

**DETAINED**

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5  
6 THE UNITED STATES DISTRICT COURT  
7 FOR THE WESTERN DISTRICT OF WASHINGTON  
8 SEATTLE, WASHINGTON  
9

10 Deng Peter Makuoy,

11 *Petitioner,*

12 v.

13 Bruce Scott, Warden, Northwest ICE  
14 Processing Center; Pamela Bondi, United  
States Attorney General; Kristi Noem,  
15 Secretary of U.S. Department of Homeland  
Security; Todd Lyons, Acting Director, U.S.  
16 Immigration and Customs Enforcement;  
Camilla Wamsley, Field Office Director, ICE  
17 Seattle Field Office; and the United States of  
America,

18 *Respondents.*

Case No.: 2:25-cv-2135

PETITION FOR WRIT OF HABEAS  
CORPUS PURSUANT TO  
28 U.S.C. § 2241

Agency File Number:



19  
20 **PETITION FOR WRIT OF HABEAS CORPUS**

21  
22  
23 **INTRODUCTION**

PETITION FOR WRIT OF  
HABEAS CORPUS

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(CASE NO. 2:25-cv-2135)

1  
2 1. This case challenges the unlawful detention of Deng Peter Makuey (“Petitioner”  
3 or “Mr. Makuey”), a stateless non-citizen who is currently in the custody of Immigration and  
4 Customs Enforcement (“ICE”) at Northwest ICE Processing Center (NWIPC). Petitioner is  
5 neither a flight risk nor a danger to the community. But on or about July 14, 2025, ICE detained  
6 him without notice or opportunity to be heard, on the decision of an individual without authority  
7 to do so, without findings required by law, and in violation of agency rules.

8 2. ICE found that Petitioner was neither a flight risk nor danger to the community  
9 when it previously released Petitioner from ICE detention on or about July 25, 2012, under an  
10 order of supervision. Since then, for the past 13 years, Petitioner has fully abided by the order’s  
11 terms including attending regularly scheduled check-ins with ICE.

12 3. On May 1, 2024, ICE reissued Petitioner’s order of supervision, with his next  
13 scheduled check-in date on August 1, 2024, which Petitioner attended.

14 4. However, at his next regularly scheduled check-in with ICE on July 14, 2025,  
15 Respondents-Defendants suddenly revoked Petitioner’s order of supervision and arrested him.  
16 Petitioner has been detained at NWIPC since then.

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

21 6. Petitioner thus brings this action for injunctive, habeas, and declaratory relief  
22 ordering Respondents to release him/her.

23 **PARTIES**

PETITION FOR WRIT OF  
HABEAS CORPUS

(CASE NO. 2:25-cv-2135)

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1           7.       Petitioner Deng Makuey is a non-citizen who has lived in the U.S. for 32 years.  
2 Prior to Petitioner’s detention on or about July 14, 2025, he was residing in Vancouver,  
3 Washington. Petitioner is currently detained at the Northwest ICE Processing Center (NWIPC)  
4 in Tacoma, Washington.

5           8.       Respondent-Defendant Cammilla Wamsley is the Field Office Director of the  
6 Immigration and Customs Enforcement (“ICE”) Seattle Field Office and is responsible for  
7 overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, including  
8 detentions, enforcement, and removal operations. She is the immediate legal custodian of the  
9 petitioner for purposes of a federal habeas petition. She is sued in her official capacity.

10          9.       Respondent-Defendant Todd Lyons is the Acting Director of U.S. Immigration  
11 and Customs Enforcement (“ICE”). He is the head of the federal agency responsible for all  
12 immigration enforcement in the United States. He is sued in his official capacity.

13          10.       Respondent-Defendant Bruce Scott is the Warden of the Northwest ICE  
14 Processing Center, the privately-operated immigration detention center where the petitioner is  
15 being detained. He is the immediate physical custodian of the petitioner, and he is sued in his  
16 official capacity.

17          11.       Respondent-Defendant Kristi Noem is the Secretary of the Department of  
18 Homeland Security (“DHS”). She is the cabinet-level secretary responsible for all immigration  
19 enforcement in the United States. She is sued in her official capacity.

20          12.       Respondent-Defendant U.S. Department of Homeland Security (“DHS”) is a  
21 federal agency headquartered in Washington, D.C. and the parent agency of ICE.

22          13.       Respondent-Defendant ICE is a component agency of DHS.  
23

1 Respondent-Defendant Pamela Bondi is the Attorney General of the United States. She is  
2 sued in her official capacity.

