

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

Y.J.F.R.)
A# [REDACTED],)
)
Petitioner,)
)
vs.)
)
JASON WOOSLEY, *in his official capacity as*)
Jailer of Grayson County Detention Center; and)
SAMUEL OLSON, *Field Office Director for ICE*)
Chicago 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.:
4:25-cv-00142-DJH

**AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF**

Petitioner respectfully submits this amended habeas complaint pursuant to Federal Rules of Civil Procedure (FRCP) 15(a), as a matter of course and without leave of court. This amendment is timely, having been filed within 21 days after service of the original complaint upon. The amended complaint is necessary to address and incorporate new and revised factual and legal arguments that have arisen since the initial filing, now that Respondents have produced the required evidence in this case, ensuring that the Court is presented with the most current and complete factual and legal basis in order to be able to grant relief.

The purpose of an amended complaint or petition is to refine, clarify, or expand

upon Petitioner's claims and remove some of the arguments pertaining to under 8 U.S.C. § 1225(b) vs. 8 U.S.C. § 1226(a). However, Petitioner will retain a small section referring to those arguments since she did enter without inspection and if she is ordered released pursuant to an unlawful revocation of an Order of Supervision (OSUP), Respondents may re-detain her again under their interpretation of 8 U.S.C. § 1225(b) rendering any relief in this case contravened. Petitioner continues to suffer significant and ongoing harm as a direct result of his detention and the case remains justiciable for which the Court can grant relief.

I. INTRODUCTION

1. This Petition challenges the ongoing and unlawful detention of Petitioner, Y.J.F.R. (██████████), a noncitizen currently detained by U.S. Immigration and Customs Enforcement (ICE) at the Grayson County Detention Center in Leitchfield, Kentucky. A motion to proceed under a pseudonym has already been filed with the Court due to Petitioner's protected asylum applicant status and crime victim status. Petitioner is a mother of three, has no criminal record, and poses neither a flight risk nor a danger to the community.
2. Petitioner, Y.J.F.R. ("Petitioner"), brings this action to challenge the unlawful and arbitrary revocation of her Order of Supervision ("OSUP") by the Department of Homeland Security ("DHS") and ICE without notice, individualized assessment, or opportunity to be heard. Petitioner, a noncitizen with a pending application for asylum and withholding of removal, was previously released from immigration detention on an OSUP after posting bond and has consistently complied with all

conditions of her release. Despite this, DHS revoked her OSUP and re-detained her at a routine check-in, without providing any written notice, explanation, or opportunity to contest the action. This abrupt and procedurally deficient revocation violated Petitioner's constitutional right to due process, as well as governing statutes and regulations.

3. The revocation of Petitioner's OSUP is strictly governed by federal regulations, including 8 C.F.R. §§ 241.4 and 241.13, which require individualized findings, written notice of the reasons for revocation, and a meaningful opportunity to respond before re-detention. These procedural safeguards are not discretionary; they are binding legal obligations, and federal agencies are required to follow them under the Accardi doctrine, which mandates that agencies must adhere to their own rules and procedures. Failure to comply with these requirements renders agency action invalid and subject to judicial relief.
4. Petitioner seeks the following relief: (1) a declaration that the revocation of her OSUP was unlawful and in violation of her due process rights; (2) an order reinstating her OSUP and releasing her from detention under the same or similar conditions; (3) damages for the deprivation of her liberty and due process violations; and (4) such other and further relief as the Court deems just and proper.

II. JURISDICTION

5. This Court has jurisdiction under several legal provisions, including 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus, and 28 U.S.C. § 1331, which provides for federal question jurisdiction. Jurisdiction over habeas claims is conferred by 28 U.S.C. § 2241, while non-habeas claims for

declaratory and injunctive relief arise under 28 U.S.C. § 1331, the APA, and the Declaratory Judgment Act.

6. Additionally, jurisdiction is supported by Article I, § 9, cl. 2 of the Constitution, known as the Suspension Clause, and Article III, Section 2, which addresses the Court's authority to hear constitutional issues raised by the Petitioner. The Petitioner seeks immediate judicial intervention to address ongoing violations of constitutional rights by the Respondents. This action is grounded in the United States Constitution, the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 *et seq.*, and the APA, 5 U.S.C. § 551 *et seq.* Furthermore, the Court may also exercise jurisdiction under 28 U.S.C. § 1331, as the action arises under federal law, and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
7. The Court has authority to issue a declaratory judgement and to grant temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure (FRCP), as well as 28 U.S.C. §§ 2201-2202. Additionally, the Court can utilize the All Writs Act and its inherent equitable powers to provide such relief. Furthermore, the Court has the authority to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.
8. This Court possesses federal question jurisdiction under the APA to "hold unlawful and set aside agency action" deemed "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," as outlined in 5 U.S.C. § 706(2)(A). In the absence of a specific statutory review process, APA review of final agency actions can proceed through "any applicable form of legal action," which includes

actions for declaratory judgments, writs of prohibitory or mandatory injunction, or habeas corpus, in a court of competent jurisdiction, as specified in 5 U.S.C. § 703.

9. 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 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioner.
10. The U.S. Supreme Court 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. Even though the government may detain individuals during removal proceedings, *Denmore v. Kim*, 538 U.S. 510, (2003), (although that case involved detention under §1226(c) of certain criminal aliens) there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment. *Reno v. Flores*, 507 U.S. 292, 306, (1993). Courts must review immigration procedures and ensure that they comport with the Constitution.
11. Federal courts have retained the statutory authority to grant writs of habeas corpus since enactment of the Judiciary Act of 1789. In *Felker v. Turpin*, 518 U.S. 651 (1996), the Supreme Court declined to find a repeal of § 2241 by implication as to its original habeas corpus jurisdiction. See also *Boumediene v. Bush*, 553 U.S. 723

(2008). In addition to the Supreme Court in many cases, all Circuit Courts of Appeals have 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, violations of the *Accardi* doctrine, and other injuries 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. Petitioner's claims challenge only her 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).

14. 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 —e.g., directing Petitioner’s release under § 1226(a) or precluding DHS from enforcing the “arriving alien” definition of § 1225 toward 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.

15. 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).

16. Section 1252(e)(3) is likewise inapplicable as it is narrowly tailored to channel


systemic or facial challenges to the validity of the expedited removal “system” or its implementing regulations and written policies to the U.S. District Court for the District of Columbia, and only within 60 days of implementation. It does not bar as-applied, individualized habeas challenges to the legality or constitutionality of a particular noncitizen’s detention under § 1225(b)(2) or whether § 1225 governs Petitioner’s detention or § 1226. The text of § 1252(e)(3) is explicit: it covers “[c]hallenges on the validity of the system” and review of “whether such a regulation, or a written policy directive, written policy guideline, or written procedure ... is not consistent with applicable provisions of this title or is otherwise in violation of law.” It does not preclude review of the legality of detention as applied to a specific individual, nor does it bar habeas review of constitutional claims or claims that the government is misapplying the statute in a particular case.

