UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

ARCILA PEREZ, RAFAEL E.

Petitioner,

v.

KRISTI NOEM, in their official capacity as Secretary of the United States Department of Homeland Security;

MATTHEW MORDANT, in their official capacity as Alligator Alcatraz Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement;

PAMELA BONDI, in their official capacity as Attorney General of the United States;

GARRET RIPA, in their official capacity as, Director of Miami Field Office, U.S. Immigration and Customs Enforcement;

TODD LYONS, in their official capacity as Acting Director of Immigration and Customs Enforcement;

CHARLES PARRA, in their official capacity as Assistant Field Office Director for the Krome North Service

KEVIN GUTHRIE, in his official capacity as Executive Director of the Florida Division of Emergency Management (FDEM)

Respondents.

Civil Action No.:

PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Rafael E. Arcila Perez is national of Venezuela who holds Temporary Protected Status (TPS) under 8 U.S.C. 1254a. TPS holders may not be either detained or deported so long as their TPS is valid. The TPS statute provides that "[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien's immigration status in the United States." 8 U.S.C. 1254a(d)(4) (emphasis added). That protection remains available even if the TPS holder has a final removal order or lacks other immigration status, because the government "shall not remove the alien from the United States during the period in which such [TPS] status is in effect." 8 U.S.C. 1254a(a)(1)(A). *See also* 8 U.S.C. 1254a(a)(5) (TPS statute provides no authority to "deny temporary protected status to an alien based on the alien's immigration status"); 8 U.S.C. 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to "otherwise deportable" non-citizens).

2. While Respondent DHS Secretary Kristi Noem purported to rescind TPS for Venezuela, for the purposes of this habeas petition, Petitioner's TPS status must be deemed valid. On December 10, 2025, the federal district court of the Northern District of California granted declaratory relief and declared unlawful Respondent Noem's vacatur of the January 17, 2025, extension of TPS for Venezuela and subsequent termination of Venezuela's 2023 designation in a case brought by the membership organization National TPS Alliance. *Nat'l TPS All. v. Noem*, No. 25-cv-01766-EMC, 2025 WL 3539156 at *3 (N.D. Cal. Dec. 10, 2025) (hereinafter "*NTPSA*" and "December 10 Order"). The December 10 Order in *NTPSA* has preclusive effect in Petitioner's habeas case, controlling the legal question of whether members of the National TPS Alliance (NTPSA), such as Petitioner, retain their

TPS status. This Court must thus find Petitioner's detention unlawful and order his release.

3. Petitioner has now been detained by U.S. Immigration and Customs Enforcement (ICE) for 10 days despite the unambiguous statutory command that TPS holders may not be either detained or deported.

4. Petitioner challenges their detention as a violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.

5. Petitioner also was detained without the proper procedures for revoking his Order of Supervision.

6. Petitioner respectfully requests that this Court grant a Writ of Habeas Corpus and order Respondents to release them from custody. Petitioner seeks habeas relief under 28 U.S.C. 2241, which is the proper vehicle for challenging civil immigration detention.

CUSTODY

7. Petitioner is in the physical custody of Respondents. Petitioner is in the custody of the Respondents at ICE's Florida Soft South Side a/k/a "Alligator Alcatraz," located at 54575 Tamiami Trail East, Ochopee, Collier County, Florida 34141. **(Exhibit A)**

JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody and seeks a writ of habeas corpus challenging the legality of his continued civil detention by U.S. Immigration and Customs Enforcement ("ICE") in violation of the Constitution and laws of the United States.

9. Venue is proper in this Court under 28 U.S.C. § 2241(a) because Petitioner is detained

within the geographic boundaries of the Middle District of Florida, at Florida Soft Side South in Collier County, Florida, which lies within the Fort Myers Division of this District.

10. Venue is proper in this District under 28 U.S.C. 1391 and 28 U.S.C. 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioners' immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("the proper respondent to a habeas petition is 'the person who has custody over the petitioner'") (citing 28 U.S.C. 2242) (cleaned up).

