UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

TRUC BA TRINH A# [redacted] Petitioner, vs. GEORGE STERLING, *Field Office Director of ICE Atlanta Field Office*, and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and KRISTI NOEM, *Secretary of Homeland Security*; and PAMELA BONDI, *U.S. Attorney General*. Respondents.	)	CASE NO.:

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This case challenges the unlawful detention of Petitioner, TRUC BA TRINH (Petitioner), A# [redacted], who is currently detained in the custody of Immigration and Customs Enforcement (ICE) at an unknown location. *See* Exhibit 1 ICE Detainee Locator which was printed this evening shortly prior to filing this Complaint. It confirms Petitioner is in custody but the location is undisclosed.
2. Petitioner is neither a flight risk nor a danger to the community. Petitioner was last known to go to report to ICE pursuant to a call-in letter for him to come and report on

October 17, 2025 to the third floor at the ICE offices at 180 Ted Turner Drive, SW, Atlanta, Georgia. However since then, no one has known his whereabouts and his family called undersigned counsel since they were concerned he has been detained by ICE. Undersigned counsel looked up the ICE detainee locator and found that he is indeed detained by ICE at an undisclosed location. Exhibit 1.

3. Petitioner was clearly detained by ICE on or about October 17, 2025, following a routine check-in reporting appointment with ICE as he was complying with his OSUP. See Exhibit 2, reporting notice. ICE in Atlanta detained him without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules, as well as in violation of a treaty between the United States and Vietnam.

4. According to 2008 U.S.-Vietnam Repatriation Agreement, officially titled *Vietnam (08-322) – Agreement on the Acceptance of the Return of Vietnamese Citizens*, this agreement **explicitly excluded** Vietnamese nationals who arrived in the United States **before July 12, 1995** from being subject to deportation. The relevant clause states: "Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995." *See* Exhibit 2.

5. ICE found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention nearly 25 years ago on or about 2000 under an order of supervision. Since then, Petitioner has fully abided by the order's terms, including attending regularly scheduled check-ins with ICE. Petitioner has applied for and been granted an Employment Authorization Document ("EAD"),

which he was able to renew every two years. See Exhibit 4.

6. But at a regularly scheduled check-in with ICE on October 17, 2025, Respondents-Defendants suddenly revoked Petitioner's order of supervision and arrested him without notice. His whereabouts are currently unknown.

7. 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.

8. Petitioner therefore brings this action for injunctive, habeas corpus, and declaratory relief ordering Respondents to direct his immediate release from custody.

II. JURISDICTION

9. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution (Suspension Clause). This Court's subject matter jurisdiction further arises under Article III, Section 2 of the Constitution because Petitioner is raising constitutional issues. Petitioner is seeking immediate judicial intervention to remedy imminent violations of his constitutional rights by Respondents. In addition to the United States Constitution, this action arises under the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. § 551, *et seq*. This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under federal law and may grant

relief pursuant to the Declaratory Judgement Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10. The Eleventh Circuit has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law, based on Supreme Court precedent. Even though the government may detain individuals during removal proceedings, *Denmore v. Kim*, 538 U.S. 510, 523 (2003), there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. *Id.*; *Frech v. U.S. Att'y Gen.*, 491 F.3d 1277, 1281 (11th Cir. 2007) ("It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment.") (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Courts must review immigration procedures and ensure that they comport with the Constitution. *See* also *J.G. v. Warden, Irwin Cnty. Detention Ctr.*, 501 F.Supp.3d 1331 (M.D. Ga. 2020).

11. Similar to these supreme court cases, the Eleventh Circuit has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law.

12. In this case, Petitioner asserts substantial constitutional violations—including deprivation of liberty without due process, arbitrary and capricious agency action, and the unlawful revocation of his long-standing Order of Supervision without notice or opportunity to be heard. These claims fall squarely within the scope of habeas review

preserved by statute and recognized by controlling precedent. Accordingly, this Court has both the authority and the obligation to adjudicate the constitutional and statutory claims presented in this Petition and to grant appropriate relief to remedy ongoing violations of Petitioner's rights.

13. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioner.