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. 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 Western District of Kentucky because Petitioner is currently detained at Grayson County Detention Center in Leitchfield, Kentucky, under the custody of the Department of Homeland Security (DHS). Respondent Jason Woosley, as the Jailer of Grayson County Detention Center, is the Petitioner's immediate custodian and Respondents exercise authority over Petitioner's custody in this jurisdiction, as supported by *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). 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.

IV. PARTIES

19. Petitioner, , is a 41-year-old noncitizen who has resided in the United States since 2012, having been released into the country on her own recognizance under an OSUP on February 9, 2012. ECF Dkt. No. 12-3 and 12-4. She was allowed into

the U.S. after passing a Reasonable Fear Interview following her detention at the border in 2011, where she expressed fear of returning to her home country due to [REDACTED]. She lives in Indianapolis, Indiana, with her husband and their three children, two of whom are U.S. citizens, ages 8 and 12. She has no criminal record and was detained by U.S. ICE on July 28, 2025, during a routine check-in, and is currently held at the Grayson County Detention Center in Leitchfield, Kentucky.

20. Respondent Jason Woosley is the Jailer of Grayson County Detention Center in Leitchfield, Kentucky. As such, Respondent Woosley is responsible for the operation of the Detention Center where Petitioner is detained and is the immediate custodian who is currently holding Petitioner in physical custody. Because ICE contracts with private and county-operated detention facilities to house immigration detainees, Respondent Woosley has immediate physical custody of the Petitioner and is sued in his official capacity.
21. Respondent Samuel Olson is the Chicago Field Office Director (FOD) for ICE. As such, Respondent Olson is responsible for the oversight of ICE operations at the Grayson County Detention Center. Respondent Olson is being sued in his official capacity. He is the head of the ICE office that unlawfully arrested Petitioner, and such arrest took place under his direction and supervision. He is the immediate *legal* custodian of Petitioner.
22. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). As such, Respondent Lyons is responsible for the oversight of ICE operations and the head of the federal agency responsible for all immigration

enforcement in the United States. Respondent Lyons is being sued in his official capacity.

23. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). As Secretary of DHS, Secretary Noem is the cabinet-level official 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.

24. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for bond and relief from removal do so as her designees at the Executive Office for Immigration Review (EOIR).

25. Petitioner names certain federal officials in their official capacities solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA’s waiver of sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651—necessary to enjoin enforcement of DHS regulations and their interpretation as applied to Petitioner, ensure compliance with DHS/EOIR custody regulations, prevent transfer or removal of Petitioner, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. See, e.g., *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963).

26. Petitioner acknowledges, consistent with *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that the proper respondent to the habeas claim is the immediate custodian, and does not rely on the federal officials as “habeas respondents.” Rather, Petitioner names these federal officials in their official capacities solely to ensure that the Court can issue effective relief on non-habeas claims, such as declaratory and injunctive relief, and to direct agency action to those with actual authority to implement it. Should the Court find these officials improper as respondents to the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as respondents for the non-habeas claims. Maintaining these officials as parties is necessary to ensure that, if relief is granted, the responsible agency officials cannot simply re-arrest Petitioner or otherwise frustrate the Court’s order by invoking their erroneous interpretation of the INA. This approach is consistent with *Padilla* and ensures that the Court’s orders are both effective and enforceable.

V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

27. Petitioner, Y.J.F.R, is a 41-year-old noncitizen who has resided in the United States since 2011. Petitioner first attempted to enter the United States in on or around April 2007 through the southern border near Columbus, New Mexico, where she was detained and subject to expedited removal under 8 U.S.C. § 1225. Following her expedited removal, she was sent back to her home country with an order of removal.

28. Petitioner then made a second attempt to enter the United States in August 2011

without authorization. She was again encountered by Border Patrol agents near Brownsville, Texas, and her 2007 expedited removal order was reinstated. After a positive reasonable fear determination, her case was referred to an immigration judge for withholding-only proceedings.

29. On or about February 9, 2012, Petitioner was released from ICE custody under an OSUP, Form I-220B upon posting a \$7,000 bond. The OSUP set forth specific conditions, including regular reporting, restrictions on travel, and requirements to provide updated contact information. The release was based on compelling factors, including her positive reasonable fear determination and pending withholding-only proceedings. ECF 12-4.
30. Since 2012, Petitioner has resided in Indianapolis, Indiana, with her husband, and their three U.S.C. children: M., age 11, J., age 8, and L., age 15. Petitioner has no criminal record and has complied with all reporting requirements set by ICE, including appearing at all check-ins.
31. Petitioner's daughter, M., age 11, has been diagnosed with unilateral hearing loss in her right ear. This sensorineural hearing loss affects her ability to hear and understand speech, particularly in noisy environments, such as a classroom. As a result, M. has been receiving speech and language therapy and audiological services through the Indianapolis Public Schools (IPS) to address the educational impact of her hearing impairment. She requires preferential seating in class and the use of amplification systems to better access auditory information in school. M.'s academic performance in reading, writing, and auditory memory is affected by her hearing loss, and she requires accommodations to succeed in her academic

environment.

32. In June 2022, Petitioner's husband filed a principal U-Visa petition (Form I-918) for himself, and Petitioner was included as a derivative spouse on Form I-918A. On January 17, 2025, Petitioner was granted Deferred Action for a period of four years (until January 16, 2029) under the Bona Fide Determination (BFD) process as part of her husband's U-Visa petition. *See* Exhibit 3 (USCIS Bona Fide Determination and Deferred Action Notice).
33. Despite her Deferred Action status, on July 28, 2025, Petitioner was arrested by ICE during a routine check-in in Indianapolis, Indiana, and transferred to Grayson County Detention Center in Leitchfield, Kentucky. While a search of the ICE Detainee Locator did not yield any results for Petitioner, her detention at Grayson County Detention Center was confirmed through her husband's communication with ICE. Petitioner remains in custody at Grayson County Detention Center, where she is being held without bond. *See* Exhibit 1 (ICE locator).
34. Petitioner has no criminal convictions and has complied with all reporting requirements set by ICE. She has lived with her family in Indianapolis, Indiana, and has remained in compliance with all conditions of her parole since her release in 2012. Petitioner is also a victim of domestic violence and has suffered from death threats from her former partner, which were among the reasons she fled her home and sought protection in the United States.
35. Petitioner's Individual Hearing is scheduled for November 17, 2025, at 3:00 p.m. before Immigration Richard Drucker at 320 Shaw Station Road, Leachfield, KY 42754. *See* Exhibit 4 (EOIR Automated Case Information System).

