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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY MUCHACHE NYAMWEYA)

Petitioner)

v.)

CHRISTOPHER J. LAROSE, Senior)

Warden, Otay Mesa Detention Center;)

JOSEPH FREDEN, Acting Field Office)

Director, U.S. Immigration & Customs)

Enforcement (ICE); TODD LYONS,)

Acting Director, U.S. ICE; KRISTI)

NOEM, U.S. Secretary of Homeland)

Security; PAMELA BONDI, Attorney)

General of the United States)

Respondents.)

Case No. '25CV3094 BJC VET

Agency No. 

**PETITION FOR WRIT
OF HABEAS CORPUS**

**ORAL ARGUMENT
REQUESTED**

Expedited Hearing Requested

I. INTRODUCTION

1. Petitioner, Jeffrey Muchache Nyameya, by and through his undersigned counsel, hereby files this Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief to compel his immediate release from the immigration detention facility where he has been held by the U.S. Department of Homeland Security (DHS) since being detained on November 4, 2025, at his routine ICE check-in. Petitioner is neither a flight risk nor a danger to the community. Despite this, ICE detained him without notice or an 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 that provide for an opportunity for an orderly departure when the time came for Petitioner's removal from the United States.

2. On July 23, 2008, Petitioner was granted withholding of removal under Section 241 Of the Immigration and Nationality Act ("Act") and also Withholding under the Convention Against Torture to Kenya. When he granted withholding, the immigration judge entered an alternative order of removal to "such country, other than Kenya, as may be legally permissible under section 241 of the Act." ICE found that Petitioner was neither a flight risk nor danger to the community when it placed Mr. Nyamweya on an order of supervision on August

27, 2008, seventeen (17) years ago. Since that time, Mr. Nyamweya has continued to check in with ICE annually and has fully complied with all the requirements of his order of supervision. No material change in facts or circumstances has occurred since he was placed on the order of supervision.

3. At Mr. Nyamweya's regularly scheduled check in with ICE on November 4, 2025, Respondents suddenly and without advance notice, revoked Mr. Nyamweya's order of supervision and arrested him. Mr. Nyamweya is being held at Otay Mesa Detention Center, in Otay Mesa, California.

4. Respondent's actions violate the Due Process Clause of the Fifth Amendment of the United States Constitution, the Immigration and Nationality Act (INA) and its implementing regulations, the Administrative Procedure Act (APA), and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

II. JURISDICTION

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

6. The aid of this Court is further invoked under 28 U.S.C. §§ 2201-2, authorizing a declaratory judgment and any further necessary and proper relief.

III. VENUE

7. Venue is proper with this court because Respondent Warden LAROSE is Petitioners' immediate custodian at the Otay Mesa Detention Facility in Otay Mesa, California. Venue is also proper pursuant to 28 U.S.C. § 1391(e) because the Defendants are all officers and agencies of the United States; the Plaintiff resides in this judicial district; and there is no real property involved in this action.

IV. PARTIES

8. Petitioner JEFFREY MUCHACHE NYAMWEYA is a native and citizen of Kenya who has resided in the Southern District of California for 25 years and is currently detained by ICE at the Otay Mesa Detention Center.

9. Respondent CHRISTOPHER J. LAROSE is the warden of Otay Mesa Detention Center. Respondent LaRose oversees the day-to-day operations of Otay Mesa Detention Center and acts at the direction of Respondents FREDEN, LYONS, NOEM, AND BONDI. He is a custodian of the Petitioner and is named in this official capacity.

10. Respondent JOSEPH FREDEN is the Acting Field Office Director of U.S. Immigration and Customs Enforcement (ICE), in San Diego California. ICE

is the component of the Department of Homeland Security (DHS) which is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. Mr. Freden is named in his official capacity. In his official capacity, he is a legal custodian of the petitioner.

11. Respondent TODD LYONS is the Acting Director of ICE and is named in his official capacity. In his official capacity, he is a legal custodian of the petitioner.

