UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Erika Noemy Alcantara De Erazo, J.N.E.A. (A minor), E.N.E.A. (A minor), Petitioners, v. Donald J. TRUMP, in his official capacity As President of the United States; Kenneth GENALO, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Todd LYONS, Acting Director, U.S. Immigration and Customs Enforcement, Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; and Pamela BONDI, United States Attorney General Respondents.	Case No. 1:25-cv-10098-ALC **AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This case challenges the unlawful detention of "Petitioners," Ms. Erika Alcantara De Erazo ("Ms. Alcantara") and her two minor children, J.N.E.A. (age 12), and E.N.E.A. (age 6) (both "Minor Petitioners"). On December 4, 2025, ICE abruptly detained this family at 26 Federal Plaza in New York, New York without notice or opportunity to be heard, and without findings required by law. Petitioners are currently detained at the Dilley Immigration Processing Center in Dilley, Texas, where minor petitioners receive only one hour of educational instruction per day.

2. ICE found that Petitioners were neither a flight risk nor danger to the community when it initially released Petitioners from ICE detention on or about November 3, 2023 and placed them on an Order of Release on Recognizance under the Intensive Supervision Appearance Program ("ISAP"). Petitioners fully abided by the terms of this supervision, including checking in electronically and in person at the local ISAP office as required.

3. Petitioners were ordered removed *in absentia* at their first master calendar hearing on January 26, 2024. On March 25, 2024, Petitioners filed a motion to reopen their *in absentia* removal order arguing that they were prevented from attending their master calendar hearing due to extraordinary circumstances and lack of notice. Ms. Alcantara submitted a Form I-589, Application for Asylum and Withholding of Removal in support of her motion. On April 4, 2024, the Immigration Judge denied Petitioners' motion to reopen. After the Immigration Judge denied their motion to reopen, Petitioners no longer benefited from an automatic stay of removal and at that time became subject to a final removal order. On May 1, 2024, Petitioners appealed the Immigration Judge's decision to the Board of Immigration Appeals, and that motion remains pending. On December 5, 2025, petitioners filed an emergency motion to stay removal with the Board of Immigration Appeals ("BIA"), and that motion remains pending.

4. After the Immigration Judge's January 26, 2024 *in absentia* removal order, ICE declined to detain Petitioners during the 90-day removal period. Nor did ICE detain Petitioners during the nineteen months following the 90-day removal period. ICE further failed to place Petitioners on an Order of Supervision ("OSUP"), as required by 8 U.S.C. 1231(a)(3) and (a)(6). Instead, ICE maintained the same conditions of release, and subjected Petitioners to ongoing ISAP and ICE check-ins. In doing so, ICE continued to determine that Petitioners were neither a flight risk nor a danger to the community.

5. On December 4, 2025, Ms. Alcantara, her 12-year-old son, her 6-year-old daughter, and their attorney Michael Shannon attended their check-in on the 5th Floor of 26 Federal Plaza, New York, New York. At this check-in, ICE officers informed Petitioners and Mr. Shannon that they would be detained. Prior to their detention on December 4, 2025, Ms. Alcantara was never informed that she and her children would be detained at their next ICE check-in. When Mr. Shannon asked why ICE was detaining Petitioners without warning, ICE officers told him that Ms. Alcantara and her children have a final order of removal and do not have an automatic stay of removal. The officer also stated that ICE is not required to inform Petitioners in advance of their detention. Mr. Shannon told the ICE officers that Petitioners were in the same procedural posture at their last ICE check-in on June 25, 2025, and that ICE did not detain them at that time. One of the ICE officers responded that Ms. Alcantara and her children have been given enough time and that ICE was exercising its discretion to detain them.

6. An ICE officer then informed Mr. Shannon that Petitioners would be "detained for processing" but that they might be released on an order of supervision. Ultimately, after approximately four and a half hours of waiting, ICE informed Petitioners and Mr. Shannon around 1:30pm that they would be detained permanently and subsequently transferred to a location that was currently unknown to the ICE officer providing the information.