36. Petitioner was arrested in the interior of the United States approximately fourteen (14) years after entry and is therefore improperly detained under 8 U.S.C. § 1226(a), ICE having not issued a warrant for her arrest. Had they issued a warrant, her arrest under 8 U.S.C. § 1226(a), which provides for discretionary bond or release on recognizance, may have been proper. Nevertheless, Respondents have classified her as an “arriving alien” and detained her under 8 U.S.C. § 1225(b)(2)—rendering her ineligible for bond under their new, unlawful policy.
37. Petitioner’s continued detention, now exceeding three months, is based solely on ICE’s erroneous classification of her as an “arriving alien” or “applicant for admission”, subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioner was apprehended in the interior of the United States more than a decade after entry, and therefore her detention should be governed by 8 U.S.C. § 1226(a), which allows for discretionary release on bond or recognizance.
38. Because all Respondents continue to treat Petitioner as detained under § 1225(b), any request for bond redetermination before an Immigration Judge would be futile, as the Immigration Court has already disclaimed jurisdiction over such requests. Accordingly, habeas relief is the only available and effective remedy to secure Petitioner’s release or a lawful custody hearing.
39. Petitioner is neither a danger nor a flight risk. She has lived in the same community for over a decade, raised a family of U.S. citizens, and has complied with all ICE check-ins and reporting requirements. Less-restrictive alternatives remain available and adequate such as release on recognizance or posting a low bond.
40. Prolonged detention under these circumstances imposes unnecessary hardship on

Petitioner and her family, depriving her U.S.-citizen children of their mother's emotional support, and violating Petitioner's right to due process and freedom from arbitrary detention.

41. Upon information and belief, as of the time of filing of this Writ of Habeas, Petitioner remains confined the Grayson County Detention Center in Leitchfield, Kentucky, solely because of ICE's invocation of its new interpretation that Petitioner is an "arriving alien" or "applicant for admission" and is therefore subject to mandatory detention. Even Petitioner were to file for a bond redetermination with the immigration judge, they would deny it pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, it would be futile for Petitioner to request a bond for release from an Immigration Judge. Due to the binding nature of *Matter of Yajure Hurtado*, all immigration courts known to counsel are denying bond requests for similarly situated noncitizens, making habeas the only effective remedy. Similarly, even in cases an Immigration Judge would grant bond, ICE would appeal it which would leave Petitioner incarcerated through the appeal, which would take months and end up dismissed based on *Yajure Hurtado*.

VI. EXHAUSTION OF REMEDIES

42. **No statutory exhaustion requirement applies to habeas cases**, and the recent interpretations by DHS and EOIR have effectively closed all administrative avenues for securing release for noncitizens, like Petitioner, who entered the U.S. without inspection. ICE's internal policy from July 2025, coupled with the EOIR's

Board of Immigration Appeals (BIA) precedent, mandates that immigration judges deny bond to the Petitioner and similarly situated noncitizens, rendering any further administrative steps futile. An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it as noted in *Gibson v. Berryhill*, 411 U. S. 564, 575, n. 14 (1973). Requiring Petitioner to seek reconsideration with ICE or a bond hearing with an immigration judge “would be to demand a futile act” as no relief would be granted while Petitioner languishes in detention, as highlighted in *Houghton v. Shafer*, 392 U.S. 639, 640 (1968). Moreover, even if any remedies were available, the habeas statute does not require Petitioner to exhaust them.

43. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies would have been futile on claim attacking constitutionality of ICE’s actions and ICE’s and EOIR’s current interpretations of the mandatory detention provisions. Administrative hearings cannot address the constitutional claims at issue, rendering further proceedings ineffective. Moreover, where ICE seeks to quickly remove noncitizens like Petitioner even to third countries, without due process, particularly under the current administration’s policies, underscores the inadequacy of administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (futility exception to exhaustion applies where administrative remedies are inadequate or unavailable). Thus, pursuing such remedies would be an exercise in futility, as they fail to provide any meaningful opportunity to address the constitutional violations at hand.

44. Due to the binding nature of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA

2025), and ICE's July 2025 policy memo, immigration judges uniformly deny bond to similarly situated noncitizens, rendering any request for a bond hearing futile. Petitioner's experience—immediate transfer, denial of bond, and lack of any meaningful administrative remedy—exemplifies the closure of all administrative avenues for securing release. The exhaustion of administrative remedies is not required for habeas petitions under 28 U.S.C. § 2241, and the futility of administrative remedies in light of these policies further underscores the necessity of judicial intervention.

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

VII. FORNALIK ARGUMENTS: ENFORCEABILITY OF REMOVAL ORDER AND DEFERRED ACTION

46. Petitioner has been granted Deferred Action by USCIS based on her husband's U visa status, which is valid through 2029. Despite this grant, ICE is attempting to enforce a removal order against Petitioner, which is contrary to Seventh Circuit's precedent in *Fornalik v. Perryman*, which, although not binding in the Sixth Circuit, should be applied here due to the close factual parallels and persuasive reasoning.
47. In *Fornalik v. Perryman*, 223 F.3d 523 (7th Cir. 2000), the Seventh Circuit the Seventh Circuit addressed a nearly identical situation where immigration authorities attempted to remove a noncitizen after granting Deferred Action, despite a preexisting removal order. The court held that the last agency action—in that case, the grant of Deferred Action—supersedes all prior actions, including any

outstanding removal orders. The court reasoned that allowing inconsistent treatment by different branches of the same agency is impermissible, and that the most recent agency decision must control. Specifically, the court stated that “the last agency action supplants all prior ones,” and reversed the district court’s judgment, instructing it to enforce the Deferred Action grant and prevent removal during its validity period. The Seventh Circuit held that in situations of inconsistent treatment by immigration officials under the same governmental department (then INS, now DHS), the last agency action “supplants all prior ones,” which in Petitioner’s case is USCIS’s Deferred Action grant. See *id.* at 530. Thus, the removal order against Petitioner is currently unenforceable.

48. Here, as in *Fornalik*, Petitioner’s Deferred Action was granted with full knowledge of her prior removal order. The grant of Deferred Action constitutes the most recent and controlling agency action, rendering the prior removal order unenforceable for the duration of the Deferred Action. The Seventh Circuit further clarified that 8 U.S.C. § 1252(g) does not bar judicial review in cases where the claim is based on a prior, unrelated error that makes removal improper, as is the case here.

49. Accordingly, Petitioner’s continued detention and the attempted enforcement of her removal order are improper and contrary to the principles articulated in *Fornalik*. Because the removal order is not currently enforceable, Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1231 for the purpose of enforcing that order. Therefore, the Court should grant Petitioner’s immediate release, as she has demonstrated a strong likelihood of success on the merits of her habeas action based on the persuasive authority of *Fornalik*.

