

**UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK**

Gjon MHILLI

Petitioners,

Case No. _____

v.

LaDeon FRANCIS, Field Office Director of
Enforcement and Removal Operations, New York
Field Office, Immigration and Customs
Enforcement; Todd LYONS, Acting Director,
Immigration and Customs Enforcement; Kristi
NOEM, Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S. Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW.

Respondents.

**EMERGENCY PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT TO 28
U.S.C. § 2241 AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

INTRODUCTION

1. This case challenges the unlawful detention of Gjon Mhilli (“Petitioner” or “Mr. Mhilli”), a 61-year-old man who is currently in the custody of Immigration and Customs Enforcement (“ICE”) at 26 Federal Plaza in New York, New York. Petitioner is neither a flight risk nor a danger to the community. He suffers from kidney failure and is diabetic. He was recently hospitalized for over a week after falling into a diabetic coma. But on or about January 14, 2026, he was detained at LaGuardia Airport and transferred to 26 Federal Plaza by ICE without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules.

2. ICE found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention in 2008 and placed him on an Order of Supervision on July 21, 2010. Since 2010, Petitioner has attended regularly scheduled check-ins with ICE. He attended two check-ins with ICE last year, and his next check-in was scheduled for June 30, 2026.

3. But, after flying domestically to LaGuardia Airport on January 14, 2026, Respondents suddenly revoked Petitioner’s order of supervision and arrested him. Upon information and belief, Petitioner has been detained at 26 Federal Plaza since then.

4. Respondents’ 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, the Rehabilitation Act and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

5. Petitioner brings this action for injunctive, habeas, and declaratory relief ordering Respondents to release him.

PARTIES

6. Petitioner, Mr. Mhili has lived in the United States for nearly 56 years. He is a native and citizen of the former Yugoslavia. Prior to Petitioner's detention on or about January 14, 2026, he was residing in Michigan. Petitioner is currently detained at 26 Federal Plaza in New York, New York.

7. Respondent LaDeon Francis is the Director of the New York Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Francis is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity. Respondent Francis's address is New York ICE Field Office Director, 26 Federal Plaza, New York, New York 10278.

8. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of Immigration and Customs Enforcement. As the Acting Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and routinely transacts business in this District. He supervises Respondent LaDeon Francis. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

9. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

10. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. DHS's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

11. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

JURISDICTION AND VENUE

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

13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of New York, the judicial district in which Petitioner currently is detained.

14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of New York.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

15. Petitioner is 61 years old. Upon information and belief, Petitioner entered the United States when he was approximately 3 years old. He has lived in the United States since then.

16. In 2005, Petitioner was put into removal proceedings. He was ordered removed on May 5, 2008, and the BIA dismissed his appeal on March 19, 2010. As such, Petitioner's removal order was final as of March 19, 2010. Upon information and belief, Petitioner has no criminal history since his final removal order.

17. On July 21, 2010, Petitioner was put on an Order of Supervision. Petitioner is neither a danger nor flight risk, and no circumstances demonstrate that. Furthermore, Petitioner's removal is not reasonably foreseeable and ICE has not demonstrated that it is more foreseeable now than it was in 2010 when he was originally put on OSUP.

18. On January 14, 2026, Petitioner flew from Michigan to LaGuardia Airport, where he was intending to fly to Florida. He was detained by ICE at the airport and transferred to 26 Federal Plaza.

19. Petitioner suffers from kidney failure and type 2 diabetes. He was in the hospital as recently as 3 weeks ago and was in a diabetic coma in the hospital. The effects of his coma were so severe that he suffered memory loss and could not recognize his family initially after waking up. He is also seeing an oncologist and his doctors are considering treating him with dialysis.

20. Upon information and belief, the official responsible for revoking Petitioner's order of supervision did not first refer the case to the ICE Executive Associate Director, did not make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director, and had not been delegated authority to revoke an order of supervision.

21. Upon arrest, ICE has, upon information and belief, held Petitioner at 26 Federal Plaza in New York, New York, where he is currently detained. On information and belief, he is currently prescribed multiple medications, including insulin and nifedipine.

