UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

QUOC THAI MINH THUY A# 071-XXX-XXX Petitioner, vs. LADEON FRANCIS, *in his official capacity As ICE Atlanta Field Office Director*, and TODD LYONS, *in his official capacity as Acting Director of ICE*, and KRISTI NOEM, *DHS Secretary*, and PAMELA BONDI, *U.S. Attorney General* Respondents.	)	CASE NO.:

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This case challenges the imminent and unlawful re-detention of Petitioner, QUOC THAI MINH THUY ("Petitioner"), A# 071-XXX-XXX, who is currently living in the community under an Order of Supervision ("OSUP") and has complied with all supervision requirements for many years without incident. Petitioner is not detained at this time, but he is subject to significant restraints on his liberty, including electronic GPS monitoring and mandatory reporting to ICE. Petitioner is neither a flight

risk nor a danger to the community. *See* Exhibit 1 – OSUP Documents.

2. Petitioner most recently reported to ICE on September 2, 2025, at which time officers placed him on an ankle monitor and allowed him to return home under continued supervision. Ex.1 at 4. He has a scheduled reporting appointment next week with the ISAP office. In addition, ICE has informed the family that officers intend to visit Petitioner's home imminently. These actions signal a sudden escalation in supervision and create an immediate and credible risk that Petitioner will be taken back into custody without prior notice, a hearing, or any meaningful opportunity to challenge the deprivation of his liberty. This Petition seeks judicial intervention before ICE converts Petitioner's long-standing supervision into physical detention by administrative fiat.

3. In light of this recent shift in enforcement practice, Petitioner faces an imminent and credible threat of re-detention during his next scheduled check-in at the ICE Atlanta Field Office. For over fourteen years, ICE has permitted Petitioner to remain under supervision because ICE has been unable to remove him to Vietnam despite having a final removal order. Ex. 1. However, based on counsel's direct knowledge of similarly situated individuals recently detained at check-ins and the termination of remote reporting options despite any change in circumstance, there is now a substantial likelihood that Petitioner will be taken into custody.

Petitioner emphasizes that he has been in full compliance with his OSUP and there are no changed circumstances to warrant his detention. *See* Ex. 1 at 3.

4. Therefore, ICE taking Petitioner into custody at his next check-in would amount to an unlawful revocation of his Order of Supervision, executed without notice, hearing, or lawful findings, in violation of ICE's own procedures and the constitutional guarantees of due process.

5. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

6. Petitioner therefore brings this action for injunctive, habeas corpus, and declaratory relief ordering Respondents to refrain from detaining him or revoking his Order of Supervision absent lawful justification and due process.

II. JURISDICTION

7. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution (Suspension Clause). This Court's subject matter jurisdiction further arises under Article III, Section 2 of the Constitution because Petitioner is raising constitutional issues and seeks immediate judicial intervention to remedy imminent violations of his constitutional rights by Respondents. In addition to the United States Constitution, this action arises under the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq. This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under federal law and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651. Petitioner does not seek to permanently enjoin execution of his final order of removal; he challenges only the legality of his current and threatened detention, the revocation or escalation of his Order of Supervision, and any removal or transfer during the pendency of this action that would frustrate this Court's jurisdiction over those claims.

8. The Eleventh Circuit has recognized district courts' jurisdiction to

entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law, based on Supreme Court precedent. Even though the government may detain individuals during removal proceedings, *Demore v. Kim*, 538 U.S. 510, 523 (2003), there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. *Id.*; *Frech v. U.S. Att'y Gen.*, 491 F.3d 1277, 1281 (11th Cir. 2007) ("It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment.") (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Courts must review immigration procedures and ensure that they comport with the Constitution. *See also J.G. v. Warden, Irwin Cnty. Detention Ctr.*, 501 F.Supp.3d 1331 (M.D. Ga. 2020).

