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**UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO**

Civil Action No. 1:26-cv-136

WILMER ALAS HERRERA,

Petitioner

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,

TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,

PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Respondents' incarceration of Mr. Wilmer Alas Herrera is unlawful. Immigration and Customs Enforcement ("ICE") violated Mr. Alas Herrera's right to due process when it ignored its own procedures to jail him. Mr. Alas Herrera now seeks redress from this Court to remedy his unlawful loss of liberty.

2. Mr. Alas Herrera is a native and citizen of El Salvador who most recently entered the United States on or about November 5, 2016. Exh. 2, Tab K. He was arrested after unlawfully crossing the border, and his prior removal order was reinstated. *Id.* However, he was released and placed on an order of supervision. *Id.* Mr. Alas Herrera then began residing with his family in Boulder, Colorado, and applied for withholding of removal. An immigration judge denied his application for withholding of removal on March 7, 2022, but he timely filed an appeal with the Board of Immigration Appeals, which remains pending over three years later. Exh. 3 (EOIR Case Information).

3. Mr. Alas Herrera complied with the order of supervision for nearly nine years, but was arrested on October 6, 2025 at an ICE check-in. He was not given a reason for his arrest and detention and neither he nor his attorney have received any explanation or documentation despite repeated requests.¹ Nor was Mr. Alas Herrera given an opportunity to contest the decision to re-detain him. Mr. Alas Herrera's BIA appeal remains pending and there is no indication that his removal is likely in the reasonably foreseeable future.

¹ Because of this, Mr. Alas Herrera has no exhibit to demonstrate the date of his arrest, or other circumstances related to it that are discussed in this Petition.

4. Mr. Alas Herrera, through counsel, respectfully moves the Court for a writ of habeas corpus to remedy the unlawful deprivation of his liberty and enjoin further unlawful incarceration by Respondents.

II. PARTIES

Petitioner

5. ICE jails Mr. Alas Herrera at the Aurora Facility in Aurora, Colorado. Mr. Alas Herrera has lived in the United States for more than nine years along with wife and two children, one of who is a U.S. citizen.

Respondents

6. Juan Baltazar is the Warden of the Aurora Facility where ICE jails Mr. XX, and is an employee of the GEO Group, the for-profit prison company that operates the facility. Mr. Baltazar is a legal custodian of Mr. XX. He is sued in his official capacity.

7. Robert Gaudian is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Mr. Gaudian is the immediate custodian of Mr. XX and is responsible for Mr. XX's detention and removal.

8. Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). Ms. Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"). DHS is the parent agency of ICE, and thus Ms. Noem also oversees ICE, which is responsible for Mr. XX's illegal detention. Ms. Noem has ultimate custodial authority over Mr. XX and is sued in her official capacity.

9. Todd M. Lyons is the Acting Director of ICE and is sued in his official capacity. Mr. Lyons is responsible for Mr. XX's illegal detention and has custodial authority over him.

10. Pam Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice (“DOJ”). The Executive Office for Immigration Review (“EOIR”) and the immigration court system it operates are a component agency of DOJ. Ms. Bondi is sued in her official capacity.

III. REQUIREMENTS OF 28 U.S.C. § 2243

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to 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.* (emphasis added).

12. Courts have long recognized the significance of the habeas statute protecting individuals from unlawful incarceration. 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) (emphasis added).

IV. JURISDICTION AND VENUE

13. This action arises under the Constitution of the United States, 28 U.S.C. § 2241(c)(1), (3), and the INA, 8 U.S.C. § 1101 *et seq.*

14. Under 28 U.S.C. § 1331, this Court has federal question jurisdiction over actions arising under the Constitution, laws, or treaties of the United States.