11. 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. and Article I, Section 9, Clause. 2 of the U.S. Constitution ("Suspension Clause"), as Petitioner is currently in custody under color of the authority of the United States in violation of the Constitution, laws, or treaties of the United States.

12. Venue for the complaint for injunctive relief is proper under 28 U.S.C. § 1391(e), as Respondents are officers or employees of the United States. Venue for the habeas action is proper under 28 U.S.C. §§ 2241 *et seq.*, as Respondents exercise control over Petitioner's custody.

PARTIES

13. **RAFAEL EMILIO ARCILA PEREZ,** is a citizen and national of VENEZUELA, born on [redacted] 1961. He is the Petitioner in the instant matter. (**Exhibit B**).

14. Respondent, **MATTHEW MORDANT**, is sued in his official capacity as the as Alligator Alcatraz Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement, which is the agency directly Responsible for Petitioner's detention and custody.

15. Respondent **GARRET RIPA** is sued in his official capacity as the Acting Director of the Miami Field Office of U.S. Immigration and Customs Enforcement. Respondent Ripa exercises authority over Petitioner's detention, transfer, and potential release.

16. 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.

17. Respondent **PAM 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.

18. Respondent **TODD LYONS** is sued in his official capacity as Acting Director of Immigration and Customs Enforcement.

19. Respondent, **CHARLES PARRA** is sued in his official capacity as Assistant Field

Office Director for the Krome North Service.

20. Respondent **KEVIN GUTHRIE,** in his official capacity as Executive Director of the Florida Division of Emergency Management (FDEM) which controls Alligator Alcatraz in Ochopee, Florida. In that capacity he controls Alligator Alcatraz and is a custodian of Petitioner

STATEMENT OF FACTS

21. Petitioner came to the United States on or about September 23, 2002, with a B-2 Visitor's Visa. **(Exhibit C)**.

22. On or about August 1, 2006, the Petitioner was indicted in the United States District Court for the Southern District of Florida on one count of Fraud and Misuse of Visas, Permits and Other documents pursuant to 18 USC 1546(a). For this offense he was sentenced to probation for a term of two years. **(Exhibit D)**.

23. On November 1, 2010, the Petitioner, together with his wife and children applied for Asylum, Withholding of Removal and the Convention Against Torture. The Application was initially filed with the United States Citizenship and Information Services (USCIS) and then referred to the Immigration Court. **(Exhibit E)**.

24. On March 22, 2012, the Immigration Judge denied the asylum applications and ordered the Petitioner removed from the United States. He thereafter appealed his case to the Board of Immigration Appeals (BIA). The BIA dismissed the appeal on May 14, 2013. **(Exhibit F)**. The Order of Removal became final on May 14, 2013.

25. On August 15, 2013, the Petitioner was placed on an Order of Supervision by Immigration and Customs Enforcement. **(Exhibit G)**.

26. The Petitioner has been reporting to ICE yearly consistently without failure, with the

exception of when ICE was closed due to COVID-19. Petitioner has complied with all reporting requirements.

27. Petitioner has been accorded employment authorization on a continuous basis by Respondents since being released from custody. He applied for TPS under the 2021 designation and was approved TPS in 2022. (**Exhibit H**).

28. Petitioner was detained by ICE on Sunday, January 11, 2026, and taken to Florida Soft Side South.

29. Upon being re-detained by ICE on January 11, 2026, ICE failed to provide (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonable forseeable future. *See Kong v. United States*, 62 F.4th 609, 619-20 (1st Cir. 2023); 8 C.F.R § 241.13(i)(2).

30. Since Petitioner's last release from custody, ICE has failed to procure travel documents from Venezuela or effect his removal to Venezuela.