14. Petitioner's claims challenge only his civil immigration detention and the procedures used to prolong it—not the merits of removability or any final order of removal—and therefore fall outside 8 U.S.C. § 1252(b)(9)'s channeling provision. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (detention challenges are not "questions of law or fact arising from" removal proceedings). Consistent with that framing, any injunctive relief sought here is strictly as-applied to Petitioner—for example, directing Petitioner's release under § 1226(a) or barring application of § 1225 as to Petitioner — and does not "enjoin or restrain the operation" of any statute within § 1252(f)(1)'s bar. In any event, § 1252(f)(1) permits individualized, as-applied relief for a single noncitizen, even while prohibiting class-wide injunctions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022).

15. Section 1252(f)(1) does not bar the individualized injunctive relief sought here. That provision limits lower courts' authority to "enjoin or restrain the operation" of the

INA's detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief "with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–50 (2022). Petitioner seeks only as-applied relief tailored to Petitioner. That relief neither halts the general operation of any INA provision nor provides class-wide relief and thus falls squarely within § 1252(f)(1)'s carve-out.

16. Section 1252(g) is likewise inapplicable. It is a "narrow" jurisdictional bar that applies only to three discrete decisions or actions: "to commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any such decision. Petitioner challenges ongoing civil detention and DHS's use of an unlawful interpretation to nullify the plain language of the INA and its regulations as applicable to these agencies. Such detention-related claims and challenges to custody procedures fall outside § 1252(g). *See id.* at 482–83; cf. *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (§ 1252(b)(9) does not channel detention claims).

17. To prevent ouster of this Court's habeas jurisdiction, the Court should, pursuant to 28 U.S.C. § 1651(a) (All Writs Act) and 28 U.S.C. § 2241, issue an immediate limited order prohibiting Respondents from transferring Petitioner outside the court's District or otherwise changing Petitioner's immediate custodian without prior leave of Court while this action is pending. *See*, e.g., *Hernandez Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM (Court temporarily enjoined Respondents from transferring or relocating

Lopez outside the jurisdiction of the MDFL pending a ruling on the habeas petition. This relief makes sense given that Lopez's rights are not violated by the mere fact of his detention. Rather, they are allegedly violated because he has been detained without a bond hearing that accords with due process). *See* also *Chogllo Chafla v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2531027, at *3 (D. Me. Sept. 2, 2025); *Co Tupul v. Noem*, No. CV-25-02748-PHX-DJH (JZB), 2025 WL 2426787, at *2 (D. Ariz. Aug. 4, 2025). Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

III. VENUE

18. Venue is proper in the United States District Court for the Northern District of Georgia because Petitioner is currently detained by ICE, presumably at the ICE field offices basement at 180 Ted Turner Drive SW, Atlanta, Georgia in DHS's custody. Respondent George Sterling is the ICE Field Office Director for Atlanta and is in charge of all detainees in ICE custody in Atlanta and is the Petitioner's immediate custodian and Respondents exercise authority over Petitioner's custody in this jurisdiction. See 28 U.S.C. §§ 2241(d), 1391(e).

19. Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioner's non-habeas claims seeking prospective

declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including the initial arrest and continued detention of Petitioner and the enforcement of the mandatory detention agency interpretation, occurred in this District. Furthermore, the Respondents are officers of United States agencies, the Petitioner resides within this District, and there is no real property involved in this action.

20. It is highly possible that Petitioner is still held at the basement of the ICE offices in Atlanta, Georgia. See news articles from the Atlanta Journal-Constitution confirming such. Exhibit 5 (ICE detaining immigrants for long periods in Atlanta field office basement) and Exhibit 6 (Downtown ATL holds ICE's newest hellhole. Cruelty is the point.)

21. Even if he had already been transferred, Venue is proper in this District because it is the location of the last known place of detention of Petitioner, who is currently in an unknown location. The last known location of Petitioner was on October 17, 2025 when he went to report to ICE in 180 Ted Turner Drive SW pursuant to his reporting appointment. In such circumstances, courts have recognized that venue is appropriate in the **district of the last known place of custody**, as articulated by the Eastern District of Virginia in *Suri v. Trump*, 785 F.Supp.3d 128 (2025), which held that when a habeas petitioner's current location and custodian cannot be ascertained, the petition may be filed in the district where the petitioner was last detained. This approach ensures that the writ of habeas corpus remains available to individuals whose whereabouts are unknown due to government action and prevents the government from evading judicial

review by transferring or concealing detainees. Accordingly, Petitioner respectfully submits that this Court has jurisdiction and venue over this habeas action. Exhibit 1.