15. Federal courts have subject matter jurisdiction under 28 U.S.C. § 2241(c)(1) and (c)(3) (habeas corpus) to determine whether people imprisoned in federal custody are held in violation of law. *INS v. St. Cyr*, 533 U.S. 289, 305 (2001) *superseded by statute*, REAL ID Act of 2005, 119

Stat. 310 (codified as amended at 8 U.S.C. § 1252(a)(5) (2005)), *as recognized in Nasrallah v. Barr*, 140 S. Ct 1683 (2020); *Boumediene v. Bush*, 128 S.Ct. 2229, 2248 (2008) (citing *St. Cyr*).

16. Jurisdiction is also proper pursuant to 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (waiver of sovereign immunity); 28 U.S.C. § 1346 (original jurisdiction); Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); the All Writs Act, 28 U.S.C. § 1651; and 28 U.S.C. §§ 2201–02 (Declaratory Judgement Act).

17. Mr. Alas Herrera is “in custody,” and the custody is “in violation of the Constitution or laws or treaties of the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (“We conclude that § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.”); *St. Cyr*, 533 U.S. at 301 (“at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.”).

18. Venue properly lies in the District of Colorado. 28 U.S.C. §§ 1391(b)(2), (e); 2241. This petition is filed while Mr. Alas Herrera is physically present within the district because he is incarcerated by Respondents Baltazar and Gaudian at the Aurora facility in Aurora, CO. The material events leading to Mr. Alas Herrera’s detention also occurred in the District of Colorado: he was arrested at his ICE check-in in Frederick, CO; he also has Colorado-based counsel and, as noted above, ICE jailed him within the District. The place of employment of Respondent Baltazar is at the Aurora facility, located at 3130 N. Oakland Street, Aurora, CO 80010. The place of employment of Respondent Gaudian is also located within the district, at 12445 East Caley Avenue, Centennial, CO 80111. *See* 28 U.S.C. §§ 1391(b)(2) and (e); 2241(d); *Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493–94 (1973) (laying out traditional venue factors).

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. Exhaustion is not required because Congress did not codify a requirement that petitioners seeking a writ of habeas corpus exhaust administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (“Where Congress specifically mandates, exhaustion is required... But where Congress has not clearly required exhaustion, sound judicial discretion governs.”) (citation omitted).

20. While inapplicable here, some courts require prudential exhaustion of administrative remedies prior to seeking a writ under § 2241. *Baquera v. Longshore*, 948 F. Supp. 2d 1258, 1259 (D. Colo. 2013) (citing *Williams v. O'Brien*, 792 F.2d 986, 987 (10th Cir. 1986) (per curiam)) *abrogated on different grounds by Nielsen v. Preap*, 139 S. Ct. 954 (2019). However, exhaustion of remedies is unnecessary if futile. *Goodwin v. State of Okl.*, 923 F.2d 156, 157 (10th Cir. 1991) (finding that exhaustion is not required due to futility where the state’s highest court recently decided the precise legal issue petitioner raised in his federal habeas petition).

21. Here, exhaustion would be futile because the detention statute does not provide for a bond hearing when an individual is held pursuant to 8 U.S.C. § 1231. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2277 (2021) (when a noncitizen “is ordered removed and the order becomes ‘administratively final,’ detention becomes mandatory.”). Thus, an IJ does not have jurisdiction to reconsider Mr. XX’s custody status. In other words, exhaustion is futile because there is no process to exhaust.

22. On November 11, 2025, approximately five weeks after his arrest, a deportation officer served Mr. Alas Herrera with a “Notice to Alien of File Custody Review” pursuant to 8 U.S.C. § 1231(a), indicating that “your custody status will be reviewed on or about 01/03/2026” and providing a list of factors and documents to be considered. Exh. 1. On 12/30/2025 undersigned counsel hand-delivered a packet of documents in support of release and sent a courtesy copy via

email. Exhs. 2 & 4. Neither Mr. Alas Herrera nor undersigned counsel have received any other communication regarding the 90-day review or any other requests or questions as of this writing. On information and belief, Denver ICE-ERO has not generally been releasing detained individuals pursuant to such process.