31. Upon information and belief, ICE has never issued a notice revoking Petitioner's release.

32. Petitioner is not a danger to the community and is not a flight risk.

33. Petitioner's removal from the United States is not reasonably foreseeable in the immediate future, as can be seen from the USCIS website stating that TPS is valid until October 2, 2026. [1]

34. The Petitioner applied for and was granted Temporary Protected Status in the United States initially pursuant to the 2021 designation of TPS for Venezuela. Petitioner has consistently renewed TPS since this initial registration, including pursuant to the most

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[1] https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela

recent January 17, 2025, extension, which extended protection for Venezuelan TPS beneficiaries through October 2, 2026.

35. Petitioner's most recent USCIS notice, serves as proof of TPS registration for 2025. (**Exhibit I**).

36. Petitioner is a member of the National TPS Alliance. (**Exhibit J**).

37. ICE officers took Petitioner into custody at the ICE Miramar Office in Miramar, Florida on or about January 11, 2026, when the Petitioner presented himself at the Order of Supervision.

38. After a final removal order is entered, an alien ordered removed is held in custody during a 90-day removal period. If the alien is not removed in those 90 days, the post-removal-period detention statute authorizes further detention or supervised release, subject to administrative review. The post-removal-period detention statute, read in light of the Constitution's demands, implicitly limits an alien's detention to a period reasonably necessary to bring about that alien's removal from the United States, and does not permit indefinite detention. *Zadyvdas v. Davis,* 533 U.S. 678 (2001).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

39. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this action.

40. There has been no prior judicial review of this matter.

TEMPORARY PROTECTED STATUS FOR VENEZUELA

41. On the last day of his first term, President Trump designated Venezuela for Deferred

Enforced Departure—a form of nationality-based, discretionary relief from deportation—because Venezuela was experiencing "the worst humanitarian crisis in the Western Hemisphere in recent memory." 86 Fed. Reg. 6,845, 6,845 (Jan. 19, 2021). President Trump's action permitted approximately 300,000 Venezuelan refugees to live and work here for 18 months. Memorandum re Deferred Enforced Departure for Certain Venezuelans, 86 Fed. Reg. 6845 (Jan. 19, 2021).

42. Shortly afterwards, on March 9, 2021, then-DHS Secretary Mayorkas designated Venezuela for TPS, allowing Venezuelans residing in the U.S. since March 8, 2021 to apply for protection. 86 Fed. Reg. 13,574 (Mar. 9, 2021). He did so again on October 3, 2023, allowing more recently arrived Venezuelans to apply. 88 Fed. Reg. 68,130 (Oct. 3, 2023).

43. DHS twice extended the 2021 designation of TPS for Venezuela, providing protections through September 10, 2025 to TPS holders who initially registered in 2021. 87 Fed. Reg. 55,024 (Sept. 8, 2022); 88 Fed. Reg. at 68,130.

44. On January 17, 2025, the DHS Secretary extended the 2023 Venezuela Designation by 18 months, through October 2, 2026. 90 Fed. Reg. 5,961 ("January 2025 Extension"). DHS cited Venezuela's ongoing "complex, serious and multidimensional humanitarian crisis," which has "disrupted every aspect of life," and concluded that the "extraordinary and temporary conditions supporting Venezuela's TPS designation remain." *Id.* at 5,963 (citation omitted).

45. In the extension order, DHS also streamlined the registration process for TPS holders by consolidating them into a single track, "allow[ing] existing beneficiaries of either the 2021 or 2023 TPS designation to seek an 18-month extension of status through October

2, 2026." *Id.* at 5,962.

46. On February 3, 2025, just days after she took office, Respondent Secretary Noem purported to "vacate" DHS' January 17 extension of TPS for Venezuela. 90 Fed. Reg. 8805 (Feb. 3, 2025). That decision was the first vacatur of a TPS extension in the 35-year history of the TPS statute.

47. On February 5, 2025, DHS published a notice in the Federal Register purporting to terminate the 2023 Venezuela Designation. 90 Fed. Reg. 9040 (Feb. 5, 2025).

48. On September 8, 2025, DHS published a notice in the Federal Register purporting to terminate the 2021 designation of TPS for Venezuela.[2] 90 Fed. Reg. 43225 (Sept. 8, 2025).