IV. PARTIES

22. Petitioner, TRUC BA TRINH, is a 52-year-old Vietnamese national who has resided in Clarkston, Georgia for the past several years. Based on information and belief, he was ordered deported in July 1999 by an Immigration Judge due to criminal conviction(s). *See* Exhibit 7, EOIR automated case information. Notwithstanding the removal order against him, Petitioner was granted a deferral of removal and was put on an Order of Supervision (OSUP) by ICE, which he has complied with dutifully since 1999-2000 timeframe until today, for approximately 25 years. *See* Exhibit 2 Reporting letter.

23. Petitioner was detained by ICE in Atlanta on October 17, 2025, following a routine check-in with ICE as he was complying with his OSUP. ICE detained him without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules. Petitioner's current whereabouts are unknown at this time.

24. Respondent George Sterling is the Atlanta Field Office Director for Immigration and Customs Enforcement (hereinafter "FOD"). As such, Respondent Sterling is responsible for the oversight of ICE operations at the Atlanta ICE offices and detention centers in Georgia. Respondent Sterling is being sued in his official capacity.

25. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (hereinafter "ICE"). As such, Respondent Lyons is responsible for the oversight of ICE operations. Respondent Lyons is being sued in his official capacity.
26. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (hereinafter "DHS"). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.
27. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity.

IV. EXHAUSTION OF REMEDIES

28. No statutory exhaustion requirement applies to habeas cases. Moreover, ICE's revocation of Petitioner's Order of Supervision (OSUP) and detention of Petitioner without prior notice on October 17, 2025 leaves no administrative avenue to secure protection; additional agency steps would be futile. *Santiago-Lugo v. Warden*, 785 F.3d 467 (11th Cir. 2015). An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it. *Gibson v. Berryhill*, 411 U. S. 564, 575 n. 14 (1973); *Houghton v. Shafer*, 392 U.S. 639, 640 (1968). However, even if there were any available remedies, the habeas statute does not require the Petitioner to exhaust them.
29. Furthermore, even if applied, attempting to exhaust administrative remedies would have been futile for claims attacking the constitutionality of ICE's actions. It would be

futile to await further administrative remedies when proceedings before ICE cannot in any way address the constitutional claims at issue in this case, and where ICE seeks to quickly remove noncitizens like Petitioner without due process even to third countries under this administration.

30. Petitioner has exhausted all administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this judicial action.

V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

31. Petitioner is a 52-year-old Vietnamese national who has resided in Clarkston, Georgia, for a number of years. He has been living in the U.S. since 1992 and originally came to the U.S. with his family as refugees who later became Lawful Permanent Residents. He has been living together with his long-time U.S. citizen partner and they have two young U.S. citizen children ages 12 and 7. Petitioner also has an adult 28 year old child from a prior relationship.

32. Petitioner has held steady employment with the same employer for the past 9 years. He also is the primary caregiver to his 89-year old U.S. citizen father who has been sick recently being in and out of the hospital. Petitioner's father suffers from multiple health ailments, including HLD, or hyperlipidemia, is a condition characterized by high levels of lipids (fats) like cholesterol and triglycerides in the blood, which is a major risk factor for cardiovascular diseases such as heart attack and stroke. He also suffers from HTN, or hypertension (high blood pressure), is a long-term condition that can cause significant health problems if left untreated, including heart attack, stroke, heart failure,

chronic kidney disease, and vision loss. He is managing high blood pressure and high cholesterol and has a hard time breathing and needs oxygen, utilizing a machine to help him breathe.

33. Petitioner was ordered deported in July 1999 by an Immigration Judge due to criminal conviction(s). *See* Exhibit 7, EOIR automated case information. Notwithstanding the removal order against Petitioner, he was granted a deferral of removal and was put on an Order of Supervision (OSUP) by ICE, which he has complied with since 1999-2000 until today, for approximately 25 years. *See* Exhibit 2.

34. Undersigned counsel does not have information regarding the removal order or the criminal conviction(s) of Petitioner. However, notwithstanding the removal order against him, he was granted a deferral of removal and was put on an Order of Supervision (OSUP) by ICE, which he has complied with since at least 2000 until today, for approximately 25 years. *See* Exhibit 2. During this time, he reported to ICE as instructed, received multiple Employment Authorization Documents from USCIS and cooperated with the authorities. Upon information and belief, he has fully rehabilitated having no new criminal convictions or run-ins with the law.