VI. FACTUAL AND PROCEDURAL BACKGROUND

A. Mr. Alas Herrera's most recent entry to the United States and his reinstated removal order.

23. On or about November 5, 2016, Mr. Alas Herrera entered the United States without permission and surrendered to Border Patrol agents. He had previously attempted to enter the United States unlawfully, and received an expedited removal order. Upon processing at a substation, his prior removal order was reinstated, but he was released on an order of supervision² to reunite with his family in Colorado and pursue his application for relief from removal. He was thereafter required to periodically report to ICE.

24. For nearly nine years, as described in greater detail below, Mr. Alas Herrera complied with the terms of his order of supervision and built a life in Boulder, Colorado, working and raising his children. His wife and older children, age 14 and 20, have resided in the United States since 2015 under an order of release on recognizance, while their own cases are in process. His ten-year-old son was born in Texas and is a United States citizen. Exh. 2, Tabs A, B, E.

B. Mr. Alas Herrera's Life at Liberty for Almost Nine Years

25. Mr. Alas Herrera obliged by the terms of his OSUP for the next nearly nine years. Initially, he was required to report to ICE two times a week in person, as well as send a photo of himself every day. ICE also monitored him by GPS through an ankle bracelet. Over time, as he continued

² Mr. Alas Herrera is not in possession of any documents related to the order of supervision prior to August 6, 2025; however, as the Personal Report Record from that date references, the order of supervision was previously in place.

to comply with the rigorous requirements, the frequency of his assigned check-ins decreased. After what Mr. Alas Herrera remembers to be roughly a couple of years, ICE took him off the ankle monitor. At that point, he only had to report once a week, then this became every two weeks, every month, and finally every two months. Mr. Alas Herrera was required to present literally hundreds of times over these nine years, and did so without fail.

26. While in the community for these nine years, Mr. Alas Herrera largely avoided criminal legal contact. The limited exception was an arrest for misdemeanor driving under the influence in 2020. Exh. 2, Tab J. Mr. Alas Herrera served no jail time, successfully completed probation with a clean record, and has not reoffended. *Id.* Otherwise, his time on an OSUP was unblemished.

27. On August 6, 2025, Mr. Alas Herrera reported for a check-in and was noted as in compliance with the order of supervision. Exh. 2, Tab K. Nevertheless, on September 9, 2025, ICE placed him on an ankle monitor. *Id.* No reason specific to Mr. Alas Herrera was given for this change. The officer, who spoke Spanish, told Mr. Alas Herrera that there were orders to put everyone similarly situated on an ankle monitor, but that he might not be on it for long.

28. His next in-person check-in was set for 8:00 am on October 6, 2025, but Mr. Alas Herrera became confused by his new paperwork and did not report at that time. Sometime after 9 am, an ICE supervisory officer called Mr. Alas Herrera asking why he was not at the check-in. Upon receiving this call, Mr. Alas Herrera immediately went to the ICE office to report. He explained that, with the new paperwork, he had simply misunderstood or misremembered the date and time of his check-in and had promptly reported as soon as he realized otherwise.

29. Nevertheless, an ICE officer arrested Mr. Alas Herrera at this check-in. The officer spoke to Mr. Alas Herrera in English. To the best of Mr. Alas Herrera's recollection and understanding, the reason given was simply "you're going to be in custody until there's a decision about you."

Mr. Alas Herrera was neither given an opportunity to contest the revocation of his OSUP, nor was he provided with an explanation that he could understand. He signed some papers which he neither understood nor was given a copy of, and ultimately he was incarcerated at the Aurora ICE Processing Center, where he remains.

30. As stated above, Mr. Alas Herrera did not understand the reason why his order of supervision was revoked, and has not received any paperwork providing an explanation. Likewise, undersigned counsel has attempted to contact ICE without success on four separate occasions, subsequent to submitting his formal entry of appearance as Mr. Alas Herrera's representative. Exh. 2. Mr. Alas Herrera has also contacted ICE through the detention center's internal communication system without a response. ICE also did not give Mr. Alas Herrera an opportunity to present evidence or argument as to why his reincarceration was unnecessary.