3 14. Respondent-Defendant United States of America is responsible for the issuance of  
4 immigration benefits, and exercises authority to adjudicate and approve applications filed by  
5 immigrants and intending immigrants, including the application filed by Plaintiff. Respondent-  
6 Defendant United States of America is sued pursuant to 5 U.S.C. §703.

7  
8  
9 **JURISDICTION**

10 15. This Court has jurisdiction over this matter under 18 U.S.C. § 1331 (federal  
11 question jurisdiction); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (All Writs Act).

12 16. Further, this Court has jurisdiction under the Suspension Clause of Article I, § 9,  
13 cl. 2, of the U.S. Constitution. *See INS v. St. Cyr*, 533 U.S. 289 (2001).

14 17. No other petitions, appeals, or motions regarding habeas corpus have been filed  
15 with any other court.

16 18. Venue in the Western District of Washington is appropriate under 28 U.S.C.  
17 § 1391(e)(1) because the petitioner is detained in this judicial district.

18 19. Venue is further appropriate under 28 U.S.C. § 1391(e)(1) because Respondents  
19 regularly transact business within this judicial district and because the actions which gave rise to  
20 this petition took place in Seattle, Washington, which falls within this judicial district.

21 **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

22 20. The Petitioner, Mr. Makuey, was born in a refugee camp in Ethiopia, and is a  
23 native of South Sudan, but does not have citizenship in either country. He is therefore stateless.

1 21. Mr. Makuey is 32 years old. He came to the United States in 2000 at about age 7  
2 or 8 with his parents as a refugee and has lived here ever since. He did not ever adjust his status  
3 to that of permanent resident.

4 22. On April 9, 2012, when he was 18 years old, Mr. Makuey pleaded guilty and was  
5 convicted of Possession of Marijuana with Intent to Deliver within 1000 feet of school in the  
6 East Central Judicial District in Fargo, North Dakota, and was sentenced to two (2) years in jail  
7 with all but 30 days suspended.

8 23. On April 25, 2012, on the basis of Mr. Makuey's conviction, DHS issued a Notice  
9 to Appear ("NTA") charging him with being removable under Sections 237(a)(2)(A)(iii)  
10 (aggravated felony conviction) and 237(a)(2)(B)(i) (controlled substance violation) of the INA.

11 24. Upon his release from criminal incarceration, on April 25, 2012, DHS served Mr.  
12 Makuey with the NTA and detained him.

13 25. On May 8, 2012, Mr. Makuey was found removable as charged with no available  
14 options for relief, and was ordered removed to Ethiopia, and to South Sudan, in the alternative.  
15 However, his removal could not be executed because he is stateless.

16 26. On or about July 25, 2012, Mr. Makuey was released from immigration detention  
17 and placed on an order of supervision that required him to check-in with ICE every year. Since  
18 ICE released the Petitioner, Mr. Makuey, on or about July 25, 2012, for the past 13 years, he has  
19 consistently complied with all conditions of the order, including attending periodic check-ins with  
20 ICE.

21 27. ICE re-issued Mr. Makuey's Order of Supervision on May 1, 2024, and no  
22 circumstances have changed since the reissuance that make him a flight risk or danger to the  
23 community.

1 28. But at a regularly scheduled check-in with ICE on July 14, 2025, ICE  
2 suddenly revoked Mr. Makuey's order of supervision and arrested him.

3 29. Between 2012 and 2019, Mr. Makuey was convicted of a number of low-level  
4 traffic and criminal offenses, as well as a handful or more serious offenses, related to his  
5 struggles with alcohol and addiction, including: theft-2<sup>nd</sup> in Iowa in June 2015; theft-3<sup>rd</sup>,  
6 possession of controlled substance without prescription, and four counts of custodial assault (for  
7 fighting while incarcerated) in Washington State in July 2016; and robbery-2<sup>nd</sup> in Oregon in  
8 September 2019.

9 30. As a result, Mr. Makuey was again incarcerated for his criminal convictions: in  
10 North Dakota from late 2013 to about April 2014; in Washington from about September 2015 to  
11 about July 2016, and from about August 2016 to about January 29, 2017; and in Oregon for his  
12 most recent criminal conviction on September 26, 2019, of robbery in the second degree, from  
13 about November 28, 2019 to about May 1, 2024.

14 31. ICE was timely and fully informed of Mr. Makuey's criminal convictions and  
15 periods of criminal incarceration prior to the reissuance of his OSUP on May 1, 2024.