12. Respondent KRISTI NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency of which ICE is a component part. DHS is responsible for the administration and enforcement of the Immigration and Nationality Act (INA) and all other laws pertaining to the immigration of noncitizens. In her capacity as Secretary of the DHS, Respondent NOEM has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); see also 8 U.S.C. § 1103(a). Respondent NOEM is the ultimate legal custodian of Petitioner.

13. Respondent PAM BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret the immigration

laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals (BIA).

V. REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243



14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” Id.

15. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” Fay v. Niola, 372 U.S. 391, 400 (1963).

16. Petitioner is “in custody” for the purpose of § 2241 because he was arrested and remains detained by the Respondents.

VI. STATEMENT OF FACTS

17. Petitioner, Jeffrey Muchache Nyamweya, is a citizen of Kenya who has resided in the United States since 1999, since he was 21 years old. He has one US citizen brother and one lawful permanent resident brother.

18. Mr. Nyamweya came to the United States to attend graduate school. He attended Alliant International University in San Diego, California, graduating in Information Systems. Mr. Nyamweya has been working at   as a system analyst for several years.

19.

20. In 2007 Mr. Nyamweya was placed in removal proceedings. In 2008 he applied for asylum, withholding of removal, and United Nations Convention Against Torture (CAT) relief because he is afraid of being imprisoned, killed or tortured in Kenya. On July 23, 2008, the immigration judge granted his applications for withholding of removal and CAT relief were granted with regard to Kenya by the immigration judge. Asylum was denied because he did not file his asylum application within one year. Because the protections of withholding of removal and CAT are country specific, the immigration judge entered an alternative order that Mr. Nyamweya be removed to “such country, other than Kenya, as may be legally permissible under section 241 of the act-.”

21. Approximately one month later, ICE requested that Mr. Nyamweya check in with them for the first time. At that check in, on August 27, 2008, Mr. Nyamweya was placed on an order of supervision. For the next 17 years, Mr. Nyamweya continued to check in with ICE annually and fully comply with all the requirements of his Order of Supervision. No material change in facts or

circumstances has occurred since that time that would justify revoking his order of supervision.


22. On May 1, 2025, Mr. Nyamweya appeared for his annual check in with ICE and was given an appointment for his next check in on November 4, 2025.

23. On January 20, 2025, President Donald J. Trump issued several executive actions relating to immigration, including “Protecting the American People Against Invasion,” an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping changes to immigration enforcement, establishing a formal framework for mass deportation. The “Protecting the American People Against Invasion,” EO instructs the DHS Secretary to “take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures, including through mass detention.

24. On November 4, 2025, Mr. Nyamweya appeared for his scheduled check in and was arrested by ICE and detained.

25. At his check in, ICE questioned Mr. Nyamweya as to the reasons why he should be allowed to remain in the US. Mr. Nyamweya advised ICE that he recently underwent a urethral surgery and is scheduled for a follow-up in January 2025. He also advised ICE that he was scheduled for colorectal surgery on

December 30, 2025, with a pre-op on December 4, 2025. The colorectal surgery was scheduled to rule out cancer as a pre-screening had shown some suspicious growth. Petitioner is also pre-diabetic and is following a strict diet.

26. At , Mr. Nyamweya is a critical member of a small team working on a number of various projects. He is now at risk of losing his job and his health benefits.

27. 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.

28. Upon information and belief, at no time following Petitioner's arrest did ICE explain why it revoked Petitioner's order of supervision despite his individual circumstances, or give him an opportunity to respond to those reasons, other than to say this was a new administration and that he can ask for a bond hearing and present his case then, knowing full well he does not qualify for a bond hearing.

29. 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, nor had it even named a country for removal.

XII. LEGAL FRAMEWORK

Constitutional Due Process Requirements

30. The Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. CONST. amend. V. "The Due Process Clause protects 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).

31. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." Id. at 690 (2001). Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." Addington v. Texas, 441 U.S. 418, 423 (1979).

32. 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. Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

33. “Procedural due process imposes constraints on governmental decisions which deprive individuals of their liberty,” like the decision to revoke a non-citizen’s order of supervision. Matthews 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.