9. Although Petitioner is not physically confined, ICE has imposed significant restraints on his liberty. At a recent reporting appointment, officers placed a GPS ankle monitor on Petitioner and required continued in-person reporting without providing any explanation for the increased level of supervision. Ex.1 at 4. ICE has also informed the family of an impending home visit. These conditions are backed by the threat of arrest and detention and substantially restrict Petitioner's freedom of

movement and daily life. Such restraints are sufficient to render Petitioner "in custody" for purposes of habeas jurisdiction. *Alvarez v. Holder*, 454 F. App'x 769, 772-73 (11th Cir. 2011) (Because the OSUP amounted to a "collateral consequence" of Alvarez's release that was not moot, we find that the district court had jurisdiction to rule on his § 2241 petition.") and ("An individual may seek habeas relief under § 2241 if he is "in custody" under federal authority, and the Supreme Court has found that the in custody requirement is satisfied where restrictions are placed on a petitioner's freedom of action or movement.") citing *Jones v. Cunningham*, 371 U.S. 236, 83 S.Ct. 373 (1963) (parolee still "in custody" of the parole board because the parole order imposed conditions that "significantly confine[d] and restrain[ed] his freedom"; habeas relief may be sought); *Dawson v. Scott*, 50 F.3d 884, 886 n. 2 (11th Cir. 1995) (a§ 2241 petition filed by a prisoner while in custody was not mooted by his subsequent release because he was "still serving his term of supervised release" which "involves some restrictions upon his liberty.").

10. Federal courts have held that similar combinations of GPS ankle monitoring and intensive reporting obligations constitute "custody" for purposes of § 2241, even after physical release from a facility. And that due process required the removal of such conditions as unlawful custody where not properly authorized. In *Barreno v. Baltasar*, 2026 U.S. Dist.

LEXIS 9571 (D. Colo. Jan. 15, 2026), the court held that a petitioner released on bond but required to wear a GPS ankle monitor and comply with ICE reporting remained "in custody in violation of the Constitution or laws of the United States" and ordered removal of the ankle monitor and any conditions not imposed by the immigration judge. Similarly, in *Cortes v. Olsen*, No. 25 C 6293 (N.D. Ill. Nov. 3, 2025), the court held that a noncitizen subject to an electronic monitoring device and reporting requirements was "in custody" under § 2241 and due process notwithstanding release from a detention center.

11. In *I.N.S. v. St. Cyr*, 533 U.S. 289 (2001), the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioner.

12. Federal district courts have long been vested with jurisdiction to review the legality of immigration detention under 28 U.S.C. § 2241. The Supreme Court has repeatedly affirmed that habeas corpus is available to challenge not only the fact of detention, but also **the manner in which detention is imposed**, including whether the government has

complied with statutory and regulatory requirements and afforded due process. *See Demore v. Kim*, 538 U.S. at 516–17; *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). This jurisdiction is not displaced by the existence of a final order of removal or by the government's assertion of discretionary authority; rather, it is preserved for claims that alleged unlawful detention, deprivation of liberty without due process, or agency action contrary to law. The Suspension Clause further guarantees the availability of habeas review to test the legality of executive detention, particularly where, as here, the petitioner alleges ongoing deprivation of liberty in violation of constitutional and statutory safeguards. *See* U.S. Const. art. I, § 9, cl. 2; *Boumediene v. Bush*, 553 U.S. 723, 739 (2008).

13. Federal courts have specifically held that 8 U.S.C. § 1252(g) does not strip jurisdiction over habeas challenges to the revocation of an Order of Supervision and related detention, because such claims attack the legality and manner of detention—not the decision to commence proceedings, adjudicate the case, or execute a removal order. In *Ahmad v. Whitaker*, No. C18-287-JLR-BAT (W.D. Wash. Dec. 4, 2018), the court rejected the government's argument that revocation of an OSUP was barred by § 1252(g) and held that a noncitizen may use 28 U.S.C. § 2241 to challenge both continued custody and the process by which ICE cancelled an OSUP and returned him to detention. Likewise, in *Ferrari*

Rivera v. Wilcox, No. C19-385-RSM-BAT, 2019 WL 13209736 (W.D. Wash. Sep. 24, 2019), the court held that a habeas challenge to the revocation of an OSUP "does not attack ICE's decision to execute his removal order; rather he challenges his detention prior to his removal," and therefore falls outside § 1252(g)'s narrow scope. And in *Alam v. Nielsen*, 312 F. Supp. 3d 574 (S.D. Tex. 2018), the court reached the same conclusion, holding that district courts retain habeas jurisdiction to review whether ICE complied with 8 C.F.R. §§ 241.4 and 241.13 when cancelling an OSUP and re-detaining the petitioner. Consistent with this narrow reading, courts addressing habeas challenges to the revocation of Orders of Supervision and related detention have held that such claims fall outside § 1252(g) because they attack the legality of custody and the process by which ICE cancelled an OSUP and returned the petitioner to detention, not the discretionary decision to execute a removal order. *See Ahmad v. Whitaker*, No. C18-287-JLR-BAT (W.D. Wash. Dec. 4, 2018); *Rivera v. Wilcox*, No. C19-385-RSM-BAT (W.D. Wash. Sept. 24, 2019); *Alam v. Nielsen*, 312 F. Supp. 3d 574 (S.D. Tex. 2018).

