

JUDGE DAVID GUADERRAMA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

EP 25CV0577

Case No. _____

SAMI FRANCIS KHOURY,

Petitioner,

v.

ANGEL GARITE, *Assistant Field Office*
Director, El Paso Field Office, El Paso
Service Processing Center; JOEL

GARCIA, *Field Office Director,*
El Paso Field Office, ICE; TODD LYONS
Acting Director, ICE; KRISTI NOEM,
Secretary of Homeland Security; and
FACILITY ADMINISTRATOR,
ERO El Paso Camp East Montana

Respondents.

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

ORAL ARGUMENT REQUESTED

INTRODUCTION

1. Petitioner Sami Francis Khoury has been held in custody of the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), since October 27, 2025, under a decades-old final order of removal. **[Exhibit 1, Stipulated Order in Removal Proceedings].**

2. Petitioner has remained in the United States subject to a decades-old final order of removal because there is conflicting evidence regarding his country of citizenship. Respondents have tried to obtain travel documents for Petitioner for over two decades and have made no progress. Petitioner has been detained in violation of all due process rights because of a generalized ICE initiative, not because of any progress in his removal.

3. Petitioner's removal order was issued on February 3, 1999, and became administratively final on May 23, 2001, when the Board of Immigration Appeals dismissed his appeal. **[Exhibits 1-2, Stipulated Removal Order in Removal Proceedings, Board of Immigration Appeals Order].**

4. Petitioner was initially detained by the former INS (Immigration and Naturalization Services) and released from custody after approximately nine (9) months of detention because INS failed to obtain travel documents for Petitioner's removal.

5. After his release, Petitioner has complied fully with all supervision and reporting requirements for over two decades, living peacefully in El Paso.

6. Petitioner's parents brought Petitioner and his brother to the United States seeking asylum from the violence and chaos of the Lebanese Civil War.

7. Petitioner has since remained in the United States and settled in El Paso, Texas, where he has lived continuously for more than thirty years.

8. Petitioner is married to a United States citizen, Julia Ramie Chehedeh, and has been married since June 25, 1994. **[Exhibit 5, Marriage Certificate].** He is the father of three U.S. citizen daughters, Julianna Marie Khoury who is a pediatrician, Lilliana Joy Khoury who is a lawyer, and Raeanne Elli Khoury an engineering student at the University of Texas at El Paso. **[Exhibit 6, Children's Birth Certificates].**

9. His mother, Marie Khoury, is a United States citizen, his brother Elias Khoury is also a United States citizen, and numerous United States citizen family members including his in-laws, grandchild, nieces, nephews, and brothers and sisters-in-law. Petitioner is the sole financial provider for his elderly mother and the primary financial provider for his brother, who has a disability.

10. On October 24, 2025, an ISAP Case Specialist, who is an employee of a private company, BI Incorporated, with a government contract, called Petitioner and demanded that Petitioner report for an impromptu in-person meeting on October 27, 2025, to sign “new paperwork” despite the fact that Petitioner already had an officially scheduled in-person meeting scheduled for October 30, 2025.

11. When Petitioner arrived at the impromptu in-person meeting on October 27, 2025, Petitioner was suddenly detained without any written or verbal notice or explanation of his constitutional due process rights.

12. Petitioner was detained on October 27, 2025, alongside approximately two dozen other individuals. Upon information and belief, Petitioner’s detention resulted from a nationwide ICE initiative aimed at increasing deportations, rather than from any individualized assessment of Petitioner’s compliance with the conditions of his supervised release or progress made in obtaining travel documents.

13. To this day, Petitioner has not received a formal interview, a hearing, or a written explanation of the grounds of the revocation of his supervised release.

14. The only documents Respondents have presented to Petitioner during this entire process is a request for travel documents to Liberia which Petitioner signed.

15. Petitioner has signed and submitted to former INS, DHS, ICE, and ISAP whatever documents he has been asked to sign to obtain travel documents over the past two decades.

16. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), Petitioner’s post-order detention became presumptively unreasonable on November 23, 2001, when the Government failed to effectuate his removal within the constitutionally permissible post-removal detention period. For more than twenty-four years, DHS has been unable to remove Petitioner to any country and has

provided no basis to believe that his removal is reasonably foreseeable.