LEGAL CHALLENGE TO VENEZUELA'S TPS TERMINATION

49. On February 19, the National TPS Alliance and seven individual Venezuelan TPS holders sued the federal government, alleging that the vacatur of the January 17, 2025 extension of TPS for Venezuela and subsequent termination of Venezuela's 2023 TPS designation were contrary to the TPS statute in violation of the Administrative Procedure Act and unlawful under the Fifth Amendment. *Nat'l TPS All. v. Noem*, No. 25-CV-01766-EMC (N.D. Cal. Filed Feb. 19, 2025).

50. On December 10, 2025, the district court in *NTPSA* issued a final judgment declaring the vacatur of the January 17, 2025 extension of TPS for Venezuela and termination of Venezuela's 2023 TPS designation unlawful. *Nat'l TPS All. v. Noem*, No. 25-CV-01766-EMC, 2025 WL 3539156, at *3 (N.D. Cal. Dec. 10, 2025) ("*NTPSA* December

[2] The termination of Venezuela's 2021 designation is not at issue in this case because Petitioner initially held TPS under Venezuela's 2021 designation, Petitioner became a beneficiary of the 2023 designation by re-registering pursuant to the January 17, 2025 extension.

10 Order"). The court stayed its order for two weeks to permit the government to appeal and/or seek a stay. *Id.* The government did neither.

51. Pursuant to the NTPSA December 10 Order, Petitioner retains TPS because Defendants' actions purporting to deprive them of that status—*i.e.,* the vacatur of the January 17, 2025 extension and the termination of Venezuela's 2023 designation—were unlawful.

52. The *NTPSA* December 10 Order controls as to the question of whether members of the National TPS Alliance—the lead plaintiff in *NTPSA*—retain their TPS status.

53. A declaratory judgment is a final judgment on the merits which defines the legal duties among the parties. *See* 28 U.S.C. 2201 ("Any such declaration shall have the force and effect of a final judgment[.]"); *Burlington Ins. Co. v. Oceanic Design & Constr., Inc.*, 383 F.3d 940, 952 (9th Cir. 2004) (cleaned up, citation omitted) ("A declaratory judgment is a binding adjudication that establishes the rights and other legal relations of the parties where those rights are in doubt.").

54. A final merits judgment, including a declaratory judgment, has preclusive effect on future proceedings involving the same parties. *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023) ("the point of a declaratory judgment 'is to establish a binding adjudication that enables the parties to enjoy the benefits of reliance and repose secured by res judicata,'" *citing* 18A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4446 (3d ed. Supp. 2022)).

55. "A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. [E]ven if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long

as the judgment in the first suit remains unmodified. Accordingly, [a] case pending appeal is res judicata and entitled to full faith and credit unless and until reversed on appeal." *Comer v. Murphy Oil USA, Inc.*, 718 F.3d 460, 467 (5th Cir. 2013) (internal cites and quotations omitted); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003). *Seminole Tribe of Fla. v. Biegalski*, 757 F. App'x 851 (11th Cir. 2018)

LEGAL FRAMEWORK

56. The Court need analyze only one statutory provision to resolve this habeas petition. The TPS statute unequivocally prohibits the detention of persons with valid TPS, and Petitioner must be released. See 8 USC 1254a(a)(1)(A), (d)(4) ("[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General") (emphasis added).[3] It is hard to imagine a clearer statutory mandate proscribing detention.

57. The Court need not delve further in an attempt to understand other aspects of Petitioner's immigration status, because TPS protection remains valid even if the TPS holder has a final removal order or lacks other immigration status. 8 U.S.C. 1254a(a)(1)(A) (the government "shall not remove the alien from the United States during the period in which such [TPS] status is in effect."). Indeed, individuals with a final order of removal are statutorily eligible for TPS and may not be denied TPS if otherwise eligible on the basis of that removal order. 8 U.S.C. 1254a(a)(5) (TPS statute provides no authority to "deny temporary protected status to an alien based on the alien's immigration status"). *See also*

[3] "Attorney General" in Section 1254a now refer to the Secretary of the Department of Homeland Security. *See* 8 U.S.C. 1103; 6 U.S.C. 557.

