, Respondents kept Petitioner on an Order of Release of Recognizance, despite the fact that such an order is for non-citizens who do not have a final order of removal. A Release on Recognizance on Form I-220A does not include the provisions enumerated in 8 U.S.C. § 1231(a)(3), including requirements to submit to a medical and psychiatric examination. *See* Exhibit G, Sample Order of Release on Recognizance on Form I-220A. These requirements are found on an Order of Supervision on Form I-220B. *See* Exhibit H, Sample Order of Supervision on Form I-220B.

85. Respondents violated the INA by not placing Petitioner on a proper Order of Supervision, which could only be revoked by the ICE Executive Associate Director as explained above. The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. Nor had the officer been delegated authority to revoke an order of supervision.

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

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

88. Nor did the Respondents give Petitioner notice of the reasons for revocation and opportunity to be heard.

89. The revocation should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

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

90. Petitioner re-alleges all paragraphs above as if fully set forth here.

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

92. Respondents' revocation of Petitioners' release was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

93. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

94. Respondents' decision to revoke Petitioners' order of release ran counter to the evidence before the agency that Petitioner would comply with a demand to appear for removal

without detention. Petitioners have never violated a condition of their ISAP program or ROR and no new facts or changed circumstances suggest they would.

95. Respondents' revocation also "failed to consider important aspects of the problem" before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

96. First, Respondents failed to consider the serious constitutional concerns raised by revoking Petitioners' release without notice and opportunity to respond.

97. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of release of Petitioners, including financial and administrative costs incurred by the agency due to unnecessary detention. Petitioners are neither a flight risk nor a danger to the community and, upon information and belief, the agency does not have travel documents needed to effectuate their removal.

98. Third, Respondents failed to consider reasonable alternatives to revoking Petitioners' order of release that were before the agency, like simply continuing release and scheduling a future time and date to appear for removal. This alternative would vindicate the government's interests in effectuating a removal order and save it the expense of detention not needed to guarantee Petitioner's appearance.

99. Fourth, Respondents failed to consider Petitioners' substantial reliance interest, created by its instruction on Petitioner's release notification, and in particular, ICE's explicit communication to Lead Petitioner on August 27, 2025 that it would not detain or deport Petitioners while a motion remained pending before the BIA.

100. Further, Respondents' decision to revoke Petitioners' release and detain them for the purposes of removing them from the United States is arbitrary and capricious because

Petitioners are eligible for victim-based immigration relief, namely U nonimmigrant status for Ms. Siguencia Romero (with her children as derivatives) and SIJS for the Minor Petitioners.

101. Ms. Siguencia Romero has completed the first step necessary to apply for U nonimmigrant status in that the NYPD has signed an I-918B certification for her. Likewise, SIJS proceedings have been initiated in Queens Family Court.

102. ICE was informed of this at their check-in on October 29, 2025. There is no question that Respondents have been made aware that Petitioners are eligible for victim-based benefits.

103. ICE Directive 11005.3 established that "absent exceptional circumstances, ICE will refrain from taking civil immigration enforcement action against known beneficiaries of victim-based immigration benefits and those known to have a pending application for such benefits." Further, "[t]he fact that someone is a victim of crime and, where applicable, may be eligible for victim-based immigration benefits for which they have not yet applied, is a positive discretionary factor that must be considered in deciding whether to take civil immigration enforcement against the noncitizen or to exercise discretion, including but not limited to release from detention."

104. ICE Directive 11005.4 purported to replace ICE Directive 11005.3 on January 31, 2025. However, this Directive fails to engage in any manner with the important policy considerations underlying ICE Directive 11005.3.

105. Respondents' decision to rescind and supersede ICE Directive 11005.3 is arbitrary and capricious, and the rescission cannot be applied to Petitioners. ICE Directive 11005.3's respect for noncitizen crime victims rests on solid policy reasoning, including the strong legal protections laid out by Congress and the need to "encourage noncitizen victims to seek assistance and report crimes committed against them despite their undocumented status," which in turn "strengthens" the

possible law enforcement response to criminal activity. See ICE Directive 11005.3(1). ICE Directive 11005.4 does not provide any "reasoned explanation" for abandoning this strategy.

106. Instead, the Directive cites solely President Trump's Executive Order "Protecting the American People Against Invasion," which states the policy of the United States to achieve the "total and efficient enforcement of [immigration] laws". This scant explanation is insufficient under the APA to upend decades of prior policy and ignore voluminous Congressional and agency findings regarding the benefits of protecting noncitizen crime survivors.

107. Because the purported rescission of the directive is arbitrary and capricious, Respondents should have applied ICE Directive 11005.3 when considering whether to detain Petitioners. They did not. In fact, Officer Haynes admitted to Petitioner's attorney, Ms. Becker-Smith, that the agency was not interested in Petitioners' eligibility for U nonimmigrant status or SIJS. Respondents did not apply ICE Directive 11005.3 when making a determination about Petitioner's custody and therefore violated the APA.

108. For these and other reasons, Respondents' revocation of Petitioner's order of release was arbitrary and capricious and should be held unlawful and set aside.

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

109. Petitioner re-alleges all paragraphs above as if fully set forth here.

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

111. "An agency . . . literally has no power to act—including under its regulations—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).

112. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

Count Six
Ultra Vires Action

113. Petitioner re-alleges all paragraphs above as if fully set forth here.

114. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner.

115. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

Count Seven
Violation of the *Accardi* Doctrine

116. Petitioner re-alleges all paragraphs above as if fully set forth here.

117. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

118. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of release when it revoked Petitioners' order. "As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release" and Petitioner "is entitled to release on that basis alone." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also, e.g.*, *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

119. Under *Accardi*, Respondents' revocation of the order of should be set aside for violating agency procedures, rules, or instructions.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court:

a. Exercise jurisdiction over this matter;

b. Enjoin Petitioners' removal pending its adjudication of this petition;

c. Declare that Petitioners' detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;

d. Issue a Writ of Habeas Corpus Ordering Respondents to immediately release Petitioners from custody without restraints on their liberty;

e. Order the immediate reunification of the Lead Petitioner with her daughter Evelyn;

f. Order Respondents to facilitate petitioners' communications with their attorneys at Sanctuary for Families;

g. Order Defendants to produce the Petitioners to appear virtually for the SIJS hearing before the Queens County Family Court on November 10, 2025 at 2:00PM;

h. Stay Petitioners' removal from the United States while this petition remains pending;

i. Award Petitioner costs and reasonable attorneys' fees; and

j. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

DATED: November 4, 2025
New York, NY

Pooja Asnani, Esq.
Maura Heron, Esq.
Sanctuary for Families
30 Wall Street, 8th Floor
New York, NY 10005
332.223.4519
pasnani@sffny.org
mheron@sffny.org

Attorneys for Petitioners-Plaintiffs

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner's other lawyers the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

DATED: November 4, 2025
New York, NY

Pooja Asnani
Sanctuary for Families
30 Wall Street, 8th Floor
New York, NY 10005
T: 332.223.4519
E: pasnani@sffny.org

Attorney for Petitioners-Plaintiffs