III. VENUE

14. Venue is proper in the United States District Court for the Northern District of Georgia because Petitioner resides in Northern Georgia, within this District, and is under the supervision and authority of the ICE Atlanta Field Office. Respondents-Defendants are officers of United States agencies, Petitioner currently resides within this District, and there is no real property involved in this action.

IV. PARTIES

15. Petitioner, Quoc Thai Minh Thuy, is a Vietnamese national who entered the United States lawfully in 1991, through the Humanitarian Operation ("HO") refugee program and has lived in this country for more than three decades. He currently resides in Gwinnett County, Georgia, with his family and is the father of U.S. citizen children, including minor children in his household, and a primary financial provider for his family as well as for his elderly U.S. citizen father who depends on his support. For more than a decade, Petitioner has been living in the community under an Order of Supervision ("OSUP") and has consistently complied with all ICE reporting requirements without incident, demonstrating long-term stability, strong family and community ties, steady

employment through a family-operated business, and full cooperation with the Government's supervision conditions. *See* Exs. 1 and 2.

16. Respondent Ladeon Francis is the Atlanta Field Office Director for Immigration and Customs Enforcement (hereinafter "FOD"). As such, Respondent Francis or the supervision, detention, and enforcement actions concerning noncitizens under ICE Atlanta's jurisdiction, including Petitioner. Respondent Francis is being sued in his official capacity.

17. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (hereinafter "ICE"). As such, Respondent Lyons is responsible for the oversight of ICE operations. Respondent Lyons is being sued in his official capacity.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (hereinafter "DHS"). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

19. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity as U.S. government agencies are Respondents in this Petition.

20. Petitioner names certain federal officials in their official capacities solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA's waiver of sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651—necessary to enjoin enforcement of DHS regulations and their interpretation as applied to Petitioner, ensure compliance with DHS/EOIR custody regulations, prevent transfer or removal of Petitioner, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. See, e.g., *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963).

21. Petitioner acknowledges that under *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), the proper respondent to the habeas claim is the immediate custodian, and Petitioner does not rely on these officials as "habeas respondents." Petitioner names federal officials in their official capacities solely to ensure the Court can issue effective relief on non-habeas claims, consistent with *Rumsfeld v. Padilla*. Respondents are named so the non-core claims, such as declaratory judgement and injunctive relief, can be granted effective, agency-directed relief to the officials with authority to implement it.

22. While the immediate custodian is necessary for habeas relief, Petitioner's non-habeas and declaratory claims require the inclusion of additional federal officials to ensure that the Court can grant complete and effective relief and to prevent evasion of its orders. The failures in this case implicate high-level officials within DHS and ICE, including the ICE Atlanta Field Office Director, whose actions regarding detention and the unlawful revocation of the OSUP were independent of the immediate custodian. Naming all relevant federal officials is not a mere formality; it is a deliberate safeguard against jurisdictional gamesmanship, such as transferring Petitioner outside this Court's jurisdiction to frustrate judicial review or releasing him now and then re-detaining him in the future without due process or against OSUP regulations. Including these officials is essential for both habeas and non-habeas claims seeking prospective declaratory and injunctive relief, given Petitioner's ongoing unlawful detention and the risk of re-detention by the same authorities. In the immigration detention context, only DHS/ICE officials—not local jailers—possess the legal authority to revoke an OSUP or release a detainee, which is why they must remain as parties. Maintaining these federal officials as Respondents ensures that any order of this Court can be implemented promptly and without dispute, as the relief sought necessarily runs to DHS/ICE at the federal

agency level, where policy and implementation authority reside. These officials are, at a minimum, the proper parties under principles analogous to FRCP 19, as complete relief cannot be afforded in their absence when it is the officials' actions that are challenged. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 690-91 (1949); *Dugan v. Rank*, 372 U.S. 609, 611, 621-22 (1963). Only these federal Respondents can effectuate the Court's orders and ensure that Petitioner's rights are protected. As federal officials, they are squarely within the Court's power to enjoin and direct, both for habeas and non-habeas relief. Their continued presence as Respondents is indispensable to prevent the government from evading judicial oversight and to guarantee that the Court's authority is not rendered hollow by unilateral and unlawful agency action.