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

8. Petitioners bring this action for injunctive, habeas, and declaratory relief ordering Respondents to release them.

9. Petitioners also seek a temporary restraining order preventing Respondents from removing Petitioners from the United States until the resolution of this habeas petition.

JURISDICTION

10. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

12. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

13. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *See, e.g., Zadvydas v. Davis*, 533, U.S. 678, 687 (2001).

VENUE

14. Venue is proper in the Southern District of New York under 28 U.S.C. § 2241 and 28 U.S.C. § 1391 because Petitioners were detained by ICE at the New York ICE Field Office, 26 Federal Plaza, New York, New York, in the Southern District of New York and were under the custody and control of ICE officials in the Southern District at the time of the filing of this petition; and a substantial part of the events giving rise to the claims and relevant facts in this action took place in this District.

PARTIES

15. Petitioners are Salvadoran nationals, a mother and her two minor children. Ms. Alcantara is 36-year-old mother and asylum-seeker from El Salvador. Her son is twelve years old, and her daughter is six years old. Both attended elementary school in New York City prior to their detention. Petitioners have no criminal history. Petitioners were detained at the New York ICE Field Office at 26 Federal Plaza, New York, New York on December 4, 2025. They are currently detained at the Dilley Immigration Processing Center in Dilley, Texas. They are in the custody, and under the direct control, of Respondents and their agents.

16. Respondent Donald J. Trump is sued in his official capacity as the President of the United States. In this capacity. He is responsible for the policies and actions of the executive branch, including the Department of Homeland Security. Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington, D.C. 20500.

17. Respondent Kenneth Genalo is sued in his official capacity as the Acting Director of the New York Field Office of U.S. Immigration and Customs Enforcement. Respondent Genalo is a legal custodian of Petitioners and has authority to release them.

18. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of ICE. He is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove Petitioner; and as such is a custodian of Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, D.C. 20536-5900.

19. 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 Immigration and Nationality Act, and oversees U.S.

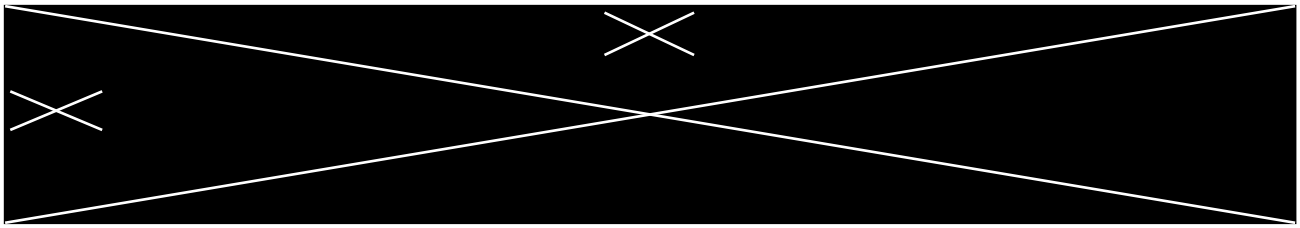
Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

20. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

21. Petitioners are a 36-year-old mother and her two minor children, ages six and twelve, from El Salvador with no criminal history. They have a pending appeal filed on May 1, 2024 at the Board of Immigration Appeals ("BIA") of an Immigration Judge's April 4, 2024 order denying their motion to reopen their *in absentia* removal order entered on January 26, 2024. They have been in the United States on an order of release on recognizance and enrollment in the ISAP Alternatives to Detention program for over two years and have complied with all supervision reporting requirements.

22. Petitioners fled El Salvador and sought protection in the United States after [redacted] gang members targeted their family for violence [redacted]



23. On or about October 26, 2023, petitioners crossed into the United States on foot from Mexico at or near Hidalgo, Texas. After entering the U.S. without inspection, United States immigration officers arrested them and sent them to a detention center for about nine days. During their detention, a male immigration officers gave Ms. Alcantara many papers in English. He pointed at certain papers and told her to "sign here." She complied. The officer told her that she had to present herself for an appointment at the "immigration office" in New York City on December 20, 2023, at 9am, and he pointed to that same date written on her Order of Release on Recognizance. He told Ms. Alcantara that when she attended the December 20, 2023 appointment, she would be given another appointment date. After the male immigration officer finished with Ms. Alcantara, a female immigration officer gave her a cell phone and detailed instructions on how she would be required to take a photo of herself and send it to U.S. immigration authorities every Tuesday between 10am and 12pm.