VIII. UNLAWFUL REVOCATION OF CRIME VICTIM POLICIES

50. The Administrative Procedure Act (APA) requires federal agencies to engage in reasoned decision-making and prohibits actions that are arbitrary, capricious, or taken without observance of procedure required by law. See *Michigan v. EPA*, 576 U.S. 743, 750 (2015); *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 16, 20–23 (2020). When rescinding a prior policy, an agency must consider reasonable alternatives and address legitimate reliance interests engendered by the prior policy. *Id.* at 20–24, 28–34).
51. For over 15 years, and throughout the entirety of Petitioner's presence in the U.S., until 2025, ICE had policies in place to protect crime victims. The first published policy was ICE Policy Number 10076.1 published on June 17, 2011. Exhibit A. Then on August 10, 2021, ICE expanded the policy in ICE directive 11005.3. Exhibit B. See also Exhibit C for Q&A explaining the revised and expanded policy.
52. ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims, in effect at the time of Petitioner's Deferred Action grant, required ICE to refrain from taking civil immigration enforcement action against individuals known to have pending petitions or applications for victim-based immigration benefits, such as U visa petitions. Courts have recognized the binding nature of such directives, noting that it is ICE's policy not to deport U visa petitioners who have been placed on the waitlist and granted deferred action. See *Meza Morales v. Barr*, 973 F.3d 656, 659 (7th Cir. 2020).
53. The current administration rescinded ICE Directive 11005.3 through ICE Policy Number 11005.4, citing only the January 20, 2025, Executive Order "Protecting the

American People Against Invasion” as justification for a sweeping change in enforcement priorities. Exhibit D. However, the new policy fails to provide any substantive rationale for abandoning the victim-centered approach, nor does it address the reliance interests of noncitizen crime victims and their families. This lack of reasoned explanation and failure to consider reliance interests is precisely the type of arbitrary and capricious agency action the APA prohibits. 5 U.S.C. § 706(2)(A), (D). When rescinding a prior policy, an agency must consider alternatives within the ambit of the existing policy and address any legitimate reliance interests engendered by the prior policy. *Regents*, 591 U.S. at 20–24, 28–34.

54. Because ICE or DHS changed its policy in contradiction to the previous policy, it was required to provide a more detailed and thorough explanation for the change, especially given the significant reliance interests at stake. DHS failed to meet that standard here. Accordingly, ICE Policy Number 11005.4 should be declared a legal nullity as it was issued in violation of the APA, and the prior directive—ICE Directive 11005.3—should be reinstated. Under the prior directive, Petitioner should not be detained or removed while her U visa Deferred Action is valid and her visa petition is pending.
55. Even assuming ICE Policy Number 11005.4 is valid, ICE failed to follow its own procedures in Petitioner’s case. The policy requires ICE officers to coordinate internally and consult with the Office of the Principal Legal Advisor (OPLA) before taking civil enforcement action against beneficiaries of victim-based immigration benefits. There is no indication that ICE considered Petitioner’s crime-victim

status, her pending U visa application, or her grant of Deferred Action when detaining her in July 2025 to enforce the prior removal order. This failure to follow internal procedures is itself a violation of the APA, which requires agencies to observe their own rules and procedures. See 5 U.S.C. § 706(2)(D).

56. ICE's actions have resulted in a de facto revocation of Petitioner's Deferred Action and employment authorization, depriving her of a liberty and/or property interest without due process of law. In the Sixth Circuit, it is well established that procedural due process requires the government to provide notice and a meaningful opportunity to be heard before depriving an individual of a significant liberty or property interest. See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Daily Servs., LLC v. Valentino*, 756 F.3d 893, 904 (6th Cir. 2014) ("The right to prior notice and a hearing is central to the Constitution's command of due process."); *Paterek v. Vill. of Armada, Michigan*, 801 F.3d 630, 649 (6th Cir. 2015) (to establish a procedural due process claim, a plaintiff must show (1) the existence of a protected property or liberty interest, (2) a deprivation of that interest, and (3) that adequate procedures were not afforded).

57. While Deferred Action and employment authorization are discretionary benefits, once granted, they confer tangible benefits and create a reasonable expectation of continued enjoyment for the duration of the grant, absent lawful revocation. The Sixth Circuit recognizes that when the government confers a benefit or status, it may not arbitrarily rescind it without affording the recipient notice and an opportunity to be heard. See *Mertik v. Blalock*, 983 F.2d 1353, 1367 (6th Cir. 1993) (recognizing a liberty interest in government-conferred benefits and the right to

procedural due process before deprivation); *Women's Med. Profl Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006) (procedural due process requires notice and an opportunity to be heard before deprivation of a protected interest).

58. Accordingly, ICE's actions in detaining Petitioner and effectively revoking her Deferred Action and employment authorization—without prior notice or a meaningful opportunity to contest the deprivation—violate the Due Process Clause of the Fifth Amendment as interpreted by the Sixth Circuit. Such deprivations are constitutionally infirm and require judicial intervention to restore Petitioner's protected interests.

59. In sum, ICE's abrupt rescission of Directive 11005.3, without a reasoned explanation or consideration of reliance interests, and its failure to follow even the procedures of the new policy, are arbitrary, capricious, and unlawful under the APA. The prior directive should control in this case. Petitioner is likely to succeed on the merits of her claim that the de facto revocation of her Deferred Action and employment authorization is unconstitutional, and that ICE's rescission of Directive 11005.3 through Policy Number 11005.4 violates the APA and established principles of administrative law.

IX. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

A. Habeas Jurisdiction

60. 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 she 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); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001). 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. section 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) (addressing post final-removal order detention under § 1231). *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018) (addressing § 1226 detention, which is more applicable to this instant case as Petitioner does not have a final order of removal).

61. “[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).

62. Even if Petitioner were to be released prior to this Court granting relief, “in custody” would still be satisfied because significant restraints short of jail, which

include removal proceedings and the continuous threat of re-detention, satisfy § 2241. See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

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

64. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000).

B. Due Process Governs Decisions to Revoke an Order of Supervision

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

66. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen’s order of supervision is only permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration

detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).

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

C. Statute and Regulation Govern Procedures for Revoking an Order of Supervision

68. 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”).
69. 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).
70. But even where initial detention past the 90-day removal period is authorized, if “removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and should be conditioned on any of the various forms of

supervised release that are appropriate in the circumstances” *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

71. 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).
72. 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 intends 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 *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not include the power to revoke release” insufficient to grant authority to revoke an order of supervision).

73. **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).

D. Due Process and the Regulatory Process for OSUP Revocation

74. 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.

75. 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.” *Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 WL 2452352, at *8 (S.D.N.Y. Aug. 26, 2025) (quoting 8 C.F.R. § 241.4(d)). **“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 her habeas petition.

76. The 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.

77. 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.

E. The APA Sets Minimum Standards for Final Agency Action

78. The Administrative Procedure Act authorizes judicial review of final agency action.
5 U.S.C. § 704.
79. 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) (citation modified).
80. ICE’s revocation of an order of supervision is a final agency action subject to this Court’s review.
81. The revocation here marked the consummation of ICE’s decisionmaking process regarding Petitioner’s custody.
82. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Petitioner in violation of his rights under the Constitution, statute, and regulation.

F. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

83. 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.”).
84. *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. 199, 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).