8 U.S.C. 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to "otherwise deportable" non-citizens). For that reason alone, this Court should grant the writ and order Petitioner's immediate release. *See* 28 U.S.C. 2241(c)(3) (authorizing writ for people detained in violation of federal law).

58. Should the Court nonetheless choose to address constitutional questions, it should also find that Petitioner's detention violates the Due Process Clause of the Fifth Amendment. "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 (2001).

59. Petitioner's detention violates the Fifth Amendment's protection for liberty, for at least three related reasons. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Where, as here, the government has no authority to deport Petitioner, detention is not reasonably related to its purpose.

60. Second, because Petitioner is not "deportable" insofar as the TPS statute bars his deportation, the Due Process Clause requires that any deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying less rigorous standard for "deportable aliens"). Petitioner's on-going imprisonment obviously cannot satisfy that rigorous standard.

61. Third, at a bare minimum, "the Due Process Clause includes protection against *unlawful*

or arbitrary personal restraint or detention." *Zadvydas v. Davis*, 533 U.S. 678, 718 (2001) (Kennedy, J., dissenting) (emphasis added). Where federal law explicitly prohibits an individual's detention, their detention also violates the Due Process Clause.

62. Petitioner may not be legally detained or deported, and this Court should order Petitioner's immediate release him from ICE custody. *See* 28 U.S.C. 2241(c)(3) (authorizing writ for people detained in violation of federal law).

63. 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).

64. 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).

65. "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

66. A non-citizen with a final order of removal "who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (titled "Supervision after 90-day period").

67. 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).

68. Even when 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.

69. 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).

70. 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). 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 "does not include the authority to detain noncitizens or to revoke orders releasing them" insufficient to grant authority to revoke an order of supervision).

71. Upon revocation of an order of supervision, ICE must give the alien 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

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

73. 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).

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

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

76. 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

77. 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.").

78. 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).

79. 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).

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT 8 U.S.C. § 1254a

80. Petitioner reallege and incorporate by reference each and every allegation contained above.

81. Section 1254a of Title 8 of the U.S. Code governs the treatment of TPS holders, including

their detention and removal under federal immigration law.

82. Section 1254a(d)(4) states "[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien's immigration status in the United States." (emphasis added). There is no exception to this rule provided in the statute.

83. Thus, Petitioners' detention violates Section 1254a, and he is entitled to immediate release from custody.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (Substantive Due Process)

84. Petitioner repeats and realleges Petitioner repeats and realleges each of the allegations in paragraphs incorporated herein in full.

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

86. When Respondents revoked the order of supervision, Petitioner had complied with every condition of the order and ICE had not secured necessary travel documents for removal. No change in circumstances warranted the order's revocation.

87. 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.

88. 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.

89. Petitioner is being detained for immigration purposes when Respondents know that they cannot effect his prompt removal from the United States in the reasonably foreseeable future, that Petitioner is neither a flight risk nor a danger to the community, and has not violated the terms and/or conditions of his Order of Supervision.

90. Respondents have no permissible basis for depriving Petitioner of his liberty in violation of 8 U.S.C. § 1231(a) as well as their respective implementing regulations. A judicial order requiring Petitioner's release from custody would remedy Respondents' unlawful conduct.

COUNT THREE

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

91. Petitioner repeats and realleges Petitioner repeats and realleges each of the allegations in paragraphs incorporated herein in full.

92. *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.

93. 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.

94. 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.

95. 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.

96. 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.

97. Petitioner's continued detention violates the Constitution of the United States.

98. Petitioner is being detained for immigration purposes when Respondents know that they cannot effect his prompt removal from the United States, that Petitioner is neither a flight risk nor a danger to the community, and has not violated the terms and/or conditions of his Order of Supervision.