24. Ms. Alcantara was never informed orally in Spanish or any other language of the time and place of her January 26, 2024 hearing in immigration court or of the consequences of her failure to appear as provided in section 240(b)(7) of the INA.

25. After Ms. Alcantara and her children were released from immigration detention, Ms. Alcantara dutifully complied with her Alternatives to Detention (ATD) reporting requirements. She took and uploaded a photo of herself every Tuesday between 10am and 12pm and sent it to ICE through the SmartLINK application installed on her phone.

26. As instructed by the male immigration officer who made her sign papers in English during her immigration detention, Ms. Alcantara attended her appointment at the "immigration office" at 26 Federal Plaza, New York, NY on December 20, 2023. At that appointment, she gave all her immigration paperwork to a male officer on the 5th Floor of 26 Federal Plaza. The officer reviewed her papers while looking at a computer screen. After reviewing her papers, he showed her page 2 of her ICE Form I-220A, Order of Release on Recognizance. He wrote "NRD 12/16/2024 @7AM" by hand, pointed at that date, and told her that her next appointment was December 16, 2024 at 7am in the morning. Despite reviewing Ms. Alcantara's Notice to Appear, the ICE officer failed to inform her that she and her children had their first immigration court appearance on January 26, 2024.

27. Ms. Alcantara continued taking and uploading a photo of herself every Tuesday between 10am and 12pm and sending it to ICE via the Smartlink application on her phone to comply with her ATD requirements.

28. On Friday, February 8, 2024, Ms. Alcantara received an *in absentia* removal order in the mail. The following Tuesday, February 12th, she went in person to Catholic Migration Services to try to obtain an appointment. She was given the next available appointment on March 11, 2024.

29. On March 11, 2024, Ms. Alcantara had a legal consultation with attorney Michael Shannon, who reviewed her immigration paperwork with her, including her Notice to Appear and Order of Release on Recognizance. During this legal consultation, Ms. Alcantara discovered that a CBP Border Patrol Agent, Juan A Garza, claimed, by electronically signing the Certificate of Service page of Ms. Alcantara De Erazo's Notice to Appear ("NTA"), that Ms. Alcantara (1) refused to sign her NTA when she was allegedly personally served with it and (2) that Ms.

Alcantara was provided oral notice in the Spanish language of the time and place of her hearing and the consequences of failure to appear as provided in section 240(b)(7) of the INA. In her declaration in support of her motion to reopen her *in absentia* removal order, Ms. Alcantara swore under penalty of perjury that CBP Border Patrol Agent Juan A Garza's allegations are false.

30. On March 25, 2024, Ms. Alcantara filed a Motion to Reopen An *In Absentia* Order with Immigration Judge Barbara Nelson at the Immigration Court in New York, NY. In support of her motion, Ms. Alcantara included her detailed sworn declaration, her Orders of Release on Recognizance and Alternatives to Detention paperwork, her Notice to Appear, and her signed Form I-589, Application for Asylum and for Withholding of Removal. On April 4, 2024, IJ Nelson denied Ms. Alcantara's motion. On May 1, 2024, Ms. Alcantara appealed IJ Nelson's decision denying her motion.

31. On or about June 23, 2024, Ms. Alcantara received an email in Spanish from ICE supervisory detention and deportation officer, Christopher C. Finnie, instructing her to report for an ICE check-in at 26 Federal Plaza on June 25, 2025 at 7am. Officer Finnie's email instructed Ms. Alcantara to bring all her immigration paperwork, her court documents, and plans to leave the United States. Worried by Officer Finnie's email, Ms. Alcantara contacted her immigration attorney, Michael Shannon.