17. Accordingly, to vindicate Petitioner's constitutional and statutory rights and to end his unconstitutional and arbitrary confinement, this Court should grant the Petition and order his immediate release.

18. Petitioner respectfully requests that the Court declare his ongoing detention unconstitutional and order his release. Because the Government has tried and failed to obtain Petitioner's travel documents for over two decades and has made no progress and the most recent unconstitutional detention is not the result of progress in Petitioner's matter but instead a general ICE initiative, absent an order from this Court Petitioner will likely remain detained indefinitely.

JURISDICTION

19. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*; *see also Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

20. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101-1537, regulations implementing the INA, the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, and Article I § 9, cl. 2 of the United States Constitution (the Suspension Clause) which guarantees the privilege of the writ of habeas corpus except in cases of rebellion or invasion.

21. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

22. The federal government has waived its sovereign immunity and permitted judicial review of agency action under 5 U.S.C. § 702. In addition, sovereign immunity does not bar claims

against federal officials that seek to prevent violations of federal law (rather than provide monetary relief).

23. Additionally, many courts “have specifically found that 8 U.S.C. § 1252(b)(9) does not present a jurisdictional bar to habeas challenges to immigration detention.” *Santiago v. Noem*, No. EP-25-CV-361-KC, slip op. at 10, 2025 WL 2792588 at 5 (W.D. Tex. Oct. 1, 2025) (Cardone, J.) (collecting cases).

24. Petitioner’s claims are not barred by 8 U.S.C. § 1252(g) either because Petitioner is not challenging Respondents’ decision to execute, commence, or adjudicate a removal order, but is instead challenging his ongoing detention over which the Court enjoys subject-matter jurisdiction. *Id.* at 8, and at 4.

25. Finally, because this petition does not contain any claims which involve the determination of the validity of a deportation order or a question of law or fact arising from a deportation proceeding, 8 U.S.C. § 1252(a)(5) “should not operate as a bar to the district court’s review.” *Id.* at 10, and 5 (quoting *Duarte v. Mayorkas*, 27 F.4th 1044, 1056 (5th Cir. 2022)).

VENUE

26. Venue is proper in this Court under 28 U.S.C. § 1391(e), because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to her claims occurred in this district, and no real property is involved in this action.

27. Lastly, under *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), most desirable venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner is currently detained under Respondents custody, witnesses and records are located.

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

28. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. Prudential exhaustion may be judicially required, however, courts may waive the prudential exhaustion requirement where, as here, “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (quoting *S.E.C. v. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981)).

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

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

31. Petitioner is “in custody” for purposes of § 2241 because Petitioner was arrested and detained by Respondents.

PARTIES

32. Petitioner Sami Francis Khoury is currently detained at the ERO El Paso Camp East Montana detention facility in El Paso, Texas. Petitioner is in custody and under the direct control of Respondents and their agents.

33. He had been reporting and complaint under an I-220B Release on Order of Supervision and was requested to “report” to ISAP on Monday October 27, 2025, at which time he was arrested and detained. **[Exhibit 3 I-220Bs current and previous].**

34. Respondent, the Facility Administrator of the ERO El Paso Camp East Montana detention facility in El Paso, Texas, is sued in his official capacity. As the official with immediate physical custody over Petitioner, he is the proper respondent in this habeas action and has the authority to effectuate Petitioner’s release.

35. Respondent Joel Garcia is sued in his official capacity as the Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement (ICE). As such, he is a legal custodian of Petitioner and has authority over Petitioner’s detention. *See Roman v. Ashcroft*, 340 F.3d 314 (6th Cir. 2003). He is sued in his official capacity.

36. Respondent Angel Garite is sued in his official capacity as the Assistant Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement (ICE). In this capacity, Respondent Garite assists in overseeing ICE detention operations in the El Paso area. He is sued in his official capacity.

37. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement, the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens and a component agency of the Department of Homeland Security. In this capacity, Respondent Lyons oversees ICE’s nationwide operations, including the detention of noncitizens. He is sued in his official capacity.

38. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for

the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention. Respondent Noem is sued in her official capacity.