V. EXHAUSTION OF REMEDIES

23. No statutory exhaustion requirement applies to habeas petitions under 28 U.S.C. § 2241. Moreover, any prudential exhaustion should be excused as futile. ICE has already escalated Petitioner's supervision by imposing electronic monitoring, requiring in-person reporting, and announcing an impending home enforcement visit. These actions create an immediate and credible risk that ICE will revoke Petitioner's Order

of Supervision and place him in physical detention without prior notice or any meaningful opportunity to be heard. There is no timely administrative mechanism through which Petitioner can challenge this impending deprivation of liberty before it occurs. An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it. *Gibson v. Berryhill*, 411 U. S., at 575, n. 14; *Houghton v. Shafer*, 392 U. S. 639, 640 (1968). *See also Santiago-Lugo v. Warden*, 785 F.3d 467 (11th Cir. 2015). However, even if there were any available remedies, the habeas statute does not require the Petitioner to exhaust them.

24. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies would have been futile on claim attacking constitutionality of ICE's actions. It would be futile to await further administrative remedies when proceedings before ICE cannot in any way address the constitutional claims at issue in this case, and where ICE seeks to quickly remove noncitizens like Petitioners without due process even to third countries under this administration.

25. Petitioner has exhausted all administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this judicial action.

VI. STATEMENT OF FACTS AND PROCEDURAL HISTORY

26. Petitioner Quoc Thai Minh Thuy was born in Vietnam in 1974. He entered the United States lawfully on March 13, 1991, through the Humanitarian Operation ("HO") refugee program for former South Vietnamese nationals. He has lived in the United States for approximately 35 years and resides in Peachtree Corners, Georgia, with his family. Petitioner is the father of three U.S. citizen children, including two minor children in his household, ages seven and five. One of his young children has documented speech delays and receives therapy services. Petitioner is also a primary financial provider for his elderly U.S. citizen father, who depends on him for support. Petitioner and his family operate a long-standing produce distribution business that supplies restaurants and supermarkets and has paid taxes for more than a decade. *See* Exhibit 2 Supporting Documents.

27. In 1998, Petitioner was convicted of a criminal offense. He was released from criminal custody in 2012. Prior to his release, an order of removal was entered in 1999; however, the U.S. Government has been unable to effectuate his removal because Vietnam has not issued travel documentation. *See* Ex. 1.

28. Since his release, Petitioner has remained in the community under an Order of Supervision ("OSUP") and has consistently complied with all

ICE reporting and supervision requirements for over a decade. *See* Ex. 1. During this time, ICE has authorized him to work through regularly renewed employment authorization, reflecting the agency's longstanding decision to allow him to live and work in the community. *See* Ex. 2 at 2-3.

29. Throughout this period, **ICE has kept Petitioner under supervision rather than detention, demonstrating that the agency has not treated him as a flight risk or a danger to the community.** Recently, however, ICE escalated Petitioner's supervision by placing him on electronic GPS ankle monitoring during his September 2, 2025 check-in. Ex. 1 at 4. He was not provided with any explanation for the change in supervision level or by what need or authority he was put under heightened supervision. Petitioner has now been directed to report again to the ISAP office next week, and ICE has informed the family that officers intend to visit the home imminently. ICE has provided no information explaining the sudden increase in restraints or whether his long-standing Order of Supervision is being modified or revoked, creating an immediate risk that Petitioner will be taken into custody without notice or an opportunity to be heard.

30. Petitioner was released from criminal custody in 2012 and has lived in the community as a law-abiding and productive member of society ever

since. During this time, he has had no new criminal history and has consistently complied with ICE supervision requirements, including regular reporting and renewal of employment authorization. *See* Ex. 1 at 3. ICE has allowed Petitioner to remain employed through a family-operated produce business that supplies local restaurants and markets, demonstrating the agency's long-standing decision to permit him to remain integrated and productive in the community. *Id.*, Ex. 2 at 2.

31. Recent media reports corroborate this pattern. Local press has reported that individuals under supervision have been detained during routine check-ins at the ICE Field Offices,[1] and that noncitizens appearing for document checks" have been taken into custody without prior notice or opportunity to be heard, raising serious due process concerns.[2] Until recently, ICE allowed non-detained individuals like Petitioner to report by phone or through a computer-based monitoring systems, but this option was abruptly discontinued in mid-2025.