32. On June 24, 2024, Mr. Shannon sent Officer Finnie an email informing him that petitioners had a pending BIA appeal of an immigration judge's denial of their motion to reopen their *in absentia* removal orders and asking Officer Finnie to postpone Ms. Alcantara's June 25, 2024 ICE check-in until the conclusion of her pending BIA appeal. Mr. Shannon's email also asked Officer Finnie to confirm that Ms. Alcantara would not be at risk of detention at her June

25, 2024 ICE check-in. He informed Officer Finnie that he would prepare a stay request if there was a risk of detention.

33. Later that same day, Mr. Shannon called and spoke with Officer Finnie to follow up on his email. Officer Finnie told Mr. Shannon that Ms. Alcantara's June 25, 2024 ICE check-in was a routine check in and was unrelated to any pending BIA appeal. Mr. Shannon told Officer Finnie that he and Ms. Alcantara were concerned about the language in Officer Finnie's email to Ms. Alcantara that asked for plans to leave the United States. Officer Finnie responded that this was just standard language. He confirmed that there was no risk that Ms. Alcantara would be taken into custody and detained at her ICE check-in the following day. Officer Finnie told Mr. Shannon that absent any national security, terrorism, or public safety risks, they always let the appeals process play out and in particular wouldn't detain someone with children.

34. Based on Officer Finnie's assurances, Mr. Shannon did not accompany Ms. Alcantara to her June 25, 2024 ICE check-in at 26 Federal Plaza. Ms. Alcantara attended her check-in on her own. She was given a new ICE check-in date one year later: June 25, 2025.

35. On July 31, 2024, an ISAP caseworker placed a GPS ankle monitor on Ms. Alcantara. The ISAP caseworker also informed Ms. Alcantara that she didn't have any pending appeal and gave her paperwork that stated that she didn't have any pending litigation. The caseworker also significantly increased Ms. Alcantara's ISAP reporting and surveillance requirements.

36. In early August 2024, Mr. Shannon called Officer Finnie to ask him for ICE to remove Ms. Alcantara's GPS ankle monitor and to reduce her ISAP reporting requirements. Mr. Shannon informed Officer Finnie that Ms. Alcantara's ISAP caseworker incorrectly informed her that she does not have a pending appeal. Mr. Shannon informed Officer Finnie that Ms. Alcantara's

appeal of her motion to reopen the immigration judge's *in absentia* removal order is still pending at the BIA. Officer Finnie instructed Mr. Shannon to send him a request via email with the relevant information and documentation.

37. On August 14, 2024, Mr. Shannon emailed Officer Finnie to formally request (1) the removal of Ms. Alcantara's ankle monitor, (2) the reduction of her in-person and virtual ISAP appointments, and (3) her placement on an order of supervision. The email request highlighted petitioners' pending BIA appeal and the erroneous ISAP paperwork stating that petitioners did not have any pending litigation. It also highlighted petitioners' positive equities and family ties, including evidence that many of petitioners' close family members have been granted asylee status.

38. On August 15, 2025, Officer Finnie forwarded Mr. Shannon's request to Deportation Officer, Christine C. Chavis, instructing Officer Chavis to respond to Mr. Shannon's request and to update a DHS electronic database called EARM.

39. That same day, August 15, 2025, Officer Chavis responded to Mr. Shannon via email, cc'ing Officer Finnie on the same email chain. Officer Chavis stated that the request to remove Ms. Alcantara's GPS ankle monitor was approved. Officer Chavis also stated that "[y]our client still needs to report to ISAP until a decision is reached on their case." Petitioners understood this as further confirmation of Mr. Shannon's June 24, 2024 phone conversation with Officer Finnie that Ms. Alcantara would remain on ISAP supervision – and would not be detained and deported – until the BIA reached a decision on petitioners' pending appeal of the immigration judge's denial of their motion to reopen their *in absentia* removal orders.