31. Upon information and belief, the official responsible for revoking Mr. Alas Herrera's OSUP did not first refer the case to the ICE Executive Associate Director, did not make a finding that revocation was in the public interest, and did not make a finding that circumstances did not reasonably permit referral to the Executive Associate Director. Also upon information and belief, the person that revoked Mr. Alas Herrera's OSUP was not a delegated authority to revoke an OSUP. Regardless, as noted above, if ICE followed these procedures, it has had numerous requests and opportunities to so demonstrate, but has failed to do so, necessitating the filing of the instant petition. Moreover, there was no basis to revoke the order of supervision, as Mr. Alas Herrera had consistently complied with the order of supervision for nine years. Even if his removal was reasonably foreseeable, which it was and is not, his demonstrated compliance belies the notion that ICE would need to detain him in order to ensure his departure from the United States.

C. Mr. Alas Herrera's 98 Days of Incarceration after his October 6, 2025 arrest.

32. Mr. Alas Herrera has been incarcerated at the Aurora facility now for 98 days since his October 6 arrest. ICE did not have a travel document for Mr. Alas Herrera prior to incarcerating him as his immigration case was still in process, which it remains as of this writing. Exh. 3.

33. Mr. Alas Herrera's incarceration has had a devastating effect on his family. His 14-year-old daughter [REDACTED] who previously struggled with severe depression and was hospitalized for suicide attempts, was improving, but has begun to relapse due to her father's absence. Exh. 2, Tabs A, G, I (letters from petitioner's wife and daughter, and medical record excerpts). His son [REDACTED] suffers from migraines. *Id.* Tab F. His wife reports that the children "are slowly fading away in sadness and in pain." *Id.* Tab A. Although a U.S. citizen, his son [REDACTED] has had difficulty even visiting Mr. Alas Herrera at the Aurora facility because his wife is afraid to enter the facility and interact with ICE, despite her own release on an order of recognizance.

34. ICE has not explained with any degree of sufficiency to Mr. Alas Herrera why it revoked his OSUP, nor has it given him an opportunity to respond to that reason.

35. ICE has not provided him a single custody review since his reincarceration.

36. ICE has not given him the opportunity to establish why his continued incarceration is unnecessary.

37. ICE cannot remove Mr. Alas Herrera because it does not have a travel document and his immigration case remains in process. Exh. 3.

38. As of the date of this petition, Mr. Alas Herrera has been deprived of his liberty at the Aurora Facility for the past 98 days.

39. This petition follows.

VII. LEGAL FRAMEWORK FOR RELIEF SOUGHT

A. ICE's Reincarceration of Mr. XX Violates Procedural Due Process

40. This Court must order Mr. Alas Herrera's release because ICE did not provide him with procedural due process when it decided to re-jail him despite his longstanding compliance with the order of supervision, and despite knowing his removal is not significantly likely in the reasonably foreseeable future.

41. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty . . ." *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). The "touchstone" of due process is protecting people against arbitrary government action, whether from "denial of a fundamental procedural fairness, or the exercise of power without any reasonable justification in the service of a legitimate government objection." *Cty. of Sacramento v. Lewis*, 532 U.S. 833, 845–46 (1998).

42. Whether government action violates procedural due process is determined by the three-factor balancing test in *Mathews*. 424 U.S. at 335. The test requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* A proper application of the test demonstrates ICE's unlawfulness and the need for this Court to order Mr. Alas Herrera's release.

43. First, the private liberty interest at stake is the most significant liberty interest there is, the interest in being free from imprisonment. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause

from arbitrary government action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Incarceration “constitutes a significant deprivation of liberty that requires due process protection” no matter the purpose. *Jones v. United States*, 463 U.S. 354, 361 (1983).

