

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

D.W.,

*Petitioner,*

v.

Judith ALMODOVAR, Acting Director,  
New York Field Office, Immigration  
and Customs Enforcement; Pamela  
BONDI, Attorney General of the U.S.;  
Kristi NOEM, Secretary of Homeland  
Security; and Todd LYONS, Acting  
Director, U.S. Immigration and  
Customs Enforcement,

*Respondents.*

Case No. 1:26-cv-00760

**VERIFIED PETITION FOR WRIT  
OF HABEAS CORPUS**

**ORAL ARGUMENT REQUESTED**

**INTRODUCTION**

1. Petitioner, D.W.<sup>1</sup>, is a native and citizen of Liberia who fled the Liberian Civil War in 1995 with his mother to a refugee camp in Ghana. Petitioner was granted refugee status in the United States and entered as a refugee a week before his twelfth birthday, on July 20, 2000.

2. Petitioner had been placed in immigration removal proceedings on March 20, 2010 following a misdemeanor conviction in New York. He was detained in the custody of U.S. Immigration and Customs Enforcement (“ICE”) at that time. The immigration judge denied Petitioner’s application for adjustment of status (“green card”) and issued a removal order on April 20, 2011.

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<sup>1</sup> Motion to Proceed Under Initials forthcoming.

3. ICE attempted to deport Petitioner to Liberia, but that country did not have a record of his birth and would not accept his removal. On October 11, 2011, Petitioner was released by ICE on an Order of Supervision (“OSUP”).

4. Since his release by ICE in 2011, Petitioner has established himself in the community on Staten Island, New York, where he raises his five-year-old daughter. He served as a mentor for children through youth sports, canvassed for a city council member, acted as a poll watcher, and was regarded as a “model employee” at a printing press where he held a job for almost a decade.

5. On December 16, 2020, Petitioner filed an application for adjustment of status under the Liberian Refugee Immigration Fairness Act (“LRIFA”).<sup>2</sup> LRIFA allows Liberian nationals, and their spouses and children, who meet certain eligibility requirements, to obtain lawful permanent resident status. Petitioner met all of the requirements; he is a national of Liberia, he has been continuously present in the U.S. since November 20, 2014, he has not been convicted of an aggravated felony, he has not been convicted of two or more crimes involving moral turpitude (“CIMT”), and he has not participated in the persecution of another protected group.

6. However, while attending a scheduled interview with U.S. Citizenship and Immigration Services (“USCIS”) at 26 Federal Plaza, New York, New York for his pending LRIFA application on January 28, 2026, Petitioner was unexpectedly and abruptly detained by ICE inside the interview room. Upon all knowledge and belief,

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<sup>2</sup> <https://www.uscis.gov/green-card/green-card-eligibility/liberian-refugee-immigration-fairness>

at the time of this emergency filing, Petitioner remains in ICE detention at 26 Federal Plaza.

7. At no point did Respondents comply with the statutes and regulations governing the lawful revocation of OSUP, nor did Respondents provide constitutionally required notice prior to Petitioner's sudden and unwarranted re-detention. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

8. Petitioner's detention is unlawful and unconstitutional, and he seeks an order for his immediate release. Petitioner further asks this Court to enjoin his transfer out of the physical jurisdiction of this Court.

#### PARTIES

9. Petitioner was detained at 26 Federal Plaza, New York, New York by ICE and remains there at the time of this filing.

10. Respondent JUDITH ALMODOVAR is named in her official capacity as the Acting Field Office Director of the New York Field Office for ICE within the U.S. Department of Homeland Security ("DHS"). In this capacity, she is responsible for the administration of immigration laws and the execution of detention and removal determinations. She has responsibility for all noncitizens held in ICE custody at 26 Federal Plaza.

11. Respondent PAMELA BONDI is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for administration of immigration laws and policies.

12. Respondent KRISTI NOEM is named in her official capacity as the Secretary of Homeland Security. She directs each of the component agencies within DHS, including ICE. She is responsible for the administration and enforcement of immigration laws pursuant to 8 U.S.C. § 1103(a) and has supervisory responsibilities for and authority over the detention and removal of noncitizens throughout the United States. Respondent Noem is the ultimate legal custodian of Petitioner.