STATEMENT OF FACTS

39. Petitioner is a 54-year-old individual, born in Monrovia, Liberia.

40. Petitioner's parents brought Petitioner and his brother to the United States seeking asylum from the violence and chaos of the Lebanese Civil War.

41. In 1989, Petitioner attended and graduated from the University of Texas at El Paso under an F-1 Student visa. **[Exhibit 4, F-1 Visa Stamp]**. Petitioner later founded a small business which he ran until his detention. Beyond his family and employment, he maintains strong community ties through his active involvement at the St. George Antiochian Orthodox Church.

42. In 1989, Petitioner met his wife, Julia, a U.S. citizen from El Paso. They married on June 25, 1994. **[Exhibit 5 Marriage Certificate]**. They have three U.S.-citizen daughters, all born and raised in Texas. Their eldest, Julianna, born in 1995, is now 30 years old and working as a pediatrician. **[Exhibit 6, Children's Birth Certificates]**. Their middle daughter, Lilliana, born in 1997, is 27 years old and works as an attorney in El Paso, Texas. **[Exhibit 6, Children's Birth Certificates]**. Their youngest, Raeanne, born in 2004, is 21 years old and is an engineering student at the University of Texas at El Paso. **[Exhibit 6, Children's Birth Certificates]**.

43. Petitioner has been a hardworking small business owner in El Paso for over three decades, during which he has paid hundreds of thousands of dollars in taxes and consistently donated his time and resources to his community, supporting his church, employing local residents, and demonstrating a longstanding pattern of responsibility, integrity, and service to a community that has long regarded him as one of its own.

44. Petitioner was arrested in 1998 for 8 USC 1324(a) Conspiring to bring in and harbor certain aliens, for which he pleaded guilty and was sentenced to 24 months in prison of which the Petitioner served 21 months with good behavior. **[Exhibit 7 Judgment in a Criminal Case]**.

45. The Petitioner completed his prison sentence in 2001 and was detained for approximately nine months by ICE, formerly INS.

46. During Petitioner's initial detention, the Government attempted to obtain travel documents. While Petitioner was released pursuant to an Order of Supervision, the Government on multiple occasions, approximately three to five times, attempted to obtain travel documents to facilitate his removal.

47. A preliminary step to removal requires obtaining the Petitioner's consent and signature on the document to request a travel document which is specific to the deportee's country of citizenship. Petitioner relied on his parents' statements regarding his citizenship, but the available evidence is contradictory, and Petitioner's father has since passed away.

48. In its efforts to remove Petitioner, the Government presented him with "Respondent's Request for Issuance of Final Order of Removal and Waiver of Hearing" for two different countries. **[Exhibit 8, Respondent's Request for Issuance of Final Order of Removal and Waiver of Hearing]**.

49. Petitioner fully cooperated and signed both agreements. Upon information and belief, the Government cannot determine Petitioner's country of citizenship. As a result, no country will issue travel documents for him. Despite Petitioner's full cooperation, the Government has been unable to obtain the travel documents needed to carry out his removal, despite at least three to five attempts over the past twenty years.

50. Petitioner was released pursuant to an I-220B Release on Order of Supervision, under which he was required to report on a periodic basis to his assigned Deportation Officer. **[Exhibit 3, Form I-220B Release on Order of Supervision]**. Petitioner's reporting requirements fluctuated, and his assigned Deportation Officer changed numerous times over the past twenty-four (24) years. **[Exhibit 3, Form I-220B Release on Order of Supervision]**.

51. Petitioner was subsequently placed in the Intensive Supervision Appearance Program (ISAP), which imposed varied reporting requirements, including home visits, in-person check-ins, random verification calls, submission of photographs through a mobile application, and use of an ankle monitor.

52. Petitioner has fully complied with every requirement imposed by ICE, including routine check-ins and participation in the Alternatives to Detention ("ATD") program administered through ISAP. Since May 2025, this has included wearing an ankle monitor, participating in virtual check-ins, and appearing for in-person check-ins at the local ISAP office in El Paso, Texas. For the past twenty-four (24) years, Petitioner has never missed a single check-in or reporting obligation. Indeed, on multiple occasions, Petitioner has proactively reminded ISAP of upcoming check-ins and initiated contact when no visit or verification call was made.