X. COMPLIANCE WITH OSUP AND LACK OF NOTICE OF REVOCATION

85. For years, Petitioner complied with all conditions of her OSUP, including regular check-ins with ICE, providing updated information, and attending all scheduled hearings. There were no allegations of flight risk, danger to the community, or violations of the terms of her release. Petitioner’s family, including her U.S. citizen children, relied on her continued presence and compliance with the OSUP.

86. Despite this record of compliance for over 13 years, Petitioner was abruptly re-detained by ICE at a routine check-in in July 2025, without any prior written notice, explanation, or individualized assessment. Petitioner was not provided with a written notice of revocation of her OSUP, nor was she given an opportunity to contest the revocation or present evidence in her defense. The government's own filings confirm that, as of the date of this Complaint, no notice of revocation has been located or provided to Petitioner.
87. The regulatory framework governing OSUP revocation is clear and mandatory. Under 8 C.F.R. § 241.4(l)(2), ICE may revoke an order of supervision only upon an individualized determination, and must provide the noncitizen with written notice of the revocation and the specific reasons for the decision. In cases where release was previously granted because removal was not reasonably foreseeable, 8 C.F.R. § 241.13(i)(2)-(3) further requires that ICE make a bona fide finding of changed circumstances indicating a significant likelihood of removal in the reasonably foreseeable future, and must promptly notify the noncitizen of the reasons for revocation and conduct an initial informal interview to allow the noncitizen to respond.
88. These procedural safeguards are not discretionary; they are binding legal obligations, and courts have repeatedly held that failure to comply with them renders agency action invalid. See, e.g., *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at 4 (*E.D. Cal.* 2025); *Roble v. Bondi*, No. 25-cv-3196 (*LMP/LIB*), 2025 WL 2443453, at 3 (*D. Minn.* Aug. 25, 2025); *Sarail A. v. Bondi*, No. 25-cv-2144 (*ECT/JFD*), 2025 WL 2533673, at 3–4 (*D. Minn. Sep. 3, 2025*);

Rokhfirooz v. Larose, No. 25-cv-2053-RSH-VET, 2025 WL 2646165, at 3 (S.D. Cal. Sep. 15, 2025).

89. In Petitioner's case, there is no evidence of any changed circumstances or new risk to justify revocation, and ICE failed to provide any individualized notice, written explanation, or meaningful opportunity to contest the action. This lack of process has caused substantial prejudice and harm to Petitioner and her family, depriving her of the ability to maintain her lawful presence in the community and to contest her detention while her withholding-only proceedings remain pending. The government's disregard for these mandatory procedures is not a mere technicality, but a fundamental violation of Petitioner's statutory and constitutional rights
90. For 13 years, Petitioner fully complied with all conditions of her OSUP, including regular check-ins with ICE, timely updates of her contact information, and attendance at all scheduled hearings. There were never any allegations of flight risk, danger to the community, or violations of the terms of her release. Petitioner's family—including her U.S. citizen children—relied on her continued presence and compliance with the OSUP for their stability and well-being.
91. Despite this unblemished record, Petitioner was abruptly re-detained by ICE at a routine check-in in July 2025, without any prior written notice, explanation, or individualized assessment. She was not provided with a written notice of revocation of her OSUP, nor given any opportunity to contest the revocation or present evidence in her defense. The government's own filings confirm that, as of the date of this complaint, no notice of revocation has been located or provided to Petitioner.

92. This action stands in direct violation of the regulatory framework governing OSUP revocation. Under 8 C.F.R. § 241.4(l)(2), ICE may revoke an order of supervision only upon an individualized determination, and must provide the noncitizen with written notice of the revocation and the specific reasons for the decision. In cases where release was previously granted because removal was not reasonably foreseeable, 8 C.F.R. § 241.13(i)(2)-(3) further requires that ICE make a bona fide finding of changed circumstances indicating a significant likelihood of removal in the reasonably foreseeable future, and must promptly notify the noncitizen of the reasons for revocation and conduct an initial informal interview to allow the noncitizen to respond. These requirements are not discretionary; they are binding legal obligations, and courts have repeatedly held that failure to comply with them renders agency action invalid. See, e.g., *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at 4 (E.D. Cal. 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at 3 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), 2025 WL 2533673, at 3–4 (D. Minn. Sep. 3, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH-VET, 2025 WL 2646165, at 3 (S.D. Cal. Sep. 15, 2025).

93. In Petitioner’s case, there is no evidence of any changed circumstances or new risk to justify revocation, and ICE failed to provide any individualized notice, written explanation, or meaningful opportunity to contest the action. The agency’s disregard for these mandatory procedures is not a mere technicality, but a fundamental violation of Petitioner’s statutory and constitutional rights. Under the *Accardi* doctrine, federal agencies are required to follow their own regulations and

procedures; failure to do so renders agency action unlawful and subject to judicial invalidation. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017).

94. At the time of her re-detention, Petitioner’s withholding-only proceedings remained pending before the immigration court. The unlawful revocation of her OSUP and subsequent detention have caused significant hardship to Petitioner and her family, including separation from her children, loss of employment, and emotional distress. The lack of notice and opportunity to be heard deprived Petitioner of a meaningful opportunity to contest her detention and to maintain her lawful presence in the community while her case is adjudicated. Petitioner brings this action to vindicate her constitutional and statutory rights, to restore her to the status quo ante, and to prevent further unlawful deprivation of her liberty.

XI. LEGAL STANDARD AND APPLICABLE LAW

95. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person of liberty without due process of law. This fundamental protection applies to all persons within the United States, including noncitizens subject to immigration proceedings and detention. The Supreme Court has repeatedly held that due process requires, at a minimum, notice and an opportunity to be heard before the government may deprive an individual of a significant liberty interest. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

A. Statutory and Regulatory Framework for Orders of Supervision

96. Orders of Supervision (“OSUP”) are governed by 8 U.S.C. § 1231 and implementing regulations at 8 C.F.R. §§ 241.4 and 241.13. These provisions authorize the release of certain noncitizens from immigration detention under specified conditions, subject to ongoing supervision by DHS and ICE. Critically, the regulations impose strict procedural requirements for any revocation of an OSUP and re-detention of a noncitizen.
97. Under 8 C.F.R. § 241.4(l)(2), ICE may revoke an order of supervision only upon an individualized determination, and must provide the noncitizen with written notice of the revocation and the specific reasons for the decision. In cases where release was previously granted because removal was not reasonably foreseeable, 8 C.F.R. § 241.13(i)(2)-(3) further requires that ICE make a bona fide finding of changed circumstances indicating a significant likelihood of removal in the reasonably foreseeable future, and must promptly notify the noncitizen of the reasons for revocation and conduct an initial informal interview to allow the noncitizen to respond. These procedural safeguards are not discretionary; they are binding legal obligations, and courts have repeatedly held that failure to comply with them renders agency action invalid. See, e.g., *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at 4 (E.D. Cal. 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at 3 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), 2025 WL 2533673, at 3–4 (D. Minn. Sep. 3, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH-VET, 2025 WL 2646165, at 3 (S.D. Cal. Sep. 15, 2025).