16 32. Mr. Makuey has been sober since June 23, 2018, the date of his last criminal  
17 arrest and has, since that date done, done everything in his power to rehabilitate himself and  
18 become a productive member of society.

19 33. For example, in the spring of 2018, prior to his September 26, 2019, conviction  
20 and incarceration for his June 23, 2018, arrest, he completed a Business 101 and a Physical  
21 Education course at Clark College in Vancouver, Washington. While incarcerated in Oregon for  
22 his September 26, 2019, conviction, he refreshed his math and typing skills and completed a  
23 Psychology 101 course through Adams State University in the fall of 2023. Mr. Makuey asserts

1 that he has also completed every Department of Corrections (“DOC”) required class, from drug  
2 and alcohol (“Lifeline Connections”) classes to cognitive thinking classes (“Thinking for a  
3 Change”). Mr. Makuey had previously earned his GED while incarcerated in December 2013.

4 34. After his release from incarceration in May 2024, Mr. Makuey participated in a  
5 re-entry and recovery support group through Going Home II in Portland, Oregon, where he  
6 volunteered doing outreach activities, such as passing out food in parks. He also attended their  
7 workshops, and was trained for a future position working with youth and as a certified H.E.A.T  
8 facilitator, which is, according to Mr. Makuey, “a group leader in a culturally-specific counseling  
9 program that addresses issues within the Black community, focusing on resilience, self-image,  
10 and behavioral patterns related to substance use or involvement with the criminal justice  
11 system.”

12 35. After participating in Going Home II activities for some weeks, Mr. Makuey was  
13 invited by the group to attend a weekend spiritual retreat in the summer of August 2024, where  
14 he made several meaningful connections, including with his future employer.

15 36. In September 2024, after Mr. Makuey received his I-766 employment  
16 authorization document, he was hired by a nonprofit called Urban Alchemy in Portland, Oregon,  
17 as a practitioner, assisting unhoused individuals in Portland find stable housing. Through his  
18 employer, he received full benefits, including health insurance. He was promoted a couple  
19 months after he was hired to being a lead outreach supervisor. Mr. Makuey worked at Urban  
20 Alchemy until the day he was detained.

21 37. During his employment with Urban Alchemy, Mr. Makuey took several trainings  
22 to improve his skills including: 1) Cardiopulmonary Resuscitation (CPR) and Narcan use for  
23 treating overdoses; 2) De-Escalation and Conflict Resolution; 3) Trauma Informed Care; 4)

1 Safety and Service; 5) Sexual Harassment; 6) Effective Communication; 7) Preventing  
2 Discrimination and Harassment for Employees; 8) Hepatitis B and Vaccination Introduction; 9)  
3 Outreach and Response; 10) Urban Alchemy Leadership; 11) Preventing Discrimination,  
4 Harassment and Retaliation; and 12) Heat Illness Prevention.

5 38. During the 14 months since he was released from criminal incarceration and prior  
6 to his re-detention by ICE, Mr. Makuey had fully re-established himself as a law-abiding  
7 member of his community in Vancouver, Washington, where he rents an apartment for himself,  
8 his girlfriend, [REDACTED], and her six-year-old daughter. Mr. Makuey was  
9 employed and asserts that he had been paying all his bills on time. He obtained a Washington  
10 State driver's license, and purchased a used automobile and insurance. He also volunteered at a  
11 local church setting up guest rooms for Family Promise, a homeless ministry, and he had been  
12 in therapy through Columbia River Mental Health.

13 39. Mr. Makuey and Ms. [REDACTED] are expecting a son in early December 2025, and  
14 plan to marry in the future. Ms. [REDACTED] is a low-income single mother who suffers from [REDACTED]  
15 [REDACTED]  
16 [REDACTED] Ms. [REDACTED] is  
17 having extreme difficulty caring for her six-year-old daughter, who has come to see Mr. Makuey  
18 as her father, while being nearly eight-months pregnant, without Mr. Makuey's help and support.  
19 She is extremely distressed by the prospect of being on maternity leave without Mr. Makuey's  
20 financial, physical, and logistical support, as she will not be able to afford childcare and cannot  
21 physically care for a newborn and a six-year-old alone. Ms. [REDACTED] stated in her letter of support  
22 for Mr. Makuey that she "desperately" needs him at home "to help lighten the load while [she]  
23 heal[s] physically and mentally."