34. In the context of re-detention for the purposes of removal, “the process that is due here is the allowance that [the petitioner] know and understand that the time has come [for his deportation], that he must organize his affairs, and that he do so by a date certain. That is what is due. That is the process required after a life lived among us.” 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 (2nd Cir. July 30, 2019). Id. at *2. *See also, Chhoeun v. Marin*, 442 F.Supp. 3d 1233, 1246 (S.D. Cal. 2020)(ordering written notice of 14 days before class members could be re-detained to give them time to say goodbye to their families and wrap up their affairs).

Statute and Regulations Governing Procedures for Revoking an Order of Supervision

35. The 90-days after a non-citizen's removal order becomes administratively final is known as the "removal period." 8 U.S.C. § 1231(a)(1). If the non-citizen is not removed during this period, he "shall be subject to [an order of] supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3).

36. 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 based on certain specified grounds not applicable to this case. Id. § 1231(a)(6).

37. 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)]." Zadvydas v. Davis, 533 U.S. 678, 699-700 (2001). Such release "may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances[.]" Id.

38. Regulations purport to give additional reasons beyond those listed at § 1231(a)(6) for an order of supervision to be revoked and the non-citizen detained beyond the removal period. These regulatory grounds are: "(i) the purposes of release have been served; (ii) alien violates any condition of release; (iii) it is appropriate to enforce a removal order or commence removal proceedings against

an alien; or (iv) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 CFR § 241.4(1)(2); *see also id.* § 241.13(i)(permitting revocation of an order of supervision only if a non-citizen “violates any condition of release”). But, because “[r]egulations cannot circumvent the plain text of the statute[,]” courts have questioned whether these regulations are ultra vires of statutory authority. *See, e.g., You v. Nielson*, 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 a person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

39. Even when the regulations are properly followed, however, only certain officials are permitted 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 CFR §§ 1.2, 241.4(1)(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 intends to revoke an order of supervision, he or she 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 CFR § 241.4(1)(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 does not include the power to revoke release” is insufficient to grant authority to revoke an order of supervision).

40. 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 CFR § 241.4(l)(1).

The APA Sets Minimum Standards for Final Agency Action

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

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

43. ICE’s revocation of an order of supervision is a final agency action subject to this court’s review.

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

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

The Accardi doctrine Requires Agencies to Follow Their Own Internal Rules

46. 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.”).

47. Accardi is not “limited to rules attaining the status of formal regulations.” Montilla v. INS, 926 f.2d 162, 167 (2nd Cir. 1991). Courts must also reverse agency action that violates unpublished rules and instructions to agency officials. See, Morton v. Ruiz, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); U.S. v. Heffner, 420 F.2d 809, 812 (4th Cir. 1969)(under Accardi, reversing decision to admit

evidence obtained by IRS agents for violating instructions on investigating tax fraud).

XIII. CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process Substantive Due Process

48. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

49. When Respondents issued Petitioner an order of supervision in 2008, it found that he was neither a flight risk nor a danger to the community.

50. When Respondents revoked the order of supervision on November 4, 2008, Petitioner had complied with every condition of the order for the last seventeen years, ICE had not secured the necessary travel documents for removal, and had not even designated a particular country to which it believed Petitioner could be removed. No change in circumstances warranted the order's revocation.

51. 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. Respondents have chosen to revoke Petitioner's release in an arbitrary manner, not based on a rational and individualized determination of whether he is a safety or flight risk.

52. 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 Fifth Amendment Right to Due Process
Procedural Due Process

53. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

54. The Supreme Court in Matthews v. Eldridge, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government’s interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail. 424 U.S. 319, 333 (1976).

55. The first factor, the Petitioner’s interest in “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). This factor favors the Petitioner, who has lived in the United States for 25 years and has established ties to this country.

56. The second factor, risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also favors the 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. 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 that a person—like the Petitioner who poses neither a danger to the community nor a flight risk—will be erroneously detained.

57. The third factor, the government's interest, also favors the Petitioner. When the government ignores law 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 petition in federal court to compel Respondents to comply with the 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.

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

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

59. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

60. Under the APA, a court “shall [...] hold unlawful [...] agency action” that is “not in accordance with law;” “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(A),(B).

61. 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).