13. Respondent TODD LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of immigration laws.

#### **JURISDICTION AND VENUE**

14. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); 5 U.S.C. § 706 (Administrative Procedure Act (“APA”)); 28 U.S.C. § 2201 (Declaratory Judgment); and 28 U.S.C. § 1651 (All Writs Act).

15. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

16. Venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioner is presently in the custody of Respondents in this District at 26 Federal Plaza, New York, New York; his USCIS interview was scheduled at 26 Federal Plaza; the ICE office that controls the location of his detention is based in New York City, and a substantial part of the events giving rise to the claims and relevant facts occurred in this district. *See* 28 U.S.C. §§ 1391, 2241(c), 2242, 2243.

### STATEMENT OF FACTS AND PROCEDURAL HISTORY

#### Background

17. D.W. entered the United States as an eleven-year-old child with approved refugee status on July 20, 2000. Garrett Decl. ¶ 4. He and his mother fled their native Liberia during the Liberian Civil War. *Id.* ¶ 3.

18. He was detained by Immigration and Customs Enforcement (“ICE”) for the first time in approximately 2009 following a misdemeanor criminal conviction under N.Y.P.L. § 130.20(1) (sexual misconduct). *Id.* ¶ 6. While detained, he applied for lawful permanent residency based on his refugee status along with a waiver of inadmissibility, but the immigration court denied his application on April 20, 2011 and ordered him removed to Liberia. *Id.* ¶ 7.

19. However, ICE was not able to deport him to Liberia because Liberia had no record of his birth given that government records were destroyed during the Liberian Civil War. *Id.* ¶ 8.

20. After more than two years in immigration custody, on or about October 17, 2011, ICE released Petitioner on an Order of Supervision (“OSUP”). *Id.* ¶ 8; Exh. A, OSUP.

21. The period Petitioner spent in immigration detention severely traumatized him and aggravated his pre-existing mental health conditions. *See* Garrett Decl. ¶ 15; Exh. E, Stein-Montalvo Letter. Even after his release, he continued to suffer from severe anxiety and symptoms consistent with post-traumatic stress disorder, and he has required at least two hospitalizations related to acute stress. *See* Exh. E, Stein-Montalvo Letter.

22. Even so, Petitioner prioritized his family and making a positive impact on his community. He has one five-year-old U.S. citizen daughter for whom he deeply cares. *See* Garrett Decl. ¶ 30; Exh. E, Stein-Montalvo Letter. He is also deeply rooted in his Staten Island community and has served as a mentor for children through youth sports, canvassed for a city council member, acted as a poll watcher, and was highly regarded at a printing press where he held a job for almost a decade. *See* Exh. E, Stein-Montalvo Letter.

23. On December 20, 2019, the Liberian Refugee Immigration Fairness Act (“LRIFA”) passed and provided an opportunity for Liberian nationals to obtain lawful permanent resident status. Nat’l Def. Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 7611, 133 Stat. 1198, 2310 (2019). LRIFA contained special provisions that allowed Liberians to adjust their status even if they had an old order of removal. *See* §§ 7611(b)(4)(A) and (B). It also prevented the deportation of Liberians who had a pending adjustment of status application under LRIFA and allowed for individuals to obtain lawful permanent residency even if they had a conviction, so long as the conviction was not an aggravated felony and the applicant did not have two or more crimes involving moral turpitude (“CIMT”). *See* § 7611(b)(3).

24. On or about December 2, 2020, Petitioner applied for lawful permanent residency under LRIFA. *See* Garrett Decl. ¶ 10. Petitioner's immigration attorney received a notice from USCIS of an interview about Petitioner's pending application scheduled for January 28, 2026. *See* Garrett Decl. ¶ 12; Exh. B, Interview Notice.