32. As a result, Petitioner is now required to report in person to ICE on short notice, creating a specific, credible, and imminent risk that his long-standing supervision will be converted into physical detention despite

[1] https://georgiarecorder.com/2025/08/07/attorneys-push-for-the-release-of-georgia-immigration-activist-detained-by-ice-during-check-in/ (Last visited February 2, 2026).
[2] https://atlpresscollective.com/2025/05/22/ice-document-check-atlanta-due-process/ (Last visited February 2, 2026).

his consistent compliance and demonstrated eligibility to remain in the community under an Order of Supervision.

33. Petitioner's removal to Vietnam is not reasonably foreseeable. Under the 2008 U.S.–Vietnam Repatriation Agreement, officially titled *Vietnam (08-322) – Agreement on the Acceptance of the Return of Vietnamese Citizens*, the Government of Vietnam agreed to accept for repatriation only those nationals who arrived in the United States on or after July 12, 1995. Ex. 3 (2008 Agreement between U.S. and Vietnam). The agreement explicitly excludes all Vietnamese citizens who entered prior to that date, stating: "***Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995, the date on which diplomatic relations were re-established between the U.S. Government and the Vietnamese Government.***" Petitioner entered the United States as a refugee in March, 1991, more than 4 years before the cutoff date. Consequently, Vietnam has refused to issue travel documents for individuals in Petitioner's position for nearly two decades, rendering removal practically and legally impossible under the governing bilateral framework. *See* Ex. 3.

34. In November 21, 2020, the United States and Vietnam signed a

Memorandum of Understanding (MOU) creating a process for deporting people who came to the United States before 1995. Ex. 4. However, deportations back to Vietnam are still severely limited either because Vietnam would not issue travel documents or agree to accept them. Note that the treaty supersedes the MOU (as it is a higher ranking document). According to Asian American Advancing Justice in Atlanta, "In the past month, ICE has continued to be unable to deport some pre-1995 individuals and has released them from custody.". **Even if he had a travel document, according to this agreement, the U.S. would not be able to remove him to Vietnam.**

35. In *Nguyen v. Scott*, No. 2:25-cv-01398, --- F.Supp.3d ---- 2025 WL 2419288 (WD. Wash, Aug. 21, 2025), the court granted a PI and in 2025 WL 2097979 granted an Ex parte TRO for a petitioner under similar circumstances. Petitioner in that case has offered evidence that **from September 2021 through September 2023, the United States deported and repatriated only four pre-1995 immigrants to Vietnam despite of the 2020 MOU.** Ex. 5 (Trinh Report). The government were only able to obtain travel documents for pre-1995 Vietnamese citizens in only 4 cases between the years 2021-2023.

36. Multiple courts addressing pre-1995 Vietnamese nationals have held that, notwithstanding the 2020 MOU, Vietnam's discretionary and

extremely limited issuance of travel documents means there is no significant likelihood of removal in the reasonably foreseeable future for this cohort, treating them as classic *Zadvydas* cases. *See Nguyen v. Hyde*, 788 F. Supp. 3d 144 (D. Mass. 2025) (MOU creates no enforceable rights or obligation to accept pre-1995 Vietnamese; government's invocation of generic removal statistics and the MOU is insufficient without individualized evidence of progress on travel documents); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP (E.D. Cal. June 30, 2025) (TRO context; government's bare intent to seek a travel document does not establish "changed circumstances" or SLRRFF for pre-1995 Vietnamese); *Nguyen v. Scott*, No. 2:25-cv-01398-TMC (W.D. Wash. Aug. 21, 2025) (evidence that only four pre-1995 Vietnamese were removed between 2021–2023 despite the MOU; court treated that as strong proof of no SLRRFF for the pre-1995 cohort); *ISA Abubaka v. Bondi*, No. C25-1889RSL (W.D. Wash. Nov. 17, 2025) (characterizing the travel-document process for pre-1995 Vietnamese as "uncertain and protracted," reinforcing lack of SLRRFF); *Garcia-Aleman v. Bondi*, and *Puertas-Mendoza v. Bondi*, No. SA-25-CA-890-XR (W.D. Tex. Oct. 22, 2025) (*Zadvydas* analysis stressing long history of non-removal despite a reinstated order; removal not reasonably foreseeable where government sits on a reinstated order for many years without

effectuating removal).