44. Mr. Alas Herrera has a protected liberty interest even though he was “subject to extensive conditions of release” *Guillermo M.R. v. Kaiser*, --- F.Supp.3d ---, 2025 WL 1983677, at *4 (N.D.Ca. Jul. 17, 2025) (citation omitted); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

45. In *Morrissey v. Brewer*, the Supreme Court addressed for the first time whether an individual had a constitutionally protected liberty interest in parole after criminal conviction and, if so, the procedures required before that interest may be terminated. 408 U.S. 471 (1972). The Court found that “the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often on others.” *Id.* at 482 (citation and quotation omitted). In its ruling, the Court examined the “nature of the interest of the parolee in his continued liberty,” finding that this interest included the ability “to do a wide range of things open to persons who have never been convicted of any crime,” to seek gainful employment, and “to be with family and friends and to form the other enduring attachments to normal life.” *Id.* 481–82.

46. Given these factors, the Court held that the parolee’s liberty came “within the protection of the Fourteenth Amendment.” *Id.* at 489. He was therefore entitled to the minimum due process protections of: “(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body such as a traditional parole board, members of which need not be judicial

officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.” *Id.*

47. Federal courts have since held that several types of government-created liberty interests are entitled due process protection. *E.g.*, *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973) (revocation of probation without due process is a deprivation of a protected liberty interest); *Young v. Harper*, 520 U.S. 143 (1997) (revocation of pre-parole conditional supervision program is a deprivation of a protectable liberty interest); *U.S. v. Sanchez*, 225 F.3d 172, 175 (2d. Cir. 2000) (revocation of supervised release is a liberty interest entitled due process); *United States v. Higgs*, 731 F.2d 167 (3d Cir. 1984) (denial of bail following jury verdict is a deprivation of protected liberty interest); *Chhoen v. Marin*, 306 F.Supp.3d 1147 (C.D.Cal. 2018) (issuing a preliminary injunction prohibiting the government from removing people it re-detained after originally releasing them years earlier without providing procedural remedies to seek release and relief from removal).

48. Here, “[g]iven the civil context, [Mr. Alas Herrera’s] liberty interest is arguably greater than the interest of the parolees in *Morrissey*.” *Guillermo M.R.*, 2025 WL 1983677, at *4 (citation omitted). Moreover, ICE jails Mr. Alas Herrera in a facility that every court in this District has determined is akin to a penal institution. *E.g.*, *Daley v. Choate*, 22-cv-03034 (RM), 2023 WL 2336052 at *4 (D. Colo. 2023). This factor therefore weighs heavily in Mr. XX’s favor.

49. Second, the risk of erroneous deprivation of Mr. Alas Herrera’s liberty interest is significant because ICE’s decision to re-jail Mr. Alas Herrera lacked *any cognizable procedures* at all. *E.g.*, *Lopez*, 2018 WL 2932726, at *11 (finding that the petitioner’s “re-detention, in the absence of any procedure or evidentiary findings, establishes the risk of erroneous deprivation of a liberty interest”). Moreover, there is “no statutory or regulatory entitlement to a bond hearing” for

individuals like Mr. Alas Herrera who ICE jails pursuant to § 1231(a). *Guillermo M.R.*, 2025 WL 1983677, at *5. This factor therefore weighs heavily in his favor because at no point was there any notice, any process, or any independent adjudicator to consider whether stripping Mr. Alas Herrera of his liberty was necessary to prevent flight or danger to the community.

50. Third, the Government's interest is not served by the process it gave Mr. Alas Herrera because, once again, it gave him no process. The Supreme Court recognized that the government's interest in civil immigration detention is limited to "certain special and narrow nonpunitive circumstances." *Zadvydas*, 533 U.S. at 690 (quotation omitted). Those limited interests are mitigation of flight and danger to the community. *Id.*; *Demore v. Kim*, 538 U.S. 510, 515, 527–28 (2018). The non-existent process to jail Mr. Alas Herrera without notice, without cause, and without an interview after having released him almost nine years ago does not address the government's purported interest and reeks of arbitrariness. *Lopez*, 2018 WL 2932726 at *12. This is especially true where—as here—the noncitizen "was released pursuant to a process that involved a determination that he was neither a danger to himself or others and" then re-detained "without prior notice, a showing of changed circumstances, or any meaningful opportunity to respond" *Id.* This factor therefore also weighs in his favor.