53. On or about October 24, 2025, Petitioner received a telephone call from an ISAP Case Specialist, who is an employee of a private company that has a contract with the Government, informing Petitioner that he was required to report in person on October 27, 2025, to sign "new paperwork."

54. Petitioner sought clarification from the ISAP Case Specialist regarding the nature and purpose of the purported "new paperwork" and the sudden requirement for an in-person visit.

55. Additionally, because Petitioner already had an in-person check-in with ICE for 9:00 a.m. on October 30, 2025, that was scheduled using the normal procedures, he asked the ISAP Case Specialist if he could sign the “new paperwork” at his official October 30, 2025 meeting. The ISAP Case Specialist declined and reiterated that Petitioner had to report in-person on October 27, 2025, without further explanation.

56. On October 27, 2025, Petitioner arrived on time for the in-person meeting, as he had for every such meeting in the last 24-years. Upon arriving at the local ISAP office located at 6501 Boeing Dr., El Paso, Texas 79925, Petitioner was called to the back of the building and directed to a van, where he was suddenly detained by an ICE agent without any written or verbal notice or explanation of his constitutional due process rights.

57. Petitioner was then transferred to ICE offices at 11541 Montana Ave, El Paso, Texas 79938 sometime between 9:30-10:30am. Petitioner spent the rest of the morning and all afternoon until approximately 5:00pm at this office. Ultimately Petitioner was transferred again to the ERO El Paso Camp East Montana detention facility, located at 6920 Digital Road, El Paso, Texas 79936.

58. Throughout the day, Petitioner was held in custody alongside approximately several dozen other individuals who, like him, appeared to have been detained en masse rather than based on any individualized review or lawful basis.

59. At no point have Respondents ever notified Petitioner of any alleged violation of the conditions of his supervised release. The complete absence of notice deprives Petitioner of the ability to respond, contest, or otherwise defend against any purported grounds for detention, in clear violation of due-process guarantees.

60. Likewise, Respondents have never informed Petitioner that any progress has been made in obtaining travel documents. For decades, the Government has repeatedly acknowledged the difficulty in securing such documents, and the lack of any notice regarding changes in that status underscores the arbitrary nature of his sudden detention.

61. During this detention, ICE agents asked Petitioner to sign a document so that they can request travel documents to Liberia. Petitioner complied and signed, just as he has complied with every request made by the Government during its decades long effort to obtain travel documents for him.

62. Respondents detained Petitioner as part of a nationwide initiative even though he has never violated any condition of supervised release, has consistently appeared for every check in, is not a flight risk, and is the sole provider for his United States citizen elderly mother and the primary financial provider of his United States citizen disabled brother.

63. Despite Petitioner's full cooperation, Respondents have failed to obtain travel documents for him for more than two decades across at least three to five separate attempts. Respondents have only just begun their latest attempt, and there is no indication that it will be any more successful than prior efforts. The Respondents have not established that there is a significant likelihood of removal in the reasonably foreseeable future.

64. Without intervention by this Court, Petitioner will remain in detention for an indefinite period despite being placed there in violation of his constitutional rights, all while Respondents' continuous impractical attempts to secure travel documents slowly and inevitably fails.

65. Petitioner respectfully requests that he be released on supervised release, as he has been for the past twenty-four years, unless and until Respondents secure valid travel documents for his removal.

LEGAL FRAMEWORK

Due Process Governs Decisions to Revoke an Order of Supervision

66. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “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).

67. Due Process 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). It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.*

68. Much like *Hendricks*, a restraint on liberty like a revocation of a non-citizen’s order of supervision should only be permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363(1997). The Supreme Court has found that the DHS recognizes 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 (2001) (discussing constitutional limitations on civil detention).

69. “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).

Prolonged Detention

70. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during “the removal period,” which is defined as the 90-day period beginning on “the latest” of either “[t]he date the order of removal becomes administratively final”; “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court’s final order”; or “[i]f the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.”