37. ICE has long determined that Petitioner is neither a flight risk nor a danger to the community, as demonstrated by his continuous release under an Order of Supervision since approximately 2012. For more than two decades, Petitioner has fully complied with every reporting requirement, remained at the same verified residence in North Georgia, and consistently cooperated with ICE officers. He has incurred no new criminal history, has demonstrated rehabilitation, and has maintained strong and stable family and community ties. Petitioner has a U.S. citizen partner and has U.S. citizen children who rely on his presence and support.

38. As of the filing of this Petition, Petitioner remains under ICE supervision and is required to report in person as directed by ICE. He faces a specific and imminent threat of being taken into custody due to DHS's anticipated and unlawful revocation or escalation of his long-standing Order of Supervision, despite his consistent compliance and extensive history of adhering to all supervision requirements.

39. Petitioner's removal to Vietnam is not reasonably foreseeable because Vietnam has refused to issue a travel document for him for the past 35 years. That has not changed and ICE does not currently have a travel document for him. Therefore, ICE does not have a "Significant

Likelihood of Removal in the Reasonably Foreseeable Future" (SLRRFF). There are also no changed circumstances.

VII. LEGAL FRAMEWORK FOR RELIEF SOUGHT

40. Habeas corpus relief extends to a person "in custody under or by color of the authority of the United States" if the person can show she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under 28 U.S.C. §2241 if they concern the continuation or execution of confinement). The U.S. Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004), (citing U.S. Const., Art. I, § 9, cl. 2). This includes immigration-related detention. *Zadvydas*, 533 U.S. at 687.

41. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall ... dispose of [] as law and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553 U.S. 723, 779– 80 (2008) (citations omitted). "[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have

adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." *Id.* at 787. The Petitioner seeking habeas relief must demonstrate he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

VIII. Due Process Governs Decisions to Revoke an Order of Supervision

42. "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*, 533 U.S. at 693 (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.

43. 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*, 533 U.S.

at 690-92 (discussing constitutional limitations on civil detention).

44. "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).

45. Even if the government were permitted to revoke an OSUP and re-detain a noncitizen after a prolonged period of supervised release, it may do so only upon a showing of "changed circumstances" that make removal significantly likely in the reasonably foreseeable future. Courts have repeatedly held that ICE must identify specific, individualized changes—such as new evidence of flight risk, danger to the community, or a concrete development making removal newly feasible. Vague or generic assertions, or the mere passage of time, are insufficient. *See Liu v. Carter*, 2025 WL 1696526 (D. Kan. Jun. 17, 2025); *Sun v. Noem*, 2025 WL 2800037 (S.D. Cal. Sep. 30, 2025); *Roble v. Bondi*, 2025 WL 2443453 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, 2025 WL 2533673 (D. Minn. Sep. 3, 2025). Here, ICE has not identified any changed circumstances in Petitioner's case; there is no evidence of new travel documents, agreements with the destination country, or any other development that

would make removal likely. The record reflects only continued compliance and stability, not any new basis for detention.

IX. Statute and Regulations Govern Procedures for Revoking an Order of Supervision

46. 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").

47. 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).

48. 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*, 533 U.S. at 699-700.

49. The "removal period" defined in 8 U.S.C. §§ 1231(a)(1)-(a)(6) applies only **once:** it commences upon the final order of removal and runs for 90

days, during which detention is mandatory. After that period, if the government has not effected removal, the noncitizen must be released under an Order of Supervision (OSUP) unless continued detention is justified under the narrow circumstances set forth in § 1231(a)(6) and *Zadvydas*, 533 U.S. at 682–84, 699–701. Courts interpreting 8 U.S.C. § 1231(a)(1)(B) have held that the 90-day "removal period" begins when the removal order becomes administratively final and does not restart each time ICE chooses to re-detain a noncitizen under a long-final order. In *Diaz-Ortega v. Lund*, No. 1:19-CV-670-P, 2019 WL 6003485 (W.D. La. Oct. 15, 2019), the court rejected the "restarting approach" and adopted the "expiration approach," holding that "[t]he removal period does not restart simply because an alien who has previously been released is taken back into custody," because § 1231(a)(1)(B) references a single removal period triggered only by the listed events. The court emphasized that reading the statute otherwise would create "countless 'conditional removal periods'" and render the statutory triggering events meaningless. Likewise, *Hamama v. Adducci*, 2019 WL 2118784 (E.D. MI, May 15, 2019), held that the government could not "reset" the six-month *Zadvydas* period by re-detaining class members, and aggregated time in ICE custody to determine whether detention had become presumptively unreasonable.