35. Since ICE released Petitioner on an order of supervision on or about 1999-2000, Petitioner has complied with all conditions of the order, including periodic check-ins with ICE. Petitioner maintained a stable residence, and cooperated fully with all supervision requirements. No circumstances have changed that make Petitioner a flight risk or danger to the community.

36. Throughout this time, Petitioner understood from a release notification accompanying the order of supervision that ICE would give "the opportunity to prepare for an orderly departure" after securing Petitioner's travel documents.

37. But at a regularly scheduled ICE check-in that occurred on October 17, 2025, ICE officers in Atlanta suddenly revoked Petitioner's order of supervision and arrested Petitioner without warning or notice or opportunity to be heard. There were no changed circumstances to trigger Petitioner's arrest.

38. Upon information and belief, the official responsible for revoking Petitioner's 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.

39. Petitioner's detention is punitive and unusually harsh and inappropriate especially if he is held at the basement of the ICE Atlanta office.

40. Upon information and belief, at no time following Petitioner's arrest did ICE explain why it revoked Petitioner's order of supervision or give Petitioner an opportunity to respond to those reasons.

41. Upon information and belief, at the time ICE revoked Petitioner's order of supervision, the agency had not secured travel documents necessary for removal from the United States.

42. Petitioner's removal to Vietnam is not reasonably foreseeable. Under the 2008 U.S.–Vietnam Repatriation Agreement, officially titled *Vietnam (08-322) – Agreement on*

the Acceptance of the Return of Vietnamese Citizens, the Government of Vietnam agreed to accept for repatriation only those nationals who arrived in the United States on or after July 12, 1995. The agreement explicitly excludes all Vietnamese citizens who entered prior to that date, stating: "***Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995***." Exhibit 3. Petitioner entered the United States as a refugee in 1992, more than three years before the cutoff date. Consequently, Vietnam has refused to issue travel documents for individuals in Petitioner's position for more than two decades, rendering removal practically and legally impossible under the governing bilateral framework. *See* Exhibit 3 (Text of the 2008 Agreement and State Department guidance). **Even if Petitioner had a travel document, according to this agreement, the U.S. would not be able to remove him to Vietnam.** *See* Exhibit 3.

43. Recent media reports corroborate this pattern. Local press has reported that individuals under supervision have been detained during routine check-ins at the Atlanta Field Office[1], and that noncitizens appearing for "document checks" in Atlanta have been taken into custody without prior notice or opportunity to be heard, raising serious due process concerns[2]. Until recently, ICE allowed non-detained individuals like Petitioner to report by phone or through a computer-based monitoring systems, but this option was abruptly discontinued in mid-2025. Exhibit 8.

44. ICE found that Petitioner was neither a flight risk nor danger to the community, as

[1] https://georgiarecorder.com/2025/08/07/attorneys-push-for-the-release-of-georgia-immigration-activist-detained-by-ice-during-check-in/

[2] https://atlpresscollective.com/2025/05/22/ice-document-check-atlanta-due-process/

evidenced by his continuous release under an Order of Supervision for over 25 years. Over the course of more than 25 years, Petitioner has fully complied with every reporting requirement, remained at the same verified residences and consistently cooperated with ICE officers. He has no new criminal record, has demonstrated rehabilitation, and has maintained steady family and community ties. Petitioner's long-term partner is a U.S. citizen and he has 3 U.S. citizen children, two of whom are minors aged 12 and 7 who completely depend on him.

45. As of the filing of this Petition, Petitioner remains in ICE custody at an unknown location, confined solely because of DHS' unlawful revocation of Petitioner's Order of Supervision.

VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

46. Habeas corpus relief extends to a person "in custody under or by color of the authority of the United States" if the person can show he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under 28 U.S.C. § 2241 if they concern the continuation or execution of confinement). The U.S. Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004), (citing U.S. Const., Art. I, § 9, cl. 2). This includes immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

47. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall … dispose of [] as law and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008) (citations omitted). "[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." *Id.* at 787. The Petitioner seeking habeas relief must demonstrate he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

Due Process Governs Decisions to Revoke an Order of Supervision

48. "[T]he 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). "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.

49. 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*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

50. "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). "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 omitted).

Statute and Regulation Govern Procedures for Revoking an Order of Supervision

51. 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) (titled "Supervision after 90-day period").

52. 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).

53. 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*, 533 U.S. at 699-700.

54. 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).

55. 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 at 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).