71. Although 8 U.S.C. § 1231(a)(6) permits detention “beyond the removal period” of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that “the statute, read in light of the Constitution’s demands, limits [a noncitizen’s] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” 533 U.S. at 689. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

72. The Supreme Court reaffirmed this interpretation in *Clark v. Martinez*, 543 U.S. 371 (2005), applying *Zadvydas*’s six-month limitation presumption equally to inadmissible noncitizens, including those effectively stateless, because the statute must be read consistently for all categories under § 1231(a)(6).

73. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen's due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

74. "Most courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated by a concern that the federal government could otherwise detain aliens indefinitely by continuously releasing and re-detaining them." *Abuelhawa v. Noem*, No. 4:25-cv-04128, 2025 WL 2937692, 2025 U.S. Dist. LEXIS 203959, at *4-6 (S.D. Tex. Oct. 16, 2025) (collecting cases).

75. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court has recognized two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

76. The first justification of preventing flight, however, is "by definition . . . weak or nonexistent where removal seems a remote possibility." *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention

accordingly is “no longer practically attainable, detention no longer ‘bear[s][a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, “preventive detention based on dangerousness” is permitted “only when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.

77. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should consider the risk of the [noncitizen’s] committing further crimes as a factor potentially justifying confinement within that reasonable removal period.” *Id.* at 700.

78. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the constitutionality of detention for more than six months” and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); *see also Clark*, 543 U.S. at 386.

79. These precedents collectively establish that prolonged post-order detention is permissible only when removal is realistically attainable within a reasonable period, a standard that the Government cannot meet here.

Statute and Regulation Govern Procedures for Revoking an Order of Supervision

80. 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”).

81. 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).

82. 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, the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances...” *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001).

83. Regulations purport to give additional reasons, beyond those listed in 1231(a)(6) that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period: “(i) The purposes of release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 CFR 241.4(l)(2); *see also* 8 CFR 241.13(i) (permitting revocation of an order of supervision only if a non-citizen “violates any of the conditions of release.”). “Regulations cannot circumvent the plain text of the statute[,]” courts questions 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).

84. Regulations permit only certain officials to revoke an order of supervision: the ICE Associate Director, a field office director, or an official “delegated the function or authority...for a particular geographic district, region, or area.” *Ceesay v. Kurzdorfer*, 781 F.Supp. 3d. 137, 161

(W.D.N.Y. 2025) *citing* 8 CFR 1.2, 241.4(i)(2), and explaining that the Homeland Security Act of 2002 renamed the position titles listed in 241.4).

85. 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 CFR 241.4(l)(2). Additionally, for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F.Supp. 3d 137, 161 (W.D.N.Y. 2025) (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).

86. Upon revocation of an order of supervision, ICE must give a non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 CFR 241.4(l)(1).

The APA Sets Minimum Standards for Final Agency Action

87. The Administrative Procedures Act authorizes judicial review of final agency action. 5 USC 704.

88. The exhaustion of administrative remedies is not required “where the available administrative remedies are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action.” *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n.14 (S.D. Tex. 2021) (quoting *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018)).

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

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

90. ICE’s revocation of an order of supervision is a final agency action subject to the Court’s review.

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

92. 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.

The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

93. Under the *Accardi* doctrine, a foundational principle in administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 345 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.”).

94. *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla v. INS*, 926 F.2d. 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *See Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *see also 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).

95. Where a release notification issued alongside an order of supervision instructs that a non-citizen with a final order of removal will be given an opportunity to prepare for an “orderly departure,” ICE’s failure to follow that instruction could be *Accardi* violation but is a violation of Due Process. *See Ceesay v. Kurzdorfer*, 781 F.Supp. 3d. 137, 169 (W.D.N.Y. 2025).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Procedural Due Process

96. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

97. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person of liberty without due process of law. U.S. CONST. AMEND. V.

98. The Supreme Court has held that courts determine the adequacy of process under the Fifth Amendment by balancing three factors: (1) the private interest affected by the official action, (2) the risk of erroneous deprivation through existing procedures and the probable value of additional or substitute safeguards, and (3) the Government’s interest, including any fiscal or administrative burdens that additional procedures would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

99. Petitioner possesses a substantial liberty interest in freedom from physical confinement—the “most elemental of liberty interests.” *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The risk of erroneous deprivation of that liberty is substantial because Respondents have provided no neutral hearing, no explanation or written statement of reasons for continued detention, and no opportunity for Petitioner to challenge the basis for confinement. Additional safeguards—such as a prompt bond hearing before an impartial adjudicator—would significantly reduce that risk.