98. The regulations further require that, upon making a determination to revoke release, ICE must (1) notify the noncitizen of the specific reasons for revocation, and (2) conduct an initial informal interview promptly after return to custody, affording the noncitizen an opportunity to respond to the stated reasons. The noncitizen must be permitted to submit evidence showing that removal is not significantly likely or that no violation occurred, and the custody review must evaluate all contested facts and determine whether revocation is warranted. Boilerplate or conclusory statements are insufficient; the government must provide specific, individualized reasons for revocation and a meaningful opportunity to contest the action.
99. The requirement for notice and an opportunity to be heard before revocation of supervised release is well established in both immigration and analogous criminal contexts. Courts have recognized that the revocation of a conditional liberty interest, such as supervised release or parole, triggers due process protections. See *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (parole revocation requires notice and a hearing); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (similar requirements for probation revocation).

B. Agency Obligation to Follow Its Own Regulations

100. Under the *Accardi* doctrine, federal agencies are required to strictly adhere to their own regulations and procedures. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954). Agency action taken in violation of mandatory procedures—such as the requirement to provide written notice, a bona fide individualized finding, and an opportunity to contest revocation—is unlawful and subject to judicial invalidation. Courts have consistently applied the *Accardi*

doctrine in the immigration context to set aside actions that fail to comply with agency rules, especially where those rules are intended to protect individual rights. See, e.g., *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017); *Montilla v. INS*, 926 F.2d 162, 166 (2d Cir. 1991).

C. Due Process Requirements for Pre-Deprivation Hearings

101. The Supreme Court has made clear that due process requires, at a minimum, notice and a meaningful opportunity to be heard before the government may deprive an individual of a significant liberty interest. See *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976). In the context of OSUP revocation, this means that the government must provide the noncitizen with advance written notice of the reasons for revocation, a meaningful opportunity to contest the action before a neutral decisionmaker, and a bona fide individualized assessment of the facts and circumstances. The risk of erroneous deprivation is greatest where, as here, the government acts without providing the affected individual with these basic procedural protections.

102. In sum, the legal framework governing OSUP revocation mandates that any deprivation of liberty must be accompanied by written notice, an individualized assessment, and an opportunity for the affected individual to contest the action. The failure to provide these protections renders the revocation of Petitioner’s OSUP unlawful and in violation of her constitutional and statutory rights.

103. Under the *Accardi* doctrine, federal agencies are strictly required to follow their own regulations and procedures. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954). This principle is not a mere formality: when an

agency fails to comply with mandatory regulatory procedures—such as providing written notice, a bona fide individualized finding, and a meaningful opportunity to contest revocation—its action is unlawful and subject to judicial invalidation. Courts have repeatedly applied the Accardi doctrine in the immigration context to set aside actions taken in violation of agency rules, especially where those rules are designed to protect individual rights. See, e.g., *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017); *Montilla v. INS*, 926 F.2d 162, 166 (2d Cir. 1991).

104. The regulatory requirements for revoking an Order of Supervision are clear and binding. Under 8 C.F.R. § 241.4(l)(2), ICE may revoke an OSUP only upon an individualized determination, and must provide the noncitizen with written notice of the revocation and the specific reasons for the decision. In cases where release was previously granted because removal was not reasonably foreseeable, 8 C.F.R. § 241.13(i)(2)-(3) further requires that ICE make a bona fide finding of changed circumstances indicating a significant likelihood of removal in the reasonably foreseeable future, and must promptly notify the noncitizen of the reasons for revocation and conduct an initial informal interview to allow the noncitizen to respond. These requirements are not discretionary; they are binding legal obligations, and courts have repeatedly held that failure to comply with them renders agency action invalid. See, e.g., *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at 4 (E.D. Cal. 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at 3 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), 2025 WL 2533673, at 3–4 (D. Minn. Sep. 3, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH-VET, 2025 WL 2646165, at 3 (S.D.

Cal. Sep. 15, 2025). Courts have further emphasized that boilerplate or conclusory notices are insufficient; the government must provide specific, individualized reasons for revocation and a meaningful opportunity to contest the action.

105. The Supreme Court has made clear that due process requires, at a minimum, notice and a meaningful opportunity to be heard before the government may deprive an individual of a significant liberty interest. See *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976). In the context of OSUP revocation, this means that the government must provide the noncitizen with advance written notice of the reasons for revocation, a meaningful opportunity to contest the action before a neutral decisionmaker, and a bona fide individualized assessment of the facts and circumstances. The risk of erroneous deprivation is greatest where, as here, the government acts without providing the affected individual with these basic procedural protections. In sum, the failure to provide the regulatory and constitutional protections required for OSUP revocation—including individualized written notice, a bona fide finding of changed circumstances, an informal interview, and a meaningful opportunity to respond—renders the revocation of Petitioner’s OSUP unlawful and void. Petitioner is entitled to immediate restoration to the status quo ante, including reinstatement of her OSUP and release from detention, as well as declaratory and injunctive relief to prevent further violations of her rights.

D. Petitioner is Not an “Arriving Alien” Notwithstanding Her Removal Order

106. Petitioner acknowledges that she entered the United States without inspection and, as such, Respondents may assert that she is subject to mandatory detention under 8 U.S.C. § 1225(b) as an “applicant for admission.” However, Petitioner’s primary

challenge is to the unlawful revocation of her Order of Supervision (OSUP) without notice or due process, and she contends that, upon restoration of her OSUP or release from custody, Respondents may seek to re-detain her under their interpretation of § 1225(b), thereby undermining any relief granted in this case. To preserve this issue, Petitioner maintains a limited argument regarding the applicability of § 1225(b) versus § 1226(a), as the government's position—if accepted—would allow for immediate re-detention under § 1225(b) even after a finding that the OSUP revocation was unlawful. This risk of re-detention renders Petitioner's claims ongoing and justiciable, as she continues to suffer significant and irreparable harm as a direct result of her detention. Notably, the Western District of Kentucky has repeatedly rejected the government's expansive interpretation of § 1225(b) in favor of the approach advanced by Petitioner, holding that noncitizens apprehended in the interior after long-term residence are governed by § 1226(a) and entitled to individualized bond hearings. See, e.g., *Zarco Lopez v. Olson*, No. 3:25-cv-654-DJH (W.D. Ky. Nov. 18, 2025); *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-cv-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Sanchez Ballestros v. Noem*, No. 3:25-cv-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Gomez Mejia v. Woosley*, 2025 WL 2933852 (W.D. Ky. Oct. 15, 2025); *Contreras Orellana v. Noem*, 2025 WL 3006763 (W.D. Ky. Oct. 27, 2025); *Martinez-Elvir v. Olson*, 2025 WL 3006772 (W.D. Ky. Oct. 27, 2025); *Hernandez-Alonso v. Tindall*, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025). These decisions reinforce that Petitioner's detention is unlawful under the correct statutory

framework and that the case remains justiciable for which the Court can grant meaningful relief.