62. Respondent’s 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.

63. 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.

64. 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.

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

66. 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 he 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 or even designate a specific country.

67. Nor did Respondents give Petitioner notice of the reasons for revocation and opportunity to be heard regarding those specific reasons.

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

69. On information and belief, Respondents have revoked Petitioner's order of supervision as a result of a categorical policy prepared by and implemented by unidentified government officials in Washington D.C., not through the individualized exercise of discretion required by law or by the individuals designated by regulation to do so.

70. Because Petitioner's revocation of Petitioner's order of supervision has been or will be categorically directed by government officials not authorized by law to make this determination, Respondent's detention of Petitioner is not in accordance with law and in excess of statutory authority.

COUNT FOUR
Violation of the Administrative Procedure Act—5 U.S.C. § 706(2)(A)
Arbitrary and Capricious

71. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

72. 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).

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

74. 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).

75. Respondent's 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. In 17 years, petitioner has never once violated a condition of his order of supervision and no new facts or changed circumstances suggest he would.

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

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

78. Second, Respondents failed to consider the increased and unnecessary administrative burden to the agency caused by revoking the order of Petitioner who

poses neither a danger to the community nor a flight risk, and for whom the agency does not have the travel documents needed to effectuate removal, or even a specific country in mind. These burdens include the financial and administrative costs incurred by the agency due to unnecessary detention.

79. Third, Respondents failed to consider reasonable alternatives to revoking Petitioner's order of supervision that were available to the agency. For example, simply continuing release under the order of supervision and scheduling a future time and date to appear for removal. This alternative would satisfy the government's interests in effectuating a removal order and save it the expense of detention which is not needed to guarantee Petitioner's appearance.

80. Fourth, Respondents failed to consider Petitioner's substantial reliance interest, created by its instruction on Petitioner's release notification, that the agency would give him an opportunity to arrange for an orderly departure once it decided on a country of removal and obtained travel documents.

81. By categorically revoking Petitioner's order of supervision and detaining him without consideration of his individualized facts and circumstances, Respondents have violated the APA.

82. By detaining the Petitioner categorically, Respondents have further abused their discretion because there have been no changes to the facts or circumstances that would warrant the revocation of Petitioner's order of

supervision since 2008 when ICE made its initial determination that he was not a flight risk or danger to the community.

83. For these and other reasons, Respondents' revocation of Petitioner's order of supervision and his categorical detention were 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)
Action in Excess of Statutory Authority

84. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

85. 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).

86. “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).

87. 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 [8 U.S.C. § 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 (2001).

88. Regulations that purport to give Respondents authority to revoke an order of supervision on grounds other than those listed in 8 U.S.C. § 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. Nelson, 321 F.Supp.3d 451, 463 (S.D.N.Y. 2018).

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

COUNT SIX Ultra Vires Action

90. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

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

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

COUNT SEVEN

Violation of Accardi Doctrine

93. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

94. Under the Accardi doctrine, Petitioner has a right to set aside agency action that violates agency procedures, rules, or instructions. United States ex re. Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954)(If petitioner can prove the allegation [that the agency failed to follow its own rules in a hearing] he should receive a new hearing”).

95. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Petitioner’s order of supervision. “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, at 162 (citing Rombot v. Moniz, 296 F.Supp. 3d 386, 386-89); see also, e.g. Zhu v. Genalo, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); M.S.L. v Bostock, 2025 WL 2430267 (D. Or. Aug. 21, 2025)(releasing habeas petitioner where revocation of ICE order of supervision was ordered by someone without regulatory authority to do so).

XIV. PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Issue an order prohibiting Respondents from transferring Petitioner outside the jurisdiction of the San Diego Field Office and/or the Southern District of California pending the resolution of this case;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;
- (4) Declare that revocation of Petitioner's order of supervision from custody was done in violation of statute and regulation;
- (5) 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;
- (6) Issue a Writ of Habeas Corpus ordering Respondent to release Petitioner from their custody
- (7) Award costs and reasonable attorney's fees pursuant to the Equal Access to Justice Act, and on any other basis justified under law; and
- (8) Grant such other relief as the Court deems just and proper.