56. **Upon revocation of an order of supervision, 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).

Due Process and the Regulatory Process for OSUP Revocation

57. OSUP regulations and the processes and procedures to revoke them can be found under 8 C.F.R. § 241.4. Once the government has exercised its discretion to release an individual from immigration detention, revocation of that liberty interest is a significant act that can only be carried out by high-level officials specifically designated in the regulations. Revocation of release under an OSUP implicates a protected liberty interest and must be accompanied by robust procedural and substantive safeguards. The agency must strictly follow its own regulations, as required by the *Accardi* doctrine, and must also provide constitutionally adequate notice and an opportunity to be heard before a neutral decisionmaker prior to revocation. The fact that only high-level officials may revoke these forms of release underscores the gravity of the liberty interest at stake and the need for accountability and individualized assessment.

58. Notice of the reasons for revocation of release under an OSUP is "required under 8 C.F.R. § 241.4(d), which provides that '[a] copy of any decision . . . to detain an alien

shall be provided to the detained alien' and a decision to retain custody must 'set forth the reasons' for that detention." 8 C.F.R. § 241.4(d).

59. A recent order by Judge Rochon in the Southern District of New York illustrated what procedural due process ICE must follow in order to revoke an OSUP and re-detain an individual like Petitioner. *See Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 WL 2452352, at *5–9 (S.D.N.Y. Aug. 26, 2025). The immigration habeas petitioner in *Zhu* was in a substantially similar posture to Petitioner here: he had applied for asylum after entering the United States; had received a notice to appear that charged him with being removable; was not removed but instead was released on an Order of Supervision; and was periodically reporting to a Deportation Officer. *Id.* at *1. In August 2025, he encountered ICE agents, seemingly somewhat by chance, outside his home during a field operation, and he was taken into custody and detained without notice. *Id.*

In his habeas petition, he argued, among other things, that "his redetention was unlawful because ICE did not provide him with notice or an explanation, as required by its regulations"—the same argument that Petitioner is making in this Court in connection with his request for a temporary restraining order requiring his release. In a comprehensive analysis, Judge Rochon carefully explained in detail the regulatory and case law background and then observed:

> Notification of the reasons for Petitioner's redetention is . . . required under 8 C.F.R. § 241.4(d), which provides that "[a] copy of any decision . . . to detain an alien shall be provided to the detained alien" and a decision to retain custody must "set forth the reasons" for that detention. 8 C.F.R. § 241.4(d). ***The failure to provide Petitioner with such notice thwarts his ability to contest the revocation***. *See Santamaria Orellana v. Baker*, No. 25-cv-01788, 2025 WL 2444087, at *6–8 (D. Md. Aug. 25,

> 2025) (holding that ICE violated 8 C.F.R. § 241.4(d) by failing to provide noncitizen whose order of supervision was revoked with a notice or any written record as to the basis for the revocation of his release, which in turn violated his due process rights).

Id. at *8 (emphasis added); *see generally id.* at *5–8 (centering on 8 C.F.R. § 241.4, its various subsections, and the case law interpreting them). The Court went on to comment that "[h]ere, Petitioner received *no* process before being redetained, in violation of ICE's own regulations and the Due Process Clause." *Id.* at *9 (emphasis original). In consequence, the Court ordered his immediate release from custody. *Id.* Here, the Court should grant the same relief to Petitioner on a temporary basis while it adjudicates the merits of his habeas petition.

60. ***"The failure to provide Petitioner with such notice thwarts [her] ability to contest the revocation."*** *Id.* (citing *Santamaria Orellana v. Baker*, No. 25-cv-01788, 2025 WL 2444087, at *6–8 (D. Md. Aug. 25, 2025) (holding that ICE violated 8 C.F.R. § 241.4(d) by failing to provide noncitizen whose order of supervision was revoked with a notice or any written record as to the basis for the revocation of his release, which in turn violated his due process rights)). Because the petitioner in *Zhu* "received *no* process before being redetained, in violation of ICE's own regulations and the Due Process Clause," the court ordered his immediate release from custody. *Id.* at *9. Here, the Court should grant the same relief to Petitioner on a temporary basis while it adjudicates the merits of his habeas petition.