1 40. Nothing happened to precipitate the revocation of the order of supervision  
2 subsequent to its reissuance in May 2024. ICE revoked the order of supervision without any  
3 notice or cause.

4 41. The only explanation Mr. Makuey received was a form stating, "This letter is to  
5 inform you that your order of supervision has been revoked and you will be detained in the  
6 custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has  
7 been made based on a review of your official alien file and a determination that there are  
8 changed circumstances in your case."

9 42. Upon information and belief, the official responsible for revoking Mr. Makuey's  
10 order of supervision did not first refer the case to the ICE Executive Associate Director, did  
11 not make findings that revocation was in the public interest and that circumstances did not  
12 reasonably permit referral to the Executive Associate Director, and had not been delegated  
13 authority to revoke an order of supervision.

14 43. Upon arrest, ICE transferred Mr. Makuey to NWIPC where he is currently  
15 detained.

16 44. Upon information and belief, at no time following Mr. Makuey's arrest did ICE  
17 explain why it revoked his order of supervision or give him an opportunity to respond to  
18 those reasons.

19 45. Upon information and belief, at the time ICE revoked Mr. Makuey's order  
20 of supervision, the agency had not secured travel documents necessary for removal from the  
21 United States, nor have they secured travel documents during the 90+ days that he has been  
22 detained.

23

1 46. By revoking the order of supervision without notice or a hearing, the Defendants-  
2 Respondents violated Mr. Makuey’s rights under both the Immigration and Nationality Act  
3 (INA) and the Due Process Clause of the Fifth Amendment. Their continuing detention of Mr.  
4 Makuey is illegal, and he seeks immediate release.

5  
6 **LEGAL FRAMEWORK**

7 **Due Process Governs Decisions to Revoke an Order of Supervision**

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

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

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

1           **Statute and Regulation Govern Procedures for Revoking an Order of Supervision**

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

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

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

13           53.     Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6),  
14 that an order of supervision may be revoked and a non-citizen may be re-detained past the  
15 removal period: “(1) the purposes of release have been served; (2) the alien violates any condition  
16 of release; (3) it is appropriate to enforce a removal order; or (4) the conduct of the alien, or  
17 any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. §  
18 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a  
19 non-citizen “violates any of the conditions of release”). Because “[r]egulations cannot  
20 circumvent the plain text of the statute[,]” courts question whether these regulations are ultra  
21 vires of statutory authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018)  
22 (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal  
23

1 period only if person is a risk to the community, unlikely to comply with the order of removal, or  
2 was ordered removed on specified grounds).

3 54. It is clear, however, that regulations permit only certain officials to revoke an order  
4 of supervision: the ICE Executive Associate Director, a field office director, or an official  
5 “delegated the function or authority . . . for a particular geographic district, region, or area.”  
6 *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2,  
7 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles  
8 listed in § 241.4). If the field office director or a delegated official intends to revoke an order of  
9 supervision, they must first make findings that “revocation is in the public interest and  
10 circumstances do not reasonably permit referral of the case to the Executive Associate  
11 [Director].” 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an  
12 order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781  
13 F. Supp. 3d 137, 161 (finding a delegation order that “refers only to a limited set of powers under  
14 part 241 that do not include the power to revoke release” insufficient to grant authority to revoke  
15 an order of supervision).

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

18 **The APA Sets Minimum Standards for Final Agency Action**

19 56. The Administrative Procedure Act authorizes judicial review of final agency action.  
20 5 U.S.C. § 704.

21 57. Final agency actions are those (1) that “mark the consummation of the agency’s  
22 decision-making process” and (2) “by which rights or obligations have been determined, or from  
23

1 which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation  
2 modified).

3 58. ICE’s revocation of an order of supervision is a final agency action subject to this  
4 Court’s review.

5 59. The revocation here marked the consummation of ICE’s decision-making process  
6 regarding Petitioner’s custody.

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

#### 10 **The Accardi Doctrine Requires Agencies to Follow Internal Rules**

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

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





1 revocation of an order of supervision, it is more likely to waste limited financial and administrative  
2 resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste  
3 drags down the efficiency of the entire immigration system. And because the government must also  
4 spend resources defending against a habeas corpus petition in federal court to compel Respondents  
5 to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity  
6 to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on  
7 the government.

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

11 **Count Three**

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

14 75. Plaintiffs reallege all paragraphs above as if fully set forth here.

15 76. 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 77. 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 78. 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.

1 79. The revocation was also not in accordance with the INA and implementing  
2 regulations governing who may lawfully revoke an order of supervision and under what  
3 circumstances, as cited and discussed in the Statutory Framework section above.