100. The first factor of private interest weighs in favor of Petitioner. “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.

101. “[O]nce released from immigration custody, noncitizens acquire ‘a protectable liberty interest in remaining out of custody on bond.’” *Santiago*, No. EP-25-CV-361-KC, 2025 WL 2792588, slip op. at 23, and *11 (quoting *Diaz v. Kaiser*, No. 25-cv-5071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025)) (collecting cases). “Because [he] spent [more than] twenty years at liberty in the United States [Petitioner] possesses a cognizable interest in [his] continued freedom from detention.” *Id.* at 24 and *11.

102. When ICE issued Petitioner an order of supervision, it was found that he was neither a danger to the community nor a flight risk. ICE’s continued renewal of the order of supervision confirms the same. He has been under an order of supervision for almost 24 years.

103. The second factor of risk of erroneous deprivation also supports Petitioner’s release, especially “where, as here, there has been no individualized explanation of any kind for [Petitioner’s] detention.” *Id.* at 25 and *12. “Here, detaining [Petitioner] without holding a bond hearing creates a substantial risk that he may be erroneously deprived of his liberty.” *Francisco Gonzalez Martinez v. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859 slip op. at 8 and *4 (W.D. Tex. Oct. 21, 2025) (Cardone, J.). “Without an individualized determination, it cannot be said that detention is warranted in his case.” *Id.*

104. 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.

105. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.

106. Third, and finally, the Government's interest in continuing to detain Petitioner is minimal, as Petitioner's removal is not reasonably foreseeable, and Respondents have articulated no individualized risks or reasons to justify continued detention. "The risk lies in the automatic continued deprivation of liberty for a noncitizen who has already been determined to not be a flight risk nor a danger to the community, and has lived in the United States for a prolonged period of time, especially where there are no facts in the record to reflect material changes in Petitioner's dangerousness or flight risk." *Teyllon Souza Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, slip op. at 15 and *7. (W.D. Tex. Oct. 16, 2025) (Briones, J.).

107. Further, when the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas 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.

108. When Respondents revoked the Petitioner's order of supervision, Petitioner had complied with every condition of the order, every condition placed on him by not only former INS, ICE, and also ISAP. The Petitioner in his over two decades of being under an order of supervision has complied with in person reporting with ISAP, virtual reporting with ISAP, random phone calls with ISAP, random home visits with ISAP, ankle monitor through ISAP, and in person visits with ICE even at times calling in to remind ISAP about his check-in.

109. ICE has yet to secure any necessary travel documents from removal as established by the fact that ICE has barely gone to visit the Petitioner during the week of November 3 through the 7, and again on November 13, 2025, requesting Petitioner to sign a request for a travel document to Liberia.

110. "Because all three *Mathews* factors support [Petitioner]'s position, the Court [should find] that detaining him without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, slip op. at 25 and *12. "This decision is supported by a growing number of district courts across the country who have found that holding people like [Petitioner] in mandatory detention without a bond hearing likely constitutes a due process violation." *Id.* No change in circumstances warranted the order's revocation.

COUNT TWO
Violation of Fifth Amendment Right to Substantive Due Process

111. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

112. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

113. Petitioner's removal order became administratively final on May 23, 2001, when the Board of Immigration Appeals affirmed Immigration Judge Penny Smith's decision deny the Petitioner's motion to reopen. [**Exhibit 2, Board of Immigration Appeals Order on Motion to Reopen**]. The Immigration Court's order of removal was issued on February 3, 1999. [**Exhibit 1, Stipulated Order in Removal Proceedings**]. The removal period began on that day and thus elapsed on May 12, 2001, more than twenty-four years ago.

114. Petitioner has now been re-detained by Respondents since October 27, 2025, under that same decades-old removal order under which he was previously detained for approximately nine months, under former INS, well beyond the six-month period permissible under *Zadvydas*. Accordingly, his claim is fully ripe for judicial review.