61. Other recent cases in accord with *Zhu* are: *Cifuentes Rivera v. Arnott*, No. 4:25-cv-00570-RK, Dkt. No. 19 (W.D. Mo. Oct. 7, 2025) (holding that under an Order of

Supervision pursuant to immigration regulations, 8 C.F.R. §§ 241.4 and 241.13, the petitioner was entitled to an informal interview upon detention based on a revocation of her supervised release order, which she can "contest and challenge, the reasons for her detention"); *Diaz v. Wofford*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *3-5 (D. Ariz. Sept. 5, 2025) (granting preliminary injunction requiring petitioner's immediate release and permanently enjoining the government from re-detaining petitioner without due process compliance based on application of section 1226 where the DHS's failure to follow the regulation procedures in 8 C.F.R. 241.8 and failing to provide notice as required under 8 C.F.R. 241.4 where petitioner was released on own recognizance due to lack of space, was a derivative applicant on his wife's asylum application, and there was no evidence petitioner failed to comply with his terms of supervision); *M.S.L. v. Bostock*, No. 25-cv-01204, 2025 WL 2430267 (D. Or. Aug 21, 2025) (granting temporary restraining order requiring petitioner's immediate release where the DHS's failure to provide notice as required under 8 C.F.R. § 241.4 and there was no evidence petitioner failed to comply with her terms of supervision); see also *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass 2017) (holding ICE violated the Due Process Clause of the Fifth Amendment by detaining petitioner without advance notice, a hearing, or an interview, despite his full compliance with the conditions of his release. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D.N.Y. 2023) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so). These cases confirm that revocation of liberty interests must comply with agency regulations, including notice and an opportunity to

be heard, and that actions taken without proper authority are void. In the past several months in 2025, there have been many reported cases (including those in federal courts) where an OSUP was unlawfully revoked by ICE, yet there are none known to undersigned counsel where ICE lawfully revoked an OSUP in 2025.

The APA Sets Minimum Standards for Final Agency Action

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

63. Final agency actions are those (1) that "mark the 'consummation' of the agency's decisionmaking 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) (citations omitted).

64. ICE's revocation of an order of supervision is a final agency action subject to this Court's review.

65. Any revocation or re-detention decision would mark the consummation of ICE's decision-making process regarding Petitioner's custody and supervision.

66. Such an action would also be one by which rights or obligations have been determined, or from which legal consequences would flow, because it would lead to Petitioner's detention in violation of his rights under the Constitution, statute, and regulation.

The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

67. 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.").

68. *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. at 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).

69. Where a release notification issued alongside an order of supervision instructs that a non-citizen with a final order of removal will be given an opportunity to prepare for an "orderly departure," ICE's failure to follow that instruction is an *Accardi* violation. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169 (W.D.N.Y May 2, 2025); *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

VII. CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE
Violation of the Fifth Amendment of the U.S. Constitution
Substantive Due Process

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

71. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

72. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be … deprived of life, liberty, or property, without due process of law." U.S. CONT. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This vital liberty interest is at stake when an individual is subject to detention by the federal government.

73. Under the civil-detention framework set out in *Zadvydas* and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose.

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

75. When Respondents revoked the order of supervision, Petitioner had complied with every condition of the order for over 25 years and ICE had not secured necessary travel documents for removal. No change in circumstances warranted the order's revocation.

There are no new criminal issues, Petitioner has complied with the OSUP and has no new adverse factors to justify detention.

76. Moreover, according to a bi-national treaty, 2008 U.S.-Vietnam Repatriation Agreement, officially titled *Vietnam (08-322) – Agreement on the Acceptance of the Return of Vietnamese Citizens*, **ICE cannot remove Petitioner from the United States**. This agreement **explicitly excluded** Vietnamese nationals who arrived in the United States **before July 12, 1995** from being subject to deportation. This exclusion was based on the historical context: many of these individuals were refugees fleeing post-war persecution and had been protected from deportation under this agreement. The relevant clause states: "**Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995**." Exhibit 3.

77. Because Petitioner's removal is not reasonably foreseeable, Petitioner's 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.

78. Because Respondents had no legitimate, non-punitive objective in revoking Petitioner's order of supervision, Petitioner's 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

79. Petitioner realleges and incorporates all paragraphs above as if fully set forth here.

80. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, (1976). Pursuant to Mathews, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

81. The first factor, the private interest at issue, favors Petitioner as Petitioner's liberty interest is **paramount**. "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 (2001). ICE had already decided 25 years ago in 1999-2000 that Petitioner is not a flight risk, and does not pose a danger to the community. Petitioner has complied with all reporting requirements over the past 25 years and does not have any adverse factors or new criminal behavior that would have led to the recent arrest. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is "without question, a weighty one." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Petitioner is being held at an unknown detention facility in the same conditions as criminal inmates and is far from his family.

82. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also favors Petitioner. To safeguard against erroneous deprivations of liberty, the statute specifies the limited number of reasons that an order of supervision can be revoked. 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 (as they failed to provide notice and an opportunity to be heard). Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of supervision 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. Likewise, the risk of erroneous deprivation of liberty is great due to the lack of a non-independent adjudicator as ICE officers under the current Trump administration are subject to daily arrest quotas of noncitizens. *Marcello v. Bonds*, 39 U.S. 302, 305-306 (1955).

83. The third factor, the government's interest, also favors Petitioner. When the government ignores law (and an agency breaks its own regulations, policies and procedures) that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, 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 an order of supervision reduces fiscal and administrative burdens on the government.

84. Moreover, according to a bi-national treaty, **ICE cannot remove Petitioner from the United States**. This agreement **explicitly excluded** Vietnamese nationals who arrived in the United States **before July 12, 1995** from being subject to deportation. The government must be held to follow its own agreements and therefore cannot foreseeably remove Petitioner. *See* Exhibit 3.

85. For these reasons, revoking Petitioner's order of supervision without providing prior notice, finding or a meaningful opportunity to be heard violated procedural due process under the Fifth Amendment to the U.S. Constitution.

COUNT THREE

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

86. Petitioner realleges and incorporates all paragraphs above as if fully set forth here.

87. 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).

88. 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).

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

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

91. Petitioner's order of supervision was not revoked by the ICE Executive Associate Director. 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.

92. 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.

93. 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 Petitioner 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. Moreover, according to a bi-national treaty, **ICE cannot remove Petitioner from the United States**. This agreement **explicitly excluded** Vietnamese nationals who arrived in the

United States **before July 12, 1995** from being subject to deportation. The government must be held to follow its own agreements and therefore cannot foreseeably remove Petitioner. *See* Exhibit 3.

94. Nor have Respondents provided Petitioner with notice of any intent to revoke supervision or an opportunity to respond as required by 8 C.F.R. § 241.4(l)(1).

95. Accordingly, the revocation of Petitioner's order of supervision and his detention are unlawful and must be set aside because it is 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

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

97. 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).

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

99. 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).

100. Respondents' decision to revoke Petitioner's order of supervision ran counter to the evidence before the agency that Petitioner would comply with a demand to appear for

removal without detention. Petitioner has never violated a condition of his order of supervision and no new facts or changed circumstances suggest he would.

101. The 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).

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

103. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner, who is neither a flight risk nor a danger to the community and for whom the agency does not have travel documents needed to effectuate removal, including financial and administrative costs incurred by the agency due to unnecessary detention. Moreover, according to a bi-national treaty, **ICE cannot legally remove Petitioner from the United States even if they had obtained a travel document for Petitioner**. *See* Exhibit 3.

104. Third, Respondents failed to consider reasonable alternatives to revoking Petitioner's order of supervision that were before the agency, like simply continuing release under the order of supervision 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.

105. Fourth, Respondents failed to consider Petitioner's substantial reliance interest, created by the agency's consistent practice over two decades of allowing people under an

OSUP like Petitioner to remain under supervision and instructing that individuals under such orders will be given an opportunity to arrange for an orderly departure once travel documents are obtained.

106. A noncitizen released from immigration custody acquires a protected liberty interest in remaining at liberty, grounded in the government's own determination that the individual is neither a flight risk nor a danger to the community. This interest is heightened by the individual's reliance on that status to build family, community, and employment ties. Before this liberty can be withdrawn, both the regulatory and constitutional framework require meaningful process—including advance notice and an opportunity to be heard before a neutral decisionmaker. As the Supreme Court has emphasized, "The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up). This principle is reinforced by Supreme Court precedent, that reliance interests created by government action cannot be disregarded arbitrarily or capriciously, and that any change in policy must be accompanied by a reasoned explanation and consideration of those interests. *See Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020), which addressed the issue of reliance interests in the context of the rescission of the Deferred Action for Childhood Arrivals (DACA) program. The Court found that DHS failed to adequately consider the reliance interests of DACA recipients when deciding to rescind the program, rendering the decision arbitrary and capricious under the Administrative Procedure Act (APA). The Court