50. In Petitioner's case, the removal period began and expired nearly 14 years ago, after which he was released on an OSUP. There is no statutory or precedential authority permitting the government to restart the 90- or 180-day removal period each time it re-detains a noncitizen who has already been subject to a final order and released under supervision. *Bailey v. Lynch,* No. 16-2600, 2016 WL 5791407 (D.NJ, Oct 3, 2016) ("The removal period does not restart simply because an alien who has previously been released is taken back into custody.").[3]

51. Courts across the country have rejected the government's "reset" theory, holding that the six-month presumptively reasonable period under *Zadvydas* does not restart with each re-detention. The only recognized exception to this rule is where the noncitizen is the impediment to his own removal, such as by refusing to cooperate with travel document requirements. Allowing the government to restart the clock with each re-detention would render the limitations imposed by *Zadvydas* meaningless and would be contrary to the plain language and purpose of § 1231(a)(6) and Supreme Court precedent (*Zadvydas*).

[3] The court determined that Bailey's removal period began prior to his release on an order of supervision, making his subsequent re-detention not presumptively reasonable and subject to challenge under *Zadvydas*. The only exception to this rule is where an alien is the impediment to his own removal, such as not complying with travel document requirements.

Even if the 90-day period could theoretically restart, the six-month *Zadvydas* period does not, except where the noncitizen is the cause of the delay. Consistent with this reading, multiple courts have held that the six-month presumptive limit under *Zadvydas* is cumulative and does not reset each time ICE releases and then re-detains a noncitizen under § 1231(a). In *Sied v. Nielsen*, 17-CV-06785-LB, 2018 WL 1876907, (N.D. Cal. Apr. 19, 2018), appeal dismissed, 18-16128, 2018 WL 6624692 (9th Cir. Sept. 14, 2018), the court aggregated successive § 1231(a) detention periods and held that "the six-month period does not reset when the government detains an alien under 8 U.S.C. § 1231(a), releases him from detention, and then re-detains him again." In *Somsanuk v. Bondi,* No. C26-48-MLP, 2026 WL 221139, at *3 (W.D. Wash. Jan. 28, 2026), a district court similarly held that "[d]etention need not be continuous for purposes of the *Zadvydas* clock." "[W]here a petitioner has been detained and released by ICE multiple times after a final order of removal, 'the clock' on *Zadvydas*'s six-month period of presumptive reasonability does not re-start with each successive detention." *Id.* quoting *Abubaka v. Bondi,* 2025 WL 3204369, at *3 (W.D. Wash. Nov. 17, 2025).

52. As explained in *Diaz-Ortega v. Lund*:

a. "A plain reading of the existing text disfavors the restarting

approach. Section 1231 references "[t]he" removal period, a single period triggered exclusively by the latest of three possible events. No other contingencies are provided. Absent a later triggering event – which would, by definition, begin "the" removal period – § 1231(a)(1)(B) dictates that the removal period necessarily begins when a removal order becomes final, and necessarily ends 90 days later.)

b. 2019 WL 6003485 (W.D. La. Oct. 15, 2019).

53. Even if the government were permitted to revoke an OSUP and re-detain a noncitizen after a prolonged period of supervised release, it may do so only upon a showing of "changed circumstances" that make removal significantly likely in the reasonably foreseeable future. This is not a mere formality: courts have repeatedly held that ICE must identify specific, individualized changes—such as new evidence of flight risk, danger to the community, or a concrete development making removal newly feasible. Vague or generic assertions, or the mere passage of time, are insufficient. Accordingly, there are no changed circumstances to justify re-detention or revocation. 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").

54. 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).

X. Petitioner's OSUP Is Governed by the Special *Zadvydas* Procedures in 8 C.F.R. § 241.13, Not the General Regime in § 241.4

55. Regulations distinguish between two different post order custody regimes: the general post removal period review process in 8 C.F.R. § 241.4, and the "special review procedures" in 8 C.F.R. § 241.13 for noncitizens who have shown there is no significant likelihood of removal

in the reasonably foreseeable future. Courts have repeatedly recognized that § 241.13 applies specifically to "those aliens who are subject to a final order of removal and are detained under the custody review procedures provided at § 241.4 after the expiration of the removal period, where the alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." *Adams v. Lowe*, No. 1:CV 11 0276, 2011 WL 663197 (M.D. Pa. Feb. 14, 2011); *G.P. v. Garland*, 103 F.4th 898, 901 (1st Cir. 2024) (holding 8 C.F.R. § 241.13 applicable and that, if the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing" or release the noncitizen subject to supervision.).