40. On August 15, 2025, ICE also reduced Ms. Alcantara's "Biometrics Reporting" from "Weekly" to "Monthly."

41. On June 25, 2025, Ms. Alcantara attended her scheduled ICE check-in at 26 Federal Plaza, New York, NY with Mr. Shannon. At that appointment, Mr. Shannon informed the ICE officer that Ms. Alcantara and her children still had a pending BIA appeal of an immigration judge's denial of their motion to reopen their *in absentia* removal orders. The ICE officer gave Ms. Alcantara a new ICE check-in date for December 18, 2025 at 8am at 26 Federal Plaza. He told her that she needed to bring her two children to this next check-in date. The officer gave Ms. Alcantara and Mr. Shannon a printed appointment confirmation notice instructing her to come to her next appointment with her two children and to bring original documents to confirm proof of citizenship, proof of address, and a valid cell phone number. The appointment type was categorized as "Non-Detained Family." Ms. Alcantara was not informed that she and her children would be detained at their next appointment on December 18, 2025.

42. Ms. Alcantara's ISAP case managers continued to give her incorrect and conflicting information between her June 25, 2025 ICE check-in at 26 Federal Plaza and ICE's detention of Ms. Alcantara and her children at their December 4, 2025 ICE check-in at 26 Federal Plaza.

43. On July 17, 2025, Mr. Shannon emailed Ms. Alcantara's ISAP case manager proof of petitioners' pending BIA appeal per the case manager's request. Mr. Shannon provided this proof because Ms. Alcantara's ISAP case manager had again incorrectly told Ms. Alcantara that she did not have a pending appeal with the BIA.

44. On November 5, 2025, Ms. Alcantara attended an ISAP appointment in Queens, New York. At that appointment, an ISAP case worker fitted Ms. Alcantara with a tracking monitor on her wrist. The caseworker also instructed her to provide departure tickets by 11/24/25 and instructed her to voluntarily leave the country with her husband and two children by 12/12/25. However, ISAP case notes from that same appointment state that Ms. Alcantara "[m]ust submit

documentation that she is working on her case before 06/25/25" and that her "ordered departure date is: 11/05/25 OR Has not yet been determined by ERO or EOIR." Ms. Alcantara repeatedly submitted documentation both before and after June 25, 2025 that she was working on her case by presenting proof that her appeal, which is fully briefed, remains pending at the BIA. Moreover, Ms. Alcantara's husband is not subject to an order of removal and is not required to leave the country.

45. On December 3, 2025, Ms. Alcantara attended another ISAP appointment in Queens. At that appointment, an ISAP case worker asked her whether she had purchased plane tickets. When she said that she had not purchased tickets, Ms. Alcantara was fitted with an ankle monitor and informed that her December 18, 2025, ICE check-in was cancelled and that she and her children instead had to appear the next morning, (December 4, 2025) for an ICE check-in at 26 Federal Plaza. However, the case notes from that December 3, 2025 appointment state that Ms. Alcantara had been instructed to "submit documentation that she is working on her case before 11/21/25." In addition, the notes also state that petitioners' departure date is December 12, 2025 while simultaneously stating that Ms. Alcantara was reminded of her next office visit on December 31, 2025 and that her next home visit on January 6, 2026.

46. Upon information and belief, during the course of 2025, ICE officers and/or ISAP caseworkers have instructed noncitizens to "voluntarily" leave the United States, even when those noncitizens do not have final orders of removal.

47. On December 4, 2025, Ms. Alcantara, her 12-year-old son, her 6-year-old daughter, and their attorney Michael Shannon attended their check-in on the 5th Floor of 26 Federal Plaza. At this check-in, ICE officers informed Petitioners and Mr. Shannon that Petitioners would be detained. Prior to their detention on December 4, 2025, Ms. Alcantara was never informed that she

and her children would be detained at their next ICE check-in. When Mr. Shannon asked why ICE was detaining Petitioners without warning, ICE officers told him that Ms. Alcantara and her children have a final order of removal and do not have an automatic stay of removal. The officer also stated that ICE is not required to inform Petitioners in advance of their detention. Mr. Shannon told the ICE officers that Petitioners were in the same procedural posture at their last ICE check-in on June 25, 2025 and that ICE did not detain them at that time. One of the ICE officers responded that Ms. Alcantara and her children have been given enough time and that ICE was exercising its discretion to detain them.

48. An ICE officer then informed Mr. Shannon that Petitioners would be "detained for processing" but that they might be released on an order of supervision. Ultimately, after approximately four and a half hours of waiting, ICE informed Petitioners and Mr. Shannon around 1:30pm that they would be detained permanently and subsequently transferred to a location that was currently unknown to the ICE officer providing the information.

