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Hami Can Kayas*

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**HAMI CAN KAYAS,**

Agency No. 

*Plaintiff,*

v.

**JL JAMISON**, in his official capacity as  
warden of The Philadelphia Federal  
Detention Center;

**BRIAN MCSHANE**, is the Acting  
Philadelphia Field Office Director for  
Immigration and Customs Enforcement's  
("ICE") Enforcement and Removal  
Operations

**TODD LYONS**, in his Official Capacity  
as Acting Director of Immigration and  
Customs Enforcement;

**KRISTI NOEM**, in her official capacity  
as: Secretary of the Department of  
Homeland Security;

**DHS, THE U.S. DEPARTMENT OF  
HOMELAND SECURITY;**

**PAMELA BONDI**,: Attorney General of  
the United States.

*Defendants.*

**CIVIL DOCKET NO.**

**PLAINTIFF'S COMPLAINT**

**FOR WRIT OF HABEAS CORPUS  
AND OTHER INJUNCTIVE RELIEF**

This case challenges the unlawful detention of HAMI CAN KAYAS , who is currently in  
the custody of Immigration and Customs Enforcement ("ICE") at the Philadelphia Federal

Detention Center. Petitioner is neither a flight risk nor a danger to the community. But on or about January 28, 2026, ICE detained him/her without notice or opportunity to be heard, on, upon information and belief, the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules.

1. ICE found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention on February 20, 2023, under an order of supervision. (“Exhibit “A”). Since then, Petitioner has fully abided by the order’s terms, including attending regularly scheduled check-ins with ICE.
2. But at a regularly scheduled check-in with ICE on January 28, 2026, Respondents-Defendants suddenly revoked Petitioner’s order of supervision and arrested him.
3. Petitioner has been detained at the Philadelphia Federal Detention Center since then.
4. Respondents-Defendants’ actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act,
5. Petitioner brings this action for injunctive, habeas, and declaratory relief ordering Respondents to release him.

#### PARTIES

6. Petitioner, Hami Can Kayas has lived in the United States for approximately three years. Prior to Petitioner’s detention on or about January 28, 2026 he was residing at  Bristol, PA 19006.
7. Respondent Brian McShane is the Acting Philadelphia Field Office Director for Immigration and Customs Enforcement's ("ICE") Enforcement and Removal Operations. In this capacity he is responsible for the custody of all noncitizens

- detained by ICE at FDC, Philadelphia, where the Petitioner was initially detained, and has the authority to order the release Hami Can Kayas or transfer him to a different facility. He is one of Mr. Hami Can Kayas immediate custodians and is sued in his official capacity.
8. Respondent Todd Lyons is the Acting Director of ICE. In this capacity he is responsible for enforcing immigration laws, and as such is a legal custodian of Mr. Kyas. He is sued in his official capacity.
  9. Respondent Kristi Noem is Secretary of Homeland Security. In this capacity she runs the Department of Homeland Security and is charged pursuant to 8 U.S.C. 1 103(a)(1) with administering and enforcing immigration laws. She is the ultimate legal custodian of Mr. Kayas and is sued in her official capacity.
  10. The Department of Homeland Security ("DHS") is the agency of the federal government responsible for enforcing the immigration laws. DHS is also Mr. Kayas' legal custodian.
  11. Respondent Pamela Bondi is the Attorney General of the United States and the head of the U.S. Department of Justice. Ms. Bondi shares responsibility for the implementation and enforcement of immigration laws along with Respondent Noem. Ms. Bondi is a legal custodian of Mr. Kayas. She is sued in her official capacity.

#### **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. Venue is proper in this district because Respondent-Defendant Warden J.L. Jamison is Petitioner's immediate custodian and under 28 U.S.C. § 1391(e)(1) because Respondents-Defendants are officers of United States agencies, Petitioner currently resides within this District, and there is no real property involved in this action.

#### **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

14. Petitioner is an adult man who came to the United States from Turkey about three years ago. Petitioner has resided in the United States continuously since then.
15. When the Petitioner attempted to enter the United States without inspection on or about February 17, 2023, he was apprehended by Immigration Authorities.
16. He promptly filed an application for asylum with U.S. Citizenship and Immigration Services on August 8, 2023. (See "Exhibit B").
17. DHS filed a Notice to Appear ("NTA") and in so doing initiated Removal Proceedings against Mr. Kayas on or about May 16, 2024. *Id.*
18. Subsequently, on or about January 13, 2025, USCIS transferred Mr. Kayas' application for asylum, withholding and Protection under the Torture Convention ("CAT") to the Executive Office of Immigration Review ("EOIR") whose jurisdiction of the application vested upon filing of the NTA. *Id.*
19. Since ICE released Petitioner on an order of supervision, Petitioner has complied with all conditions of the order, including periodic check-ins with ICE. **No circumstances have changed that make Petitioner a flight risk or danger to the community.**

20. But at a regularly ICE scheduled check-in on January 28, 2026, ICE suddenly revoked Petitioner's order of supervision and arrested him/her before he could pursue his Immigration Case scheduled before the Philadelphia Immigration Court. (Exhibit "C").
21. 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.
22. Upon arrest, ICE transferred Petitioner to the Philadelphia Federal Detention Center, where he is currently detained.
23. Upon information and belief, at no time following Petitioner's arrest did ICE explain why it revoked Petitioner's order of supervision or give him an opportunity to respond to those reasons.

### **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. 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”).
28. 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).
29. But even where initial detention past the 90-day removal period is authorized, if “removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances ” *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

30. 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).

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).

#### **The APA Sets Minimum Standards for Final Agency Action**

33. The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704.
34. 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).
35. ICE’s revocation of an order of supervision is a final agency action subject to this Court’s review.
36. The revocation here marked the consummation of ICE’s decision-making process regarding Petitioner’s custody.
37. 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.

### **CLAIMS FOR RELIEF**

#### **Count One**

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

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

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

40. 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.**

41. 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.

42. 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**

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

44. *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.

45. 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.

46. 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. Additionally, prolonged detention will make it virtually impossible to for the Petitioner to present his claim for Withholding of Removal and Convention against Torture given that detained individuals have a statistically lower rate of success than those not detained due to the obvious logistical barriers in presenting their claims.

47. 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.

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

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

50. 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).

51. 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).

52. 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.

53. 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.

54. 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.
55. 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.
56. 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.
57. Nor did the Respondents give Petitioner notice of the reasons for revocation and opportunity to be heard.
58. The revocation should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

#### **Count Four**

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

59. Petitioner realleges all paragraphs above as if fully set forth here.
60. 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).

61. Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.
62. 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).
63. 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.
64. 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).
65. First, Respondents failed to consider the serious constitutional concerns raised by revoking Petitioner's order of supervision without notice and opportunity to respond.
66. 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.
67. 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.

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

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

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 . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).
72. "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).
73. 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.

74. 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)
75. Respondents' revocation of Petitioner's order of supervision was based on ultra vires regulations. So it was in excess of statutory authority and should be held unlawful and set aside.

### **Count Six**

#### **Ultra Vires Action**

76. Plaintiffs reallege all paragraphs above as if fully set forth here.
77. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner.
78. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

**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 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 and the APA
- 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,

/s/Renee Hykel Cuddy  
Renee Hykel Cuddy, Esq.  
Attorney for Petitioner-Plaintiff  
Hami Can Kayas

DATED: 1/28/2026

**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

DATED: 1/28/2026

/s/Renee Hykel Cuddy

Attorney for Petitioner-Plaintiff