emphasized that when an agency changes its policy, it must consider the reliance interests that have developed under the previous policy. In the case of DACA, recipients had made significant life decisions based on the program, such as enrolling in educational programs, starting careers, and purchasing homes. The Court held that DHS's failure to consider these reliance interests was arbitrary and capricious, violating the APA. The agency was required to provide a reasoned explanation for its decision, which included assessing the impact on those who had relied on the program. **The decision underscored that the rescission of DACA was not merely a matter of agency discretion but was subject to judicial review**. The Court rejected the argument that DACA was an unreviewable non-enforcement policy, affirming that a rescission of even a discretionary decision by an executive branch agency is subject to judicial review under these circumstances. Likewise, the rescission of Petitioner's liberty, even if discretionary, is subject to judicial review and must comply with the APA and constitutional due process.

107. Numerous recent cases from district courts across the country have reached the same conclusion: noncitizens released on recognizance cannot be arbitrarily re-detained without individualized findings, notice, and a meaningful opportunity to be heard. These courts have granted habeas relief and injunctive orders where the government failed to honor the reliance interests and procedural safeguards inherent in its own release decisions. Arbitrary re-detention, absent evidence of noncompliance, flight risk, or danger, is unlawful and subject to judicial remedy.

See Zhu v. Genalo, No. 1:25-cv-06523 (JLR), 2025 WL 2452352, at *5–9 (S.D.N.Y.

Aug. 26, 2025); *Cifuentes Rivera v. Arnott*, No. 4:25-cv-00570-RK, Dkt. No. 19 (W.D. Mo. Oct. 7, 2025) (holding that under an Order of Supervision pursuant to immigration regulations, 8 C.F.R. §§ 241.4 and 241.13, the petitioner was entitled to an informal interview upon detention based on a revocation of her supervised release order, which she can "contest and challenge, the reasons for her detention"); *Diaz v. Wofford*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *3-5 (D. Ariz. Sept. 5, 2025) (granting preliminary injunction requiring petitioner's immediate release and permanently enjoining the government from re-detaining petitioner without due process compliance based on application of section 1226 where the DHS's failure to follow the regulation procedures in 8 C.F.R. 241.8 and failing to provide notice as required under 8 C.F.R. 241.4 where petitioner was released on own recognizance due to lack of space, was a derivative applicant on his wife's asylum application, and there was no evidence petitioner failed to comply with his terms of supervision); *M.S.L. v. Bostock*, No. 25-cv-01204, 2025 WL 2430267 (D. Or. Aug 21, 2025) (granting temporary restraining order requiring petitioner's immediate release where the DHS's failure to provide notice as required under 8 C.F.R. § 241.4 and there was no evidence petitioner failed to comply with her terms of supervision); *see also Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass 2017) (holding ICE violated the Due Process Clause of the Fifth Amendment by detaining petitioner without advance notice, a hearing, or an interview, despite his full compliance with the conditions of his release); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D.N.Y. May 2, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory

authority to do so). 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).

108. For these and other reasons, Respondents' revocation of Petitioner's order of supervision 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 realleges 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.

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

114. Respondents' revocation of Petitioner's order of supervision was based on ultra vires regulations. So it was in excess of statutory authority and should be held unlawful and set aside.

COUNT SIX
Ultra Vires Action

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

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

117. 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

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

119. 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").

120. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Petitioner's 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 (W.D.N.Y. May 2, 2025) (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 revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

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

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

CONCLUSION

The OSUP revocation was unlawful; the continued detention of Petitioner violates due process rights. But for intervention by this Court, Petitioner has no means of release from ICE custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(1) Grant Petitioner a writ of habeas corpus;

(2) Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this Petition;

(3) Order Petitioner's immediate release;

(4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;

(5) Order Respondents to file a response (Order to Show Cause) within 3 days of the filing of this petition;

(6) Order that Petitioner be returned to the prior Order of Supervision;

(7) Enjoin Respondents from re-detaining Petitioner absent full compliance with statutory and regulatory due process protections;

(8) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine absent significant change circumstances;

(9) Award attorney's fees and court costs to Petitioner; and

(10) Grant such other and further relief as this Court deems proper or equitable under the circumstances.

Respectfully Submitted,

This 21st day of October, 2025.

Karen Weinstock

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's partner and have reviewed various immigration documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

This 21st day of October 2025.

Karen Weinstock

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