115. If the Government contends that it can restart the six-month detention clock by simply releasing and then re-detaining Petitioner, there is no support in the Immigration and Nationality Act, its implementing regulations, or *Zadvydas* itself. "Most courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated by a concern that the federal government could otherwise detain aliens indefinitely by continuously releasing and re-detaining them." *Abuelhawa v. Noem*, No. 4:25-cv-04128, 2025 WL 2937692, 2025 U.S. Dist. LEXIS 203959, at *4-6 (S.D. Tex. Oct. 16, 2025) (collecting cases). As those courts have explained, allowing the government to "reset" the clock through successive detentions would effectively sanction the very type of indefinite imprisonment that *Zadvydas* prohibits.

116. Courts applying *Zadvydas* and *Clark* have consistently held that re-detention cannot be used to evade the six-month limit. *See also Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025).

117. Indeed, the Court has emphasized that a removal period will only be reset “[i]f the removal order is *judicially* reviewed and if a *court* orders a stay of the removal of the alien.” *Olya v. Garite*, No. EP-25-CV-83-DCG, at 9 (W.D. Tex. Oct. 14, 2025) (Guaderrama, J.) (quoting 8 U.S.C. § 1231(a)(1)(B)(ii) (emphases added)).

118. “[U]pon revocation of release, the Government bears the burden to show a significant likelihood that the alien may be removed in the reasonably foreseeable future” *Abuelhawa*, 2025 WL 2937692, 2025 U.S. Dist. LEXIS 203959, at *8.

119. “And a number of recently decided cases . . . are in accord that the Government fails to meet its burden where it provides only conclusory statements as to the likelihood of removal” such as by providing only “conclusory statements that they [had taken] steps to remove [the petitioner] to Mexico or perhaps Canada” or asserting “bare fact that ICE officials . . . requested third-country removal assistance from ICE headquarters”). *Id.* at 24-25 (internal quotation marks and citations omitted).

120. The Respondents have attempted multiple times during the last two decades of Petitioner’s release to obtain necessary travel documents for removal and have been unable to obtain them.

121. Petitioner’s prolonged detention is not likely to end in the reasonably foreseeable future. Nothing material has changed since his original order of removal in 1999 and the BIA’s decision in 2001.

122. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

123. For these reasons, Petitioner’s ongoing prolonged detention violates the Due

Process Clause of the Fifth Amendment.

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

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

125. 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).

126. 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).

127. 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.

128. 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.

129. 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 to present knowledge was the officer delegated the authority to revoke an order of supervision.

130. Before revoking the order, Respondents did not make findings that Petitioner is dangerous or unlikely to comply with a removal order, nor was their an individualized review of Petitioner’s case as required by statute.

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

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

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

COUNT FOUR
Violation of the Administrative Procedures Act, 5 USC 706(2)(A)
Violation of 8 U.S.C. § 1231(a)
Arbitrary and Capricious

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

135. 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).

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

137. 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).

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

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

139. The revocation also “failed to consider ... important aspect[s] 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).

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

141. 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 removal¹, including financial and administrative costs incurred by the agency due to unnecessary detention.

142. 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 interest in effectuating a removal order and save it the expense of detention not needed to guarantee Petitioner’s appearance.

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

144. 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.

¹ To reiterate and for whom Respondents have been unable to obtain travel documents for – for over two decades.

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

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

146. 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).

147. “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).

148. 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. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 (“[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.”). Because Petitioner’s removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

149. 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. Plaintiffs reallege 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 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 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*, 299 F. Supp. 3d 386, 386-89); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

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.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Exercise jurisdiction over this matter;
- (2) Declare that Petitioner's ongoing detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1231(a), the INA and implementing regulations, the APA, and the *Accardi* doctrine;
- (3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from custody;
- (4) In the alternative, should the Court decline to order immediate release, direct Respondents to place Petitioner on supervised release pursuant to 8 C.F.R. § 241.5 with appropriate conditions;
- (5) Award Petitioner reasonable attorney's fees and costs under the Equal Access to Justice Act or other applicable law; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

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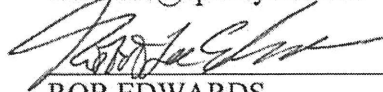
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November 21, 2025



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