51. Courts have repeatedly found that ICE's failure to provide noncitizens with notice and the opportunity to be heard prior to reincarceration violates procedural due process. *E.g.*, *Cifuentes Rivera v. Arnott, et al.*, 4:25-cv-00570-RK (W.D.Mo Oct. 7, 2025) (attached as Ex. 9); *Grigorian v. Bondi*, 25-cv-22914-RAR, 2025 WL 2604573, at *6–10 (S.D.Fla. Sept. 9, 2025); *K.E.O. v. Woosley*, No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *3 (W.D.Ky. Sept. 4, 2025); *Zhu v. Genalo*, 1:25-cv-06523 (JLR), 2025 WL 2452352, at *5–9 (S.D.N.Y. Aug. 26, 2025); *Roble v. Bondi*, No.

25-cv-3196 (LMP/LIB), 2025 WL 2443453, at *5 (D. Mass. June 20, 2025); *Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137, 163–64 (W.D.N.Y. 2025). This Court should do the same.

B. ICE’s Reincarceration of Mr. Alas Herrera Violates Respondents’ Binding Regulations.

52. A noncitizen 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).

53. The statute only permits ICE to jail the noncitizen 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).

54. Even where the 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 [noncitizen’s] release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances” *Zadvydas*, 533 U.S. at 699–700.

55. 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-jailed 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”).³

³ Whether Respondents rely on these additional reasons is unknown as they did not provide Mr. Alas Herrera with notice or reason for his reincarceration.

56. 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).

57. The 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. at 161 (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); *Orellana v. Baker et al.*, 1:25-cv-01788-TDC (D.Md. Oct. 7, 2025) (attached as Ex. 10). 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). For a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F.Supp.3d at 161 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not include the power to revoke release” insufficient to grant authority to revoke an order of supervision). In other words, ICE’s revocation of an OSUP is unlawful unless the proper official either conducts or explicitly approves the revocation. Courts have repeatedly held that ICE’s failure to adhere to this requirement violates due process and mandates release. *E.g., M.S.L. v. Bostock*, No. 25-cv-01204-AA, 2025 WL 2430267, at *9–10 (D. Or. Aug. 21, 2025); *Cordon-Salguero v. Noem*, No. 25-1626-GLR, Mot. Hr’g Tr. at 35–37 (D. Md. June 23, 2025) (attached as Ex. 11); *Rombot v. Souza*, 296 F.Supp.3d 383, 385, 387–88 (D. Mass. 2017).

58. The regulations also require that ICE give noncitizens notice of the reasons for an OSUP revocation and a prompt interview to respond to those reasons. 8 C.F.R. § 241.4(l)(1); 8 C.F.R. § 241.13(i); *Perez-Escobar v. Muniz*, --- F.Supp.3d ---, 2025 WL 2084102, * 1–2 (D.Mass. July 24, 2025) (discussing regulatory requirements for OSUP revocation); *Hoac v. Becerra*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at * 3–4 (E.D.Ca. July 16, 2025) (same). Once jailed after the removal period, ICE must frequently consider whether continued incarceration is necessary, provide opportunities to the noncitizen to argue that it is not, and explain its reasoning to the noncitizen why continued incarceration is necessary. *See generally* 8 C.F.R. § 241.4.

59. “Government agencies are required to follow their own regulations.” *Hoac*, 2025 WL 1993771, at *4. (citing *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). “[W]here an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, like the opportunity to be heard, and [ICE] fails to adhere to it, the challenged [action] is invalid” *Waldron v. I.N.S.*, 17 F.3d 551, 518 (2d Cir. 1993) (alterations in original). “[F]ailure to give [a noncitizen] meaningful notice of the basis for its revocation of his release violate[s] the regulation and due process.” *Perez-Escobar*, 2025 WL 2084102, at *2 (citation omitted).