E. Although Petitioner is Detained Pursuant to § 1231 Due Process Applies

107. Although Petitioner’s detention is governed by 8 U.S.C. § 1231, as she is subject to a reinstated removal order, it does not affect the merits of her claim. Even under § 1231, the government must comply with the regulatory and constitutional requirements for revoking an OSUP, including individualized written notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond. The Supreme Court has made clear that detention under § 1231 is subject to due process limitations and cannot be arbitrary or indefinite. See *Zadvydas v. Davis*, 533 U.S. 678, 690–92 (2001). Where, as here, the government fails to follow its own regulations and deprives Petitioner of the required process, any subsequent detention—whether under § 1225(b), § 1226(a), or § 1231—is unlawful and subject to judicial relief.

XII. CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE

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

108. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

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

110. 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.

111. 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.

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

113. When Respondents revoked the order of supervision, Petitioner had complied with every condition of the order for over 13 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.

114. 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.

115. 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

116. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

117. 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.

118. 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. ICE had already decided 19 years ago in 2006 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 10 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. at 34, 103 S.Ct. 321. Petitioner is being held at a county jail in the same conditions as criminal inmates and is far from his family.

119. 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, 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).

120. The third factor, the government's interest, also favors Petitioner. When the government ignores law (and 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.

121. Moreover, according to Petitioner's stateless status, **ICE cannot remove Petitioner from the United States**. They have tried to remove him in 2006 and detained him at that time, and they were unable to obtain a passport for him since he is stateless. This is one of the reasons Respondents were not able to previously remove Petitioner. There is no evidence that they have secured a passport for him nor that they are able to do so at this time.

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

123. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.
124. 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).
125. 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).
126. 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.
127. 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.
128. 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.
129. 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.

130. 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, due to his stateless status, **ICE cannot remove Petitioner from the United States** as she does not even have a passport.

131. 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).

132. Accordingly, any attempt to revoke Petitioner's order of supervision or place him in detention would be unlawful and must be set aside because it would be 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

133. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

134. 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).

135. Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.
136. 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).
137. 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 any order of supervision condition and no new facts or changed circumstances suggest he would.
138. 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).
139. First, Respondents failed to consider the serious constitutional concerns raised by revoking Petitioner's order of supervision without notice and opportunity to respond.
140. 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 as they had not obtained a travel document for Petitioner.

141. 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.

142. 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.

143. 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. The rescission of Petitioner's liberty, even if discretionary, is subject to judicial review and must comply with the APA

and constitutional due process

144. 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. Note, this may not be an all-encompassing list:

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. 2023) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so). *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).

145. 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

146. Petitioner realleges and incorporates by reference all paragraphs above as if fully

set forth here.

147. 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).

148. “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).

149. 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.

150. 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)

151. 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

152. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.
153. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner.
154. 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

155. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.
156. 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”).
157. 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 (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).

158. 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.

159. 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.

COUNT EIGHT

Violations of The Controlling Due Process Framework: *Mathews v. Eldridge* OSUP Revocation

160. In addition to the regulatory violations of the OSUP revocation, since Petitioner had acquired a liberty interest in her release under an Order of Supervision, any such revocation or deprivation of that liberty interest requires the procedural due process protections mandated by *Mathews v. Eldridge*, 424 U.S. 319 (1976).

161. The Supreme Court's decision in *Mathews v. Eldridge* provides the governing standard for evaluating whether the government's procedures satisfy procedural due process when depriving an individual of a protected liberty interest. The *Mathews* test requires weighing: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and

administrative burdens that additional or substitute procedural requirements would entail. The application of these factors to Petitioner’s case demonstrates that the government’s failure to provide notice, individualized assessment, and a meaningful opportunity to be heard before re-detention is constitutionally deficient and requires immediate judicial remedy.

(a) **Private Interest at Stake:** Petitioner’s liberty interest is at its apex. She lived in the United States for over a decade on an OSUP, complied with all conditions, and built deep family and community ties. The abrupt, unexplained deprivation of this liberty—without notice or hearing—constitutes a profound intrusion. The Supreme Court has repeatedly recognized that “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 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); see also *Demore v. Kim*, 538 U.S. 510, 523 (2003).

(b) **Risk of Erroneous Deprivation and Value of Additional Safeguards:** The risk of erroneous deprivation is exceptionally high where, as here, the government provided no advance notice, no individualized assessment, and no opportunity to be heard before re-detaining a noncitizen previously found not to be a flight risk or danger. The regulatory framework—8 C.F.R. §§ 241.4(l)(2), 241.13(i)(2)-(3)—requires, upon any change in custody status, a new individualized determination, contemporaneous written notice, and an opportunity for the noncitizen to respond, including an informal interview. These safeguards are designed to ensure that any deprivation of liberty is based

on accurate, individualized information and is subject to fair and reliable adjudication. The absence of a predeprivation hearing or any meaningful process creates a significant risk of erroneous detention. Courts have repeatedly found that the failure to provide these safeguards in the OSUP context constitutes a due process violation. See, e.g., *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at *4 (E.D. Cal. 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at *3 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), 2025 WL 2533673, at *3–4 (D. Minn. Sep. 3, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH-VET, 2025 WL 2646165, at *3 (S.D. Cal. Sep. 15, 2025).

- (c) **Government’s Interest:** While the government has a legitimate interest in detaining noncitizens who pose a flight risk or danger, that interest does not justify dispensing with basic procedural protections—especially where the government has already determined, by granting an OSUP, that the individual is not a flight risk or danger. The incremental administrative burden of providing notice and a predeprivation hearing is minimal compared to the risk of erroneous and arbitrary detention. The Supreme Court has recognized only two legitimate objectives of immigration detention: preventing danger to the community and preventing flight prior to removal. See *Zadvydas v. Davis*, 533 U.S. at 690–92.

Applying these factors, due process requires, at a minimum, advance written notice of the alleged grounds for revocation, an opportunity to respond before a neutral and lawfully authorized decisionmaker, and a contemporaneous

individualized assessment of whether continued detention is justified. The government's failure to provide these basic procedural protections before re-detaining Petitioner—who had been lawfully released on OSUP and complied with all conditions for over a decade—renders her redetention unlawful under the Due Process Clause and mandates immediate release.

162. In sum, applying the *Mathews v. Eldridge* balancing test, Petitioner's liberty interest is at its highest, given her decade-long compliance with OSUP conditions and the absence of any new allegations of flight risk or danger. The risk of erroneous deprivation is substantial where, as here, the government provided no advance notice, no individualized assessment, and no opportunity to be heard before re-detaining a noncitizen previously found not to be a flight risk or danger. The government's interest in administrative efficiency cannot outweigh the fundamental requirement of due process, especially where it has already determined—by granting OSUP—that the individual is not a flight risk or danger. The government's failure to provide these basic procedural protections before re-detaining Petitioner—who had been lawfully released and complied with all conditions for over a decade—renders her redetention unlawful under the Due Process Clause and the controlling regulations.