25. On January 28, 2026, Petitioner appeared for his scheduled lawful permanent residency interview along with his counsel and a social worker. *See* Garrett Decl. ¶ 14; Exh. E, Stein-Montalvo Letter. A USCIS officer conducted his interview, reviewing the form and evidence submitted with his application, and informed Petitioner and his counsel that the case would be held for review and that a notice requesting any additional evidence would be sent by mail. *See* Exh. C, Notice of Interview Results; Garrett Decl. ¶ 18.

26. Then, without any announcement, two men abruptly entered the interview room announcing themselves as ICE officers intending to detain Petitioner, and then, the USCIS officer departed the room. Garrett Decl. ¶ 19. Petitioner began to cry and wail and his body began shaking. *Id.* Petitioner's counsel asked the ICE officers for the reason for the detention, reminding them that Petitioner had been released pursuant to an OSUP and had a pending LRIFA-based lawful permanent residency application. *Id.* ¶ 20, 22. The ICE officers said the application was denied, even though there was no notice of this. *Id.* ¶ 20. And when pressed further, the ICE officers eventually concluded that it was a "new administration" and things had changed. *Id.* ¶ 22.

27. During this time, Petitioner continued to wail and fell on the ground, his eyes rolling into the back of his head. *Id.* ¶ 23. No medical personnel was contacted,

and the ICE officers merely commented, “he is breathing, he is fine.” *Id.* The ICE officers then handcuffed and led Petitioner out of the office through a back door. *Id.* ¶ 24, 27. The ICE officers did not provide Petitioner or his counsel any written notice regarding his detention at the time of his arrest. *Id.* ¶ 22.

28. Petitioner’s counsel then inquired repeatedly with other USCIS staff about the status of Petitioner’s lawful permanent residency application and finally, she was given a notice that the application was denied because of Petitioner’s prior removal order even though LRIFA does not foreclose eligibility on this basis. *See* Exh. D, Notice of Decision; Garrett Decl. ¶ 26.

29. Counsel subsequently received two distraught phone calls from Petitioner on January 28, 2026 from 26 Federal Plaza and she believes he remains at 26 Federal Plaza, which is a short-term holding facility without beds, showers or basic sanitation and hygiene services. Garrett Decl. ¶ 28.

30. On information and belief, Respondents have not produced any evidence that ICE complied with its own regulations governing the revocation of an OSUP pursuant to 8 C.F.R. § 241.4(l). Absent such compliance, Respondents lack basis for Petitioner’s continued detention. Petitioner should therefore be released under the same conditions of his prior OSUP. Even if *arguendo* ICE complied with its regulations, the manner and conditions under which he was detained, and continues to be detained, constitute a continued denial of substantive and procedural due process which this Court can remedy only through a writ of habeas corpus.

## LEGAL ARGUMENT

### I. DUE PROCESS

31. “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).

32. Congress has authorized civil detention of noncitizens for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 833 (2018); *Zadvydas*, 533 U.S. at 690.

33. Under substantive due process doctrine, a restraint on liberty 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. *See Zadvydas*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

34. “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 and to re-detain after more than a decade. *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).

35. Generally, Courts have repeatedly found due process violations where immigrants are re-detained without warning or individualized assessment when appearing for their regularly scheduled immigration appearances. *See, e.g., Kelly v. Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, at \*3 (S.D.N.Y. Aug. 15, 2025) (ICE check-in detention without notice violated due process); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at \*9 (S.D.N.Y. Aug. 13, 2025) (immigration courthouse arrest without notice violated due process); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831, at \*4 (S.D.N.Y. Aug. 19, 2025) (“By complying with his legal responsibilities and attending his regularly scheduled immigration court proceeding, Mr. Samb joined the unlucky ranks of Mr. Lopez Benitez and others in losing a perilous game of chance currently taking place outside of immigration court in Manhattan.”); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, \*2 (S.D.N.Y. June 18, 2025) (immigration courthouse arrest without notice violated due process); *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at \*3 (S.D.N.Y. July 13, 2025) (suggestion that government agents may sweep up any person they wish without consideration of dangerousness or flight risk “offends the ordered system of liberty that is the pillar of the Fifth Amendment”); *see also Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at \*18 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (“A basic principle—that individuals placed at liberty are entitled to due process before the government again imprisons them—has particular relevance here, where Rosado’s detention was previously found to be unnecessary to serve any

purpose.”); *Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425 (E.D. Cal. Aug. 14, 2025); *Prieto Salazar v. Kaiser, et. al*, No. 1:25-CV-01017-JLT-SAB, 2025 WL 2456232 (E.D. Cal. Aug. 26, 2025); *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572, at \*3–4 (N.D. Cal. June 4, 2018) (concluding that petitioner raised “serious questions going to the merits” that she had a “vested interest” in her continued release from immigration detention).