22. Upon information and belief, at no time following Mr. Mhilli's arrest did ICE explain why it revoked his order of supervision or give him an opportunity to respond to those reasons.

23. Upon information and belief, at the time ICE revoked Mr. Mhilli's order of supervision, ICE had not secured travel documents necessary for removal from the United States.

LEGAL FRAMEWORK

Due Process Governs Decisions to Revoke an Order of Supervision

24. "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).

25. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).

26. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a non-citizen's order of supervision.

Mathews v. Eldridge, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333 (citation modified).

Statute and Regulation Govern Procedures for Revoking an Order of Supervision

27. An order of removal issued by an Immigration Judge becomes administratively final when, at the conclusion of 8 U.S.C. § 1229a removal proceedings, a noncitizen waives their right to appeal. 8 C.F.R. § 1241.1(b). A detained noncitizen’s detention is authorized pursuant to 8 U.S.C. § 1231 following this final order. ICE then has a ninety-day period, known as the removal period, to secure the noncitizen’s removal. 8 U.S.C. § 1231(a)(1). If ICE is unable to remove a noncitizen within the removal period, 8 U.S.C. § 1231(a)(6) provides that certain noncitizens “may be detained beyond the removal period and, if released, shall be subject to [certain] terms of supervision.”

28. Noncitizens released from detention under 8 U.S.C. § 1231 may be subject to “various forms of supervised release that are appropriate in the circumstances[.]” *Zadvvydas*, 533 U.S. at 700. A noncitizen subject to an order of removal who is released “shall be subject to [certain] terms of supervision in paragraph (3).” 8 U.S.C. § 1231(a)(6). These certain terms include requirements that the noncitizen appear periodically before an immigration officer, obey reasonable written restrictions, and other conditions. 8 U.S.C. § 1231(a)(3). ICE has promulgated two regulations regarding the release of noncitizens with a final order of removal on an OSUP. 8 C.F.R. § 241.4; 8 C.F.R. § 241.13.

29. The first of the two regulations governing OSUP revocation is 8 C.F.R. § 241.4(l). This section provides that “upon revocation of the order, the [noncitizen] will be notified of the reasons for revocation and afforded an initial informal interview promptly after being re-detained

for an opportunity to respond” to said reasons. 8 C.F.R. § 241.4(l)(1). Under 8 C.F.R. § 241.4(l)(2), only the Executive Associate Commissioner or district director is authorized to validly revoke an OSUP and only on certain enumerated grounds. *See E.M.M. v. Almodovar*, 2025 WL 3077995, at *6 (S.D.N.Y., 2025) (finding that now the Executive Associate Director of ICE is the functional equivalent of the Executive Associate Commissioner identified in the regulation). In *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025), the Court found that the notice and interview procedures outlined in 8 C.F.R. § 241.4(l)(1) also apply when an order of supervision is revoked under 8 C.F.R. § 241.4(l)(2). Several other jurisdictions have found the same. *See K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, at *5 (W.D. Ky. Sept. 4, 2025) (“In [recent] cases, *Ceesay v. Kurzdorfer*, 2025 WL 1284720 (W.D.N.Y. May 2, 2025); *Orellana v. Baker*, 2025 WL 2444087 (D. Md. Aug. 25, 2025).

30. The second regulation governing OSUP revocation is 8 C.F.R. § 241.13, which establishes special procedures for detained noncitizens who have provided good reason to believe that there is no significant likelihood of their removal from the United States in the reasonably foreseeable future. The special procedures are triggered when a noncitizen submits a written request explaining why ICE is unlikely to remove him in the reasonably foreseeable future. 8 C.F.R. § 241.13(d)(1). The request is then formally reviewed by the Headquarters Post-Order Detention Unit (“HQPDU”). 8 C.F.R. § 241.13(e). After review, the HQPDU issues a written decision determining whether there is a significant likelihood that the noncitizen will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(g). Under 8 C.F.R. § 241.13(i), for ICE to revoke a noncitizen’s OSUP, they must provide that noncitizen with the reasons for the revocation and give him an informal interview promptly after his return to custody to respond to the stated reasons. At this interview, the noncitizen can present evidence and information to challenge ICE’s

determination that she is removable in the reasonably foreseeable future or that she has violated the OSUP's conditions. 8 C.F.R. § 241.13(i)(3).