49. On December 5, 2025, petitioners filed an emergency motion to stay removal with the Board of Immigration Appeals ("BIA"), and that motion remains pending.

50. Since December 5, 2025, petitioners have been detained at the Dilley Processing Center in Dilley, Texas, where Ms. Alcantara's children receive only one hour of educational instruction per day.

LEGAL FRAMEWORK

Due Process Governs Decisions to Revoke an Order of Release on Recognizance

51. "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)

52. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of release or 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).

53. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a non-citizen's order of release on recognizance or order of supervision. *Matthews 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).

Statute and Regulation Govern Procedures for Revoking an Order of Release to a Non-Citizen with a Final Order of Removal

54. 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).

55. 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).

56. 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.

57. 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).

58. It is clear, however, that regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intend to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. §

241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 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).

59. Upon revocation of release "under an order of supervision or other conditions of release," 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).

The APA Sets Minimum Standards for Final Agency Action

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

61. 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).

62. ICE's revocation of Petitioners' release is a final agency action subject to this Court's review.

63. The revocation here marked the consummation of ICE's decision-making process regarding Petitioners' custody.

64. 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 Petitioners in violation of their rights under the Constitution, statute, and regulation.

The Accardi Doctrine Requires Agencies to Follow Internal Rules

65. 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.").

66. *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); *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).

CLAIMS FOR RELIEF

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

67. The allegations in the above paragraphs are realleged and incorporated herein.

68. When ICE initially released Petitioners on November 3, 2023, and continued to maintain the same release conditions after Petitioners received a final order or removal on January 26, 2024, it found that the Petitioners were neither a danger to the community nor a flight risk.

69. At the time Respondents revoked their release, Petitioners had complied with every condition of the order. No change in circumstances warranted the revocation of release.

70. Petitioners' 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.

71. Because Respondents had no legitimate, non-punitive objective in revoking Petitioner's release, Petitioners' detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

COUNT TWO
Violation of the Fifth Amendment to the U.S. Constitution
Procedural Due Process

72. Plaintiffs re-allege all paragraphs above as if fully set forth here.

73. Revoking Petitioners' order of release without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

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

75. The first factor, the private interest at issue, favors Petitioners. "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. This liberty interest is not de minimis, even for noncitizens with final orders of removal. *See Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *3 (S.D.N.Y. Oct. 29, 2023). Minor Petitioners, who are 6 years old and 12 years old, have been

separated without warning from their father, their close family members, and their classmates and teachers, and are not receiving an adequate education in detention. Moreover, Petitioners risk physical violence and death if deported to El Salvador, and they are actively pursuing their appeal at the BIA. In addition, Petitioners have deep family ties in New York City. Before their detention without notice or warning on December 4, 2025, they lived with Ms. Alcantara's husband and minor petitioners' father, as well as close family members who have been granted asylum based on similar and overlapping facts.

76. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioners. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that ICE can revoke release under an order of supervision or other conditions of release. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of release is of great value because it reduces the probability of needless detention of a person, like Petitioners, who are neither dangerous nor a flight risk.

77. The third factor, the government's interest, also favors Petitioners. When the government ignores law that ensures notice and an opportunity to respond for a person at risk of revocation of an order of release, 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 release reduces fiscal and administrative burdens on the government.

78. For these reasons, Respondents' decision to revoke Petitioners' order of release without notice or an opportunity to respond does not satisfy the requirements of procedural due process.

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

79. Plaintiffs re-allege all paragraphs above as if full set forth here.

80. 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).

81. 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).

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

83. The revocation was also not in accordance with the INA and implementing regulations governing orders of supervision.

84. Respondents violated the INA statute which provides that 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 [8 CFR § 241.4]." (*emphasis added*). 8 U.S.C. §

1231(a)(3). Although Respondents have discretion under 8 U.S.C. § 1231(a)(6) to detain inadmissible noncitizens like Petitioners beyond the 90-day removal period, ICE's release of Petitioners during the following nineteen months means that Petitioners should have been subject to the terms of supervision in paragraph (a)(3) because twenty-two months is not a reasonable period to detain a mother with two minor children. Therefore, Respondents did not comply with this requirement. Instead, Respondents kept Petitioner on an Order of Release of Recognizance, despite the fact that such an order is for non-citizens who do not have a final order of removal. A Release on Recognizance on Form I-220A does not include the provisions enumerated in 8 U.S.C. § 1231(a)(3), including requirements to submit to a medical and psychiatric examination. These requirements are found on an Order of Supervision on Form I-220B.