163. In this case, none of the mandatory procedural steps required by 8 C.F.R. §§ 241.4(l)(2), 241.13(i)(2)-(3) were followed: Petitioner was detained and transferred out of state before any formal revocation of her OSUP, received no written notice of the reasons for revocation, no individualized assessment, and no opportunity to contest the government's action before a neutral, lawfully authorized

decisionmaker. There is no evidence that ICE conducted a complete review of the circumstances, served a Notice of Revocation prior to detention, or provided any opportunity to be heard. This is not a mere technical defect, but a textbook violation of her liberty and due process rights, as well as a violation of the agency's own regulations and policies governing OSUP revocation. Federal courts have repeatedly found that such failures—detaining a noncitizen without notice, individualized assessment, or an opportunity to respond—constitute clear due process violations in the OSUP context. Immediate release is the only adequate remedy to restore Petitioner's liberty and prevent further irreparable harm.

COUNT NINE

Violation of the APA — Unlawful Rescission of Crime Victim Memo 11005.3

164. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.
165. The rescission of ICE Directive 11005.3 and its replacement with ICE Policy Number 11005.4 was arbitrary, capricious, and without observance of procedure required by law, in violation of 5 U.S.C. § 706(2)(A), (D). The agency failed to provide a reasoned explanation for the policy change, failed to consider reliance interests, and failed to consider reasonable alternatives, as required by *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1 (2020). Petitioner is entitled to declaratory and injunctive relief reinstating ICE Directive 11005.3 and enjoining enforcement of ICE Policy Number 11005.4 unless and until lawfully promulgated.

COUNT TEN

**Violation of the Fifth Amendment and the APA —
Unlawful Revocation of Deferred Action and Employment Authorization**

166. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

167. ICE's actions in detaining Petitioner and effectively revoking her Deferred Action and employment authorization, without prior notice or a meaningful opportunity to contest the deprivation, violate the Due Process Clause of the Fifth Amendment as interpreted by the Sixth Circuit. See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Mertik v. Blalock*, 983 F.2d 1353, 1367 (6th Cir. 1993). These actions are also arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A). Petitioner is entitled to declaratory and injunctive relief restoring her Deferred Action and employment authorization and prohibiting further deprivation absent due process.

XIII. CONCLUSION

The OSUP revocation, redetention and continued detention of Petitioner violates due process rights. It was done without written notice, individualized assessment, or an opportunity to be heard, violate Due Process, contravened mandatory agency regulations—including 8 C.F.R. §§ 241.4 and 241.13—and disregarded binding Supreme Court and circuit precedent. The agency's failure to follow its own rules, as required by the Accardi doctrine, and the weight of recent federal case law, renders the revocation unlawful and void. Petitioner is entitled to declaratory and injunctive relief, as well as damages for the deprivation of her liberty and due process rights. But for

intervention by this Court, Petitioner has no means of release from ICE custody. Petitioner faces ongoing and irreparable harm as a result of unlawful detention, including deprivation of liberty, loss of employment, and separation from family. These injuries cannot be remedied by monetary damages and will continue absent immediate judicial intervention. The balance of equities and the public interest strongly favor expedited consideration and equitable relief, including immediate release or a prompt bond hearing. Without such relief, Petitioner will continue to suffer irreparable harm, and the constitutional and statutory violations at issue will persist.

XIV. PRAYER FOR RELIEF

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

- (1) **Declaratory Relief:** A declaration that the revocation of Petitioner's Order of Supervision ("OSUP") without individualized written notice, a bona fide finding of changed circumstances, an informal interview, or a meaningful opportunity to respond was unlawful and violated her rights under the Due Process Clause of the Fifth Amendment, as well as governing statutes and regulations, including 8 U.S.C. § 1231 and 8 C.F.R. §§ 241.4 and 241.13, and that such action is invalid under the Accardi doctrine and controlling case law
- (2) Grant Petitioner a Writ of Habeas Corpus and order Respondents to immediately release Petitioner from custody without any conditions imposed on Petitioner's liberty and restore her prior OSUP conditions unlawfully revoked under the same or substantially similar conditions as previously

imposed, thereby restoring her to the status quo ante;

- (3) An order enjoining Respondents from any future revocation of Petitioner's OSUP or re-detention absent full compliance with all regulatory and constitutional requirements, including but not limited to: (i) individualized written notice of the proposed revocation and the specific reasons therefor; (ii) a bona fide individualized finding of changed circumstances indicating a significant likelihood of removal in the reasonably foreseeable future, as required by 8 C.F.R. §§ 241.4 and 241.13; and (iii) affording Petitioner a prompt informal interview and meaningful opportunity to respond to the stated reasons before a neutral and lawfully authorized decisionmaker;
- (4) An order requiring Respondents that any future attempt to revoke or re-detain Petitioner must strictly comply with these regulatory and constitutional safeguards, and that Respondents document such compliance in the record and provide Petitioner with copies of all relevant notices and finding;
- (5) Grant other and further relief as the Court deems just and proper, including any additional equitable or legal remedies necessary to effectuate the Court's order and to prevent future violations of Petitioner's rights
- (6) Enjoining Respondents from modifying unconditional release without prior leave of Court (including, but not limited to, electronic monitoring devices);
- (7) Declare that Respondents' actions, as set forth herein, and Petitioner's continued detention violate the Due Process Clause of the Fifth Amendment, the INA and its implementing regulations, the Administrative Procedure Act,

and the *Accardi* doctrine;

- (8) A declaration that the rescission of ICE Directive 11005.3 and the promulgation of ICE Policy Number 11005.4 was arbitrary, capricious, and unlawful under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (D), and that ICE Directive 11005.3 remains in effect unless and until lawfully rescinded in accordance with the APA;
- (9) An order enjoining Respondents from enforcing ICE Policy Number 11005.4 and requiring Respondents to comply with ICE Directive 11005.3 in all matters affecting Petitioner, unless and until lawfully rescinded in accordance with the APA;
- (10) A declaration that the revocation or de facto revocation of Petitioner's Deferred Action and employment authorization, without notice and an opportunity to be heard, violated the Due Process Clause of the Fifth Amendment and the Administrative Procedure Act;
- (11) An order requiring Respondents to reinstate Petitioner's Deferred Action and employment authorization, and enjoining Respondents from revoking or denying these benefits in the future absent full compliance with due process and the APA;
- (12) Award Petitioner reasonable attorney's fees and costs; and
- (13) Grant such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully Submitted

This 19th Day of November, 2025

Karen Weinstock

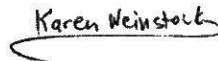
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various 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 19th day of November, 2025.



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CERTIFICATE OF SERVICE

I certify that on November 19, 2025, I electronically filed the foregoing **document** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock
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