## II. INA REVOCATION REQUIREMENTS

### **Statutes and Regulations Governing Revocation of an Order of Supervision.**

36. 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.”

37. Noncitizens released from detention under § 1231 may be subject to “various forms of supervised release that are appropriate in the circumstances[.]” *Zadvydas*, 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).

38. 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.

39. The first of the two regulations governing OSUP revocation is 8 C.F.R. § 241.4(l). This section provides that OSUP may be revoked where there is a violation of the conditions, and 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*, No. 25-CV-08212 (MMG), 2025 WL 3077995, at \*6 (S.D.N.Y. Nov. 4, 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) (citing *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. 2025)); *Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087 (D. Md. Aug. 25, 2025)).

40. It is clear that the regulations permit only certain officials to revoke an OSUP: 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*, 781 F. Supp. 3d at 161 (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intend to revoke an OSUP, 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 OSUP, the delegation order must explicitly say so. *See Ceesay*, 781 F. Supp. 3d at 161 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not include the power to revoke release” insufficient to grant authority to revoke an OSUP).

41. In addition, the regulation provides that release may be revoked in the discretion of designated officials only where one of the enumerated grounds is identified, including that (i) the purposes of release have been served; (ii) the noncitizen violates any condition of release; (iii) enforcement of a removal order or initiation of removal proceedings is appropriate; or (iv) the conduct of the noncitizen, or other circumstances, indicate that release is no longer appropriate. *Id.* § 241.4(l)(2).

42. 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 to respond to the stated reasons. At this interview, the noncitizen can present evidence and information to challenge ICE’s determination that he is removable in the reasonably foreseeable future or that he has violated the OSUP’s conditions. 8 C.F.R. § 241.13(i)(3).

43. Failure to follow the regulations results in an improper and unlawful revocation of the OSUP. See *Zhang v. Genalo*, No. 25-CIV-06781, 2025 WL 3733542, at \*18 (E.D.N.Y. Dec. 28, 2025) (“Respondents violated Zhang’s procedural due process rights by failing to provide the legally required written notification of the reasons for the revocation of his OSUP before detaining him.”); *Ramirez Lopez v. Trump et al.*, No. 25 Civ. 4826 (JAV), 2025 WL 3274224 (S.D.N.Y. July 10, 2025) (granting temporary restraining order and release because redetention of person on an OSUP without notice likely violated due process); *M.S.L. v. Bostock*, No. 6:25-cv-01204-AA, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an OSUP was ordered by someone without regulatory authority to do so); *Ceesay*, 2025 WL 1284720, at \*13 (“[T]he mere fact that the government has the

authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process.”).

### III. THE ACCARDI DOCTRINE

44. 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.”).

45. *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*, 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). “The *Accardi* doctrine is premised on fundamental notions of fair play underlying the concept of due process.” *Montilla*, 926 F.2d at 167(internal citations omitted).

46. Where release notification issued alongside an OSUP instructs that a noncitizen 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*, 781 F. Supp. 3d at 169; *Ragbir v. Sessions*, No. 18-cv-236 (KBF), 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds sub nom. Ragbir v. Barr*, No. 18-1595, 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).

#### IV. IMMEDIATE RELEASE

47. Fundamental to a federal court's habeas authority is the ability to order release from detention. See *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“[T]he traditional function of the writ is to secure release from illegal custody.”); *Allen v. McCurry*, 449 U.S. 90, 98 n. 12 (1980) (noting that the “unique purpose” of the writ is “to release the applicant . . . from unlawful confinement”); see also *Ostrer v. United States*, 584 F.2d 594, 596 n. 1 (2d Cir. 1978) (“A district court has inherent power to enter an order affecting the custody of a habeas petitioner who is properly before it contesting the legality of his custody.”).