60. Failing to provide an interview after revocation violates the same. *Wing Nuen Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D.Kan. Jun. 17, 2025) (finding “that officials did not properly revoke petitioner’s release pursuant to § 241.13” because “and most obviously . . . petitioner was not granted the required interview upon the revocation of his release”); *Ceesay*, 781 F.Supp.3d. at 166 (finding petition was not afforded even minimal due process protections when ICE failed to provide petitioner an informal interview upon reincarceration); *Santamaria Orellana v. Baker*, 25-1788-TDC, 2025 WL 2444087, at * 8 (D.Md. Aug. 25, 2025) (granting

habeas petition for ICE's failure to, *inter alia*, oblige by regulations to revoke OSUP); *Cf. Noem v. Abrego Garcia*, 604 U.S. ---, 145 S. Ct. 1017, 1019 (2025) (statement of Sotomayor, J.) (quoting 8 C.F.R. § 241.4(l), "in order to revoke conditional release the Government must provide adequate notice and promptly arrange an initial informal interview . . . to afford the [noncitizen] an opportunity to respond to the reasons for the revocation stated in the notification").

61. ICE's regulatory violations here are numerous. First, based on information and belief, Mr. Alas Herrera's OSUP was not revoked by the ICE Executive Associate Director and the officer that did revoke his OSUP did not make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. *See* Ex. 6. Second, ICE has not provided Mr. Alas Herrera with the reasons for its revocation. Third, ICE has yet to provide Mr. Alas Herrera with an opportunity to respond to the purported reasons for its OSUP revocation in an interview.

62. ICE's decision to re-jail Mr. Alas Herrera is therefore invalid and this Court must order his release.

C. ICE's Revocation of Mr. Alas Herrera's OSUP Violated the Administrative Procedures Act

63. Under the Administrative Procedures Act ("APA"), a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

64. Respondents' revocation of Petitioner's OSUP was arbitrary and capricious because it violated statute, regulation, and the Constitution.

65. 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).

66. Respondents' decision to revoke Mr. Alas Herrera's OSUP ran counter to the evidence before the agency that Mr. Alas Herrera would comply with a demand to appear for removal without detention. Mr. Alas Herrera always appeared for his OSUP appointments and there are no new facts to suggest he would start failing to comply. Moreover, Mr. Alas Herrera's lateness the day of his arrest hardly suffices as a new fact suddenly warranting detention, given that Mr. Alas Herrera unfailingly appeared for hundreds of previous check-ins, and, equally important, immediately reported the day of his appointment, as soon as he learned of his mistake. That is not the action of an individual who wishes to evade the process.

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

68. First, Respondents failed to consider the serious constitutional, statutory, and regulatory concerns raised by revoking Mr. Alas Herrera's OSUP without notice and opportunity to respond.

69. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking Mr. Alas Herrera's OSUP, who is neither a flight risk nor a danger to the community and for whom it does not have a travel document. Indeed, prolonged incarceration for someone who is neither a risk to the community nor a risk of flight provides no benefit to the government. *Velasco Lopez v. Decker*, 978 F.3d 842, 856 (2d Cir. 2020) (noting that the Government prevails when it releases noncitizens like Mr. Alas Herrera because "it has no interest in the continued detention of an individual who it cannot show to be either a flight risk or a danger to [the] community").

70. Third, Respondents failed to consider reasonable alternatives to revoking Mr. Alas Herrera's OSUP that were before the agency, like continuing release under the OSUP 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 Mr. Alas Herrera's appearance.

71. Fourth, Respondents failed to consider Mr. Alas Herrera's substantial reliance interest, created by its instruction on his release notification, that the agency would give him an opportunity to arrange for an orderly departure once it obtained travel documents. Ex. 5.

72. ICE's reincarceration of Mr. Alas Herrera violates the APA.

VIII. CLAIMS FOR RELIEF

COUNT I

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

73. Mr. Alas Herrera incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

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

75. When ICE revoked the order of supervision, Mr. Alas Herrera had meaningfully complied with the conditions of the order and ICE had not secured necessary travel documents for removal. No change in circumstances warranted the order's revocation.