85. Respondents violated the INA by not placing Petitioner on a proper Order of Supervision, which could only be revoked by the ICE Executive Associate Director as explained above. 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.

86. Before revoking the order, Respondents did not make findings that Petitioners are dangerous or unlikely to comply with a removal order, as required by statute.

87. 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 Petitioners' conduct indicated release would no longer be appropriate or that Petitioners violated any conditions of release, because they 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 Respondents had repeatedly assured Petitioners that they would remain on ISAP supervision during the pendency of their appeal at the BIA.

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

89. 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 Procedure Act, 5 U.S.C. § 706(2)(A)
Arbitrary and Capricious

90. Petitioners re-allege all paragraphs above as if fully set forth here.

91. 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).

92. Respondents' revocation of Petitioners' release was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

93. 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).

94. Respondents' decision to revoke Petitioners' order of release ran counter to the evidence before the agency that Petitioners would comply with a demand to appear for removal without detention. Petitioners have never violated a condition of their ISAP program or order of release on recognizance and no new facts or changed circumstances suggest they would.

95. Respondents' 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).

96. First, Respondents failed to consider the serious constitutional concerns raised by revoking Petitioners' release without notice and opportunity to respond.

97. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of release of Petitioners, including financial and administrative costs incurred by the agency due to unnecessary detention. Petitioners are neither a flight risk nor a danger to the community, and ICE told them that they would remain on ISAP supervision until a decision was reached on their BIA appeal.

98. Third, Respondents failed to consider Petitioners' substantial reliance interest, created by ICE's assurances that Ms. Alcantara would remain on ISAP until a decision was reached on Petitioners' pending BIA appeal and that they always let the appeals process play out and in particular wouldn't detain someone with children.

99. For these and other reasons, Respondents' revocation of Petitioners' order of release 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

100. Petitioners re-allege all paragraphs above as if fully set forth here.

101. 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).

102. "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).

103. 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. Here, Respondents were required to condition Petitioners' release on an order of supervision in accordance with 8 U.S.C. § 1231(a)(3) and (a)(6).

Count Six
Ultra Vires Action

104. Petitioners re-allege all paragraphs above as if fully set forth here.

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

106. Petitioners have a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

Count Seven
Violation of the *Accardi* Doctrine

107. Petitioners re-allege all paragraphs above as if fully set forth here.

108. Under the *Accardi* doctrine, Petitioners have 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").

109. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of release when it revoked Petitioners' 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).

110. Under *Accardi*, Respondents' revocation of the order of should be set aside for violating agency procedures, rules, or instructions. Here, the ICE New York City Field Office has a policy of not detaining noncitizens with pending appeals, in particular adults with children, absent any national security, terrorism, or public safety risks, and ICE confirmed that policy in writing when it informed Petitioners that Ms. Alcantara would continue reporting to ISAP until a decision was reached on Petitioners' case.

PRAYER FOR RELIEF

WHEREFORE, Petitioners requests that this Court:

a. Exercise jurisdiction over this matter;

b. Enjoin Petitioners' removal pending its adjudication of this petition;

c. Declare that Petitioners' detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;

d. Issue a Writ of Habeas Corpus Ordering Respondents to immediately release Petitioners from custody without restraints on their liberty;

e. Order Respondents to facilitate Petitioners' communications with their attorneys at Catholic Migration Services;

f. Stay Petitioners' removal from the United States while this petition remains pending;

g. Award Petitioner costs and reasonable attorneys' fees; and

h. Order such other relief as this Court may deem just and proper.

DATED: December 17, 2025
Brooklyn, NY

Respectfully submitted,

/s/ Michael Shannon

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