48. “In fact, ordering a petitioner’s release is ‘the very essence of habeas relief.’ As the Supreme Court put it: ‘Habeas lies to enforce the right of personal liberty; when that right is denied and a person confined, the federal court has the power to release him.’” *Enoh v. Sessions*, No. 16-CV-85(LJV), 2017 WL 2080278, at \*2 (W.D.N.Y. May 15, 2017) (citing *Phifer v. Warden*, 53 F.3d 859, 864 (7th Cir. 1995); *Fay v. Noia*, 372 U.S. 391, 430–31 (1963)).

#### CLAIMS FOR RELIEF

##### COUNT ONE:

#### **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT, SUBSTANTIVE DUE PROCESS**

49. Petitioner realleges and incorporates by reference the paragraphs above.

50. When ICE placed Petitioner on an OSUP, it found that Petitioner was neither a danger to the community nor a flight risk. Petitioner has been on the OSUP for more than 14 years without new evidence of danger or flight risk. No change in circumstances warranted the revocation of the OSUP and Petitioner's re-detention—while he appeared at a USCIS interview to pursue lawful status under LIRFA—is unlawful.

51. Petitioner's detention does not bear a reasonable relationship to the two permissible, regulatory purposes of immigration detention: preventing danger to the community or flight risk.

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

**COUNT TWO:**

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH  
AMENDMENT, PROCEDURAL DUE PROCESS**

53. Petitioner realleges and incorporates by reference the paragraphs above.

54. The Due Process Clause of the Fifth Amendment of the U.S. Constitution forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

55. *Mathews v. Eldridge*, 424 U.S. at 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.

56. 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*, 533 U.S. at 690.

57. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also favors Petitioner. To safeguard against erroneous deprivations of liberty, the immigration statutes specify the limited number of reasons that an OSUP can be revoked. The regulations further 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. Requiring Respondents to give notice and an opportunity to respond prior to revoking an OSUP reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.

58. Finally, the third factor, the government's interest, favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person prior to revocation of an OSUP, and re-detains someone who has resided in the community under their supervision for more than 14 years, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. And because the government must

also spend resources defending against a habeas corpus petition in federal court seeking to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking an OSUP reduces fiscal and administrative burdens on the government. *See, e.g., Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020) (“The Government articulates no public interest that any of this serves and we see none.”).

59. For these reasons, revoking Petitioner’s OSUP 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 ACCARDI DOCTRINE**

60. Petitioner realleges and incorporates by reference the paragraphs above.

61. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated procedures, rules, or instructions. *See United States ex. rel. Accardi*, 347 U.S. at 268.

62. Upon information and belief at the time of Petitioner’s re-detention, the revocation of Petitioner’s OSUP was also not in accordance with the implementing regulations governing who may lawfully revoke an OSUP and under what circumstances.

63. Petitioner’s re-detention without compliance with the OSUP regulations, without lawful adjudication of his LIRFA application, and without notice

and an opportunity to prepare for an orderly departure in the alternative, is in violation of the immigration rules, regulations, and instructions.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Issue an Order prohibiting Respondents' transfer of Petitioner outside the jurisdiction of the U.S. District Court for the Southern District of New York pending the resolution of this case;
- c. Grant this petition and order Petitioner's immediate release from custody on the original terms of the Order of Supervision;
- d. Retain jurisdiction over this matter to order appropriate remedies should Respondents fail to comply with this Court's order;
- e. Award Petitioner all costs incurred in maintaining this action, including attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, and on any other basis justified by law; and
- f. Grant any other further relief as the Court deems just and proper.

Dated: January 28, 2026

Respectfully submitted,

/s/ Elyssa N. Williams

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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of D.W. because I am one of his attorneys at The Legal Aid Society and have reviewed his case materials and communicated with the other attorneys on his case. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 28, 2026

Respectfully submitted,

/s/ Elyssa Williams

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