31. 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).

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

Indefinite Detention under 8 U.S.C. § 1231(a)(6).

33. In *Zadvydas*, the Supreme Court established that a statute permitting indefinite detention of a noncitizen would raise serious constitutional concerns. 533 U.S. at 690. To that end, the Court read an implicit limitation in 8 U.S.C. § 1231(a)(6) and found a six-month presumptively reasonable period of detention for continued removal efforts. *Id.* at 701 (applying constitutional avoidance). After this six-month period, if a noncitizen “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” ICE must either

“respond with evidence sufficient to rebut that showing” or release the noncitizen from detention under supervision. *Id.* “If the detainee meets his initial burden to establish no significant likelihood of removal in the reasonably foreseeable future, the burden shifts back to the Government to rebut that showing.” *Mahmood v. Nielsen*, 312 F.Supp.3d 417, 424 (SDNY May 9, 2018). Courts have routinely found that ICE violates a noncitizen’s constitutional rights and the Supreme Court’s holding in *Zadvydas* when they detain someone cooperating on OSUP when their removal is not reasonably foreseeable. *See, e.g., Munoz-Saucedo v. Pittman*, 789 F. Supp. 387 (DNJ June 24, 2025); *Tadros v. Noem*, 2025 WL 1678501, at *3 (DNJ June 13, 2025); *Zavvar v. Scott*, 2025 WL 2592543, at *8 (DMD Sept. 8, 2025).

34. In evaluating whether detention is authorized by statute, “the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal.” *Id.* at 699. Reasonableness should be measured “primarily in terms of the statute’s basic purpose, namely, assuring the [noncitizen]’s presence at the moment of removal.” *Id.* “[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699-700.

35. The Supreme Court in *Zadvydas* held that detention pending removal is only “only for a period reasonably necessary to secure the alien’s removal.” *Zadvydas*, 533 U.S. at 682.

36. Here, Mr. Mhilli’s presumed basis for detention is 8 U.S.C. § 1231(a)(6). His detention is thereby under the direct purview of *Zadvydas*.

The APA Sets Minimum Standards for Final Agency Action

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

38. 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).

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

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

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

The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

42. 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.”).

43. *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).

44. Where a release notification issued alongside an order of supervision instructs that a non-citizen with a final order of removal will be given an opportunity to prepare for an “orderly departure,” ICE’s failure to follow that instruction is an *Accardi* violation. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

Removal to a Third Country

45. When an immigration judge orders a noncitizen removed, the judge designates a country for removal and may list an alternate country. The designated country or countries are typically the noncitizen’s country of citizenship or nationality. 8 U.S.C. § 1231(b)(2)(D). If ICE is unable to remove a noncitizen to one of the countries on their order of removal, the INA permits the agency to remove that noncitizen to “any country whose government will accept the [noncitizen] into the country.” 8 U.S.C. § 1231(b)(2)(E)(vii). Such removals are called “third country removals.” *See D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass.), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1323697 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep’t of Homeland Sec.*, 786 F. Supp. 3d 223 (D. Mass. 2025).

46. The INA limits the government’s authority to effectuate third country removals under 8 U.S.C. § 1231(b)(2). Through a form of relief called withholding of removal, the INA prohibits the government from removing a noncitizen to any country, including a third country, if the noncitizen’s “life or freedom would be threatened in that country because of the [noncitizen]’s race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C.

§ 1231(b)(3)(A). Similarly, the United States' obligations under the Convention Against Torture ("CAT"), codified by the Foreign Affairs Reform and Restructuring Act of 1988, prohibit the government from removing a noncitizen to any country where they would be tortured. Pub. L. No. 105-277, div. G, Title XXII, §2242, 112 Stat. 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231).