4 80. Petitioner's order of supervision was not revoked by the ICE Executive Associate  
5 Director. The officer who revoked the order did not first make findings that revocation was in the  
6 public interest and that circumstances did not reasonably permit referral to the Executive Associate  
7 Director. Nor had the officer been delegated authority to revoke an order of supervision.

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

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

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

18 84. The revocation should be held unlawful and set aside because it was contrary to the  
19 agency's 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 85. Petitioner realleges all paragraphs above as if fully set forth here.

86. Under the APA, a court shall "hold unlawful and set aside agency action . . . found

1 to be arbitrary [or] capricious.” 5 U.S.C. § 706(2)(A).

2 87. Respondents’ revocation of Petitioner’s order of supervision was arbitrary and  
3 capricious because it violated statute, regulation, and the Constitution, as described above.

4 88. An agency decision that “runs counter to the evidence before the agency” is also  
5 arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43  
6 (1983).

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

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

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

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

21 93. Third, Respondents failed to consider reasonable alternatives to revoking  
22 Petitioner’s order of supervision that were before the agency, like simply continuing release under  
23 the order of supervision and scheduling a future time and date to appear for removal. This

1 alternative would vindicate the government’s interests in effectuating a removal order and save it  
2 the expense of detention not needed to guarantee Petitioner’s appearance.

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

6 95. For these and other reasons, Respondents’ revocation of Petitioner’s order of  
7 supervision was arbitrary and capricious and should be held unlawful and set aside.

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

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

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

15 98. “An agency . . . literally has no power to act—including under its regulations—  
16 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).

17 99. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for  
18 a person who is found to be a danger to the community, unlikely to comply with a removal order,  
19 or whose removal order is on certain grounds specified in the statute. Even then, if removal “is not  
20 reasonably foreseeable, the court should hold continued detention unreasonable and no longer  
21 authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and should be  
22 conditioned on any of the various forms of supervised release that are appropriate in the  
23 circumstances... .” *Zadvydas*, 533 U.S. at 699-700.

1 100. Regulations that purport to give Respondents authority to revoke an order of  
2 supervision on grounds other than those listed § 1231(a)(6) are ultra vires and in excess of statutory  
3 authority because “[r]egulations cannot circumvent the plain text of the statute.” *You v. Nielsen*,  
4 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018).

5 101. Respondents’ revocation of Petitioner’s order of supervision was based on ultra  
6 vires regulations. So it was in excess of statutory authority and should be held unlawful and set  
7 aside.

8 **Count Six**  
9 ***Ultra Vires Action***

10 102. Plaintiffs reallege all paragraphs above as if fully set forth here.

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

13 104. Petitioner has a non-statutory right of action to declare unlawful, set aside, and  
14 enjoin Respondents’ ultra vires actions.

15 **Count Seven**  
16 **Violation of the *Accardi* Doctrine**

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

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

22 107. Respondents violated agency regulations governing who and upon what findings it  
23 may properly revoke an order of supervision when it revoked Petitioner’s order. “As a result, this

1 Court cannot conclude that [the revoking officer] had the authority to revoke release” and Petitioner  
2 “is entitled to release on that basis alone.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing  
3 *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352  
4 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing  
5 habeas petitioner where where revocation of an ICE order of supervision was ordered by someone  
6 without regulatory authority to do so).

7 108. Respondents also violated agency instructions in Petitioner’s release notification to  
8 give an opportunity to prepare for an orderly departure when they revoked Petitioner’s order  
9 without advance notice.

10 109. Under *Accardi*, Respondents’ revocation of the order of supervision and decision  
11 to ignore instructions in the release notification should be set aside for violating agency procedures,  
12 rules, or instructions.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioner requests that this Court:

- 15 a. Exercise jurisdiction over this matter;
- 16 b. Enjoin Petitioner’s removal or transfer outside the jurisdiction of this Court and  
17 the United States pending its adjudication of this petition;
- 18 c. Declare that Petitioner’s detention violates the Due Process Clause of the  
19 Fifth Amendment, the INA and implementing regulations, the APA, and the  
20 *Accardi* doctrine;
- 21 d. Order Petitioner’s immediate release;
- 22 e. Award Petitioner costs and reasonable attorneys’ fees; and
- 23 f. Order such other relief as this Court may deem just and proper.

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Dated: October 29, 2025.

Respectfully submitted,

s/ Minda A. Thorward

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