76. Mr. Alas Herrera's detention therefore does not bear a reasonable relationship to the two lawful purposes of immigration detention: preventing danger to the community or flight prior to removal.

77. Because Respondents had no legitimate, non-punitive objective in revoking Mr. Alas Herrera's OSUP, Mr. Alas Herrera's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

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

78. Mr. Alas Herrera incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

79. ICE has yet to provide Mr. Alas Herrera with any process related to its decision to revoke his OSUP and re-jail him. The person who revoked his OSUP was not authorized to do so. It did not provide him with notice prior to its revocation. It did not provide him with the reasons for its revocation that did not exist when it originally released him; i.e., he had a final order of removal. It did not provide him with an interview after re-jailing him to respond to the purported reasons for re-jailing him. It has not provided him with any interview since his imprisonment.

80. Respondents' revocation of Mr. Alas Herrera's OSUP without providing notice and a meaningful opportunity to be heard violates procedural due process under the Fifth Amendment to the U.S. Constitution.

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

81. Mr. Alas Herrera incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

82. 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).

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

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

84. Mr. Alas Herrera incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

85. Under the APA, a court shall “hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

86. “An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute.” *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).

87. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal “is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the [noncitizen’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.

88. 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)

89. Respondents’ revocation of Mr. Alas Herrera’s OSUP was based on ultra vires regulations. It was therefore in excess of statutory authority; it should be held unlawful and set aside.

COUNT V
Ultra Vires Action

90. Mr. Alas Herrera incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

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

92. Mr. Alas Herrera has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires action.

COUNT VI
Violation of the *Accardi* Doctrine

93. Mr. Alas Herrera incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

94. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *Accardi*, 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”).

95. Respondents violated agency regulations governing who and upon what findings it may revoke an order of supervision when revoking Mr. Alas Herrera's OSUP. “As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release” and Mr. Alas Herrera “is entitled to release on that basis alone.” *Ceesay*, 781 F.Supp.3d at 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

96. Respondents also violated agency instructions in Mr. Alas Herrera's release notification to give him the opportunity to prepare for an orderly departure when Respondents revoked Mr. Alas Herrera's order without advance notice.

97. Respondents' failure to provide Mr. Alas Herrera with notice of its revocation, the reasons for the revocation, an opportunity to respond to those alleged reasons, and a custody review after his reincarceration also violated agency regulations.

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

PRAYER FOR RELIEF

Mr. Alas Herrera respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

1. Enjoin Respondents from transferring Mr. Alas Herrera outside of the jurisdiction of the District of Colorado pending the resolution of this case;
2. Declare that Mr. Alas Herrera's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;
3. Issue a writ of habeas corpus directing Respondents to immediately release Mr. Alas Herrera from ICE custody on his own recognizance or under reasonable conditions of supervision;
4. Award Mr. Alas Herrera attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
5. Grant any other and further relief that this Court deems just and proper.

Dated: January 12, 2026.

/s/ Charles J Vernon
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VERIFICATION

I, Charles J Vernon, declare as follows:

1. I am an attorney employed at El Comite de Longmont, a non-profit organization in Longmont, CO.
2. I represent the petitioner Mr. Wilmer Alas Herrera, who described to me in detail the circumstances of his Order of Supervision and its revocation, resulting in his detainment.
3. I have read the foregoing Petition for Writ of *Habeas Corpus* and know the contents thereof to be true to my knowledge, information, and belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 12, 2026

/s/ Charles J Vernon
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CERTIFICATE OF SERVICE

I, Charles J Vernon, hereby certify that on January 12, 2026 I filed the foregoing with the Clerk of Court using the CM/ECF system. I also emailed Kevin Traskos at Kevin.Traskos@usdoj.gov a copy of the foregoing and will serve via certified mail within 48 hours or earlier pursuant to any forthcoming Court order to Respondents and their Representatives.

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