CLAIMS FOR RELIEF

Count One

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

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

48. When ICE issued Petitioner an order of supervision, it found that he is neither a danger to the community nor a flight risk. Petitioner has been on this Order of Supervision for over 15 years, and in none of that time was he able to be removed. There is no reason to believe that ICE has secured the necessary travel documents for removal, as Petitioner is a native and citizen of a country that no longer exists. No change in circumstances warranted the order's revocation.

49. Petitioner's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

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

Count Two

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

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

52. *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.

53. The first factor, the private interest at issue, favors Petitioner. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690.

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

55. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste

drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

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

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

57. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

58. Petitioner is 61 years old, diabetic, and in kidney failure. He has recently been hospitalized for a diabetic coma. He requires medication and, upon information and belief, more intensive treatment that is not possible in ICE detention, particularly at 26 Federal Plaza, which has no medical facilities.

59. The Fifth Amendment guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell*, 441 at 335.

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

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

61. 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).

62. 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).

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

64. The revocation was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances, as cited and discussed in the Statutory Framework section above.

65. Upon information and belief, Petitioner’s order of supervision was not revoked by the ICE Executive Associate Director. The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. Nor had the officer been delegated authority to revoke an order of supervision.

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

67. Even assuming that regulations purporting to offer additional justifications for revocation of an order of supervision are not ultra vires, respondents did not comply with them. Respondents could not make findings that Petitioner’s conduct indicated release would no longer be appropriate or that Petitioner violated any condition of release, because he had not. Nor could

Respondents make findings that the purposes of release had been served or that it was appropriate to enforce a removal order, because it had yet to make final arrangements for Petitioner's removal.

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

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

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

71. 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).

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

73. 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).

74. Respondents' decision to revoke Petitioner's order of supervision ran counter to the evidence before the agency that Petitioner would comply with a demand to appear for removal without detention. Petitioner has never violated a condition of his order of supervision and no new facts or changed circumstances suggest he would.

75. 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).

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

77. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner, who is neither a flight risk nor a danger to the community and Respondents cannot meet their burden of demonstrating that they can immediately effectuate Petitioner's removal, as they lack the necessary travel documents and Petitioner has an appeal currently pending before the Board of Immigration Appeals.

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

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

80. For these and other reasons, Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious and should be held unlawful and set aside

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

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

82. 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).

83. “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).

84. 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.

85. 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)

86. Respondents’ revocation of Petitioner’s order of supervision was based on ultra vires regulations. So it was in excess of statutory authority and should be held unlawful and set aside.

Count Seven
Violation of the *Accardi* Doctrine

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

88. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*,

347 U.S. 260 (“If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing”).

89. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Petitioner’s order. “As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release” and Petitioner “is entitled to release on that basis alone.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

90. Respondents also violated agency instructions in Petitioner’s release notification to give an opportunity to prepare for an orderly departure when they revoked Petitioner’s order without advance notice.

91. Under *Accardi*, Respondents’ revocation of the order of supervision and decision to ignore instructions in the release notification should be set aside for violating agency procedures, rules, or instructions.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court:

- a. Exercise jurisdiction over this matter;
- b. Enjoin Petitioner’s removal or transfer outside the jurisdiction of this Court, the Eastern District of New York, or the District of New Jersey, and the United States pending its adjudication of this petition;

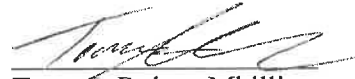
c. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, the Rehabilitation Act, and the *Accardi* doctrine;

d. Order Petitioner's immediate release;

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

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

Respectfully submitted,



Tommy Robert Mhilli
5712 Norway Spruce Dr.
Shelby Twp, MI 48317

Next Friend to Petitioner

DATED January 15, 2026
New York, New York

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's son. On information and belief, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

DATED January 15, 2026
New York, New York



Tommy Robert Mhilli
5712 Norway Spruce Dr.
Shelby Twp, MI 48317

Next Friend to Petitioner