99. Respondents have no permissible basis for depriving Petitioner of his liberty in violation of 8 U.S.C. § 1231(a) as well as their respective implementing regulations. A judicial order requiring Petitioner's release from custody would remedy Respondents' unlawful conduct.

100. Other than as punishment for a crime, due process permits the government to take away liberty only "in certain special and narrow nonpunitive circumstances . . . where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (quotations omitted). Such special justification exists only where a restraint on liberty bears a "reasonable relation" to permissible purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Zadvydas*, 533 U.S. at 690. In the immigration context, those purposes are "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (quotations omitted).

101. Those substantive limitations on detention are closely intertwined with procedural due process protections. *Foucha v. Louisiana*, 504 U.S. 71, 78-80 (1992). Noncitizens have a right to adequate procedures to determine whether their detention in fact serves the

purposes of ensuring their appearance or protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. 692; *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008). Where laws and regulations fail to provide such procedures, the habeas court must assess whether the noncitizen's immigration detention is reasonably related to the purposes of ensuring his appearance or protecting the community. *Zadvydas*, 533 U.S. at 699.

102. Because Petitioner was detained without any determination that he poses a danger or flight risk, and because he in fact poses no danger or flight risk, his detention violates due process.

COUNT FOUR

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

103. Petitioner repeats and realleges Petitioner repeats and realleges each of the allegations in paragraphs incorporated herein in full.

104. 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).

105. 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).

106. 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.

107. 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.

108. 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.

109. 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.

110. 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 s/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.

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

112. 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)

113. Petitioner repeats and realleges Petitioner repeats and realleges each of the allegations in paragraphs incorporated herein in full.

114. 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).

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

116. 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).

117. 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/her order of supervision and no new facts or changed circumstances suggest s/he would.

118. 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).

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

120. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner, who is neither a flight risk nor

a danger to the community and for whom the agency does not have travel documents needed to effectuate removal, including financial and administrative costs incurred by the agency due to unnecessary detention.

121. 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.

122. 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.

123. 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)

124. Petitioner repeats and realleges Petitioner repeats and realleges each of the allegations in paragraphs incorporated herein in full.

125. 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).

126. "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).

127. 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.

128. 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)

129. 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

(Ultra Vires Action)

130. Petitioner repeats and realleges Petitioner repeats and realleges each of the allegations in paragraphs incorporated herein in full.

131. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

COUNT EIGHT

(Violation of the *Accardi* Doctrine)

132. Petitioner repeats and realleges Petitioner repeats and realleges each of the allegations in paragraphs incorporated herein in full.

133. 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").

134. 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).

135. 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.

136. 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.

RELIEF REQUESTED

WHEREFORE, Petitioner, RAFAEL E. ARCILA PEREZ, prays that this Honorable Court grant him the following relief:

1. Accept jurisdiction over this action.
2. Immediately issue an order directing Respondents to show cause why the writ should not be granted.
3. Issue a writ of *habeas corpus*, directed to Respondents, ordering Petitioner's immediate release from custody.
4. Declare that Petitioner's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. 1254a.
5. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;
6. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the Accardi doctrine;
7. Order that Respondent immediately release Petitioner if he is subsequently transferred from his current detention to any other facility and continuing thereafter.
8. Order Respondents to provide this Honorable Court and counsel for the Petitioner with at least three days' notice prior any attempt to deport the Petitioner from the United States.
9. Grant such further relief as Petitioner may request and/or this Honorable Court deems just and proper under the circumstances.

Respectfully submitted,

/s/ Juliana G. Lamardo, Esq.

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Dated: January 21, 2026

VERIFICATION

Pursuant to 28 U.S.C. § 2242 and 28 U.S.C. § 1746. I declare under penalty of perjury that the facts set forth in the foregoing Petition for a Writ of Habeas Corpus are true and correct.

/s/ Juliana G. Lamardo, Esq.

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Dated: January 21, 2026