56. Similarly, ICE's decision to re-detain a noncitizen who has been granted supervised release for which ICE asserts removal has become significantly likely in the reasonably foreseeable future, is governed by ICE's own regulation at 8 C.F.R. § 241.13(i)(2), requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future. *Kong v. United States*, 62 F.4th 608, 619-

20 (1st Cir. 2023).

57. In *Hassanzadeh v. Warden*, No. ED CV 25-2113-DMG (MAAX), 2025 WL 3306272, at *3 (C.D. Cal. Nov. 25, 2025), the court explained that In Section 241.13 was added in 2001 (in light of *Zadvydas*) and applies "where the alien has provided good reason to believe there is no significant likelihood of removal ... in the reasonably foreseeable future." 8 C.F.R. § 241.13(a); Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, 56968 (Nov. 14, 2001). The court continued that:

    a. If there is a determination under section 241.13 that there is no such significant likelihood, section 241.13(b)(1) allows for the release of the noncitizen under an OSUP if he is not a danger to the public or a risk of flight. If there are changed circumstances such that a significant likelihood of removal materializes, section 241.13 explicitly provides for revocation and sets forth procedures, including an initial informal interview promptly after the return to custody and a revocation custody review. *Id.* § 241.13(i)(2)–(3).

58. *Id.* at *4. The Court then held that "it would make little sense for Respondents to be able to avoid following the procedures set forth in section 241.13(i)—a regulation codifying the rule that a person whose

release is revoked to enforce a removal order must receive an initial informal interview and other process—by saying that the revocation is due to it being "appropriate to enforce a removal order" against Hassanzadeh under section 241.4(l)(2)(iii). In short, Hassanzadeh was entitled to the process set forth in section 241.13(l) when he was redetained. It is undisputed that he was not afforded this process." *Id.*

59. In *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *4 (S.D. Fla. Sept. 9, 2025), a district court explained that:

    a. The distinction is salient because § 241.13(i) restricts revocation more that § 241.4(l)(2). Whereas § 241.4(l)(2) permits revocation in the discretion of the revoking official when an alien falls into one of the four specific categories, § 241.13(i) permits revocation only if (1) the alien "violates any of the conditions of release," or (2) "on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." Id. § 241.13(i)(1)–(2).

60. *Id.* The court continued to explain that once released on an OSUP under § 241.13, ICE may only revoke the OSUP for the reasons specified in § 241.13(i). *Id.* at *5. Revocation under § 241.13(i) applies only to aliens released under § 241.13(g)—where ICE has formally determined that

there is no significant likelihood that the alien will be removed in the reasonably foreseeable future. *Id.* citing § 241.13(i)(1) (applying to "[a]ny alien who has been released under an order of supervision under this section") and § 241.13(i)(2) (providing that ICE "may revoke an alien's release under this section").

61. As evidenced by these case citations above, multiple courts have applied § 241.13 specifically to long-term post-order detainees from countries that routinely refuse to issue travel documents, treating them as "*Zadvydas* cases" subject to the special procedures in § 241.13 rather than solely to § 241.4. *See also Yacouba v. District Director, ICE*, 593 F. Supp. 2d 737, 739 (M.D. Pa. 2008). These decisions state that § 241.13 is the controlling regulation for detainees who have shown "good reason to believe" there is no significant likelihood of removal in the reasonably foreseeable future, with § 241.4 supplying the background custody-review mechanics.

62. Petitioner's circumstances place him in exactly that category. For decades, ICE has been unable to obtain travel documents to remove pre-1995 Vietnamese nationals like Petitioner because of the 2008 U.S.–Vietnam Repatriation Agreement (Ex. 3), under which "Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995." Courts

addressing the same treaty framework—including in cases involving pre-1995 Vietnamese refugees—have treated such petitioners as falling within the *Zadvydas* "no significant likelihood of removal" class and have analyzed their custody under § 241.13 rather than under § 241.4 alone. *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP (E.D. Cal. June 30, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144 (D. Mass. 2025); *Nguyen v. Scott*, No. 2:25-cv-01398-TMC (W.D. Wash. Aug. 21, 2025).

63. Courts applying 8 C.F.R. § 241.13 in this context have repeatedly treated pre-1995 Vietnamese nationals as falling squarely within the "no *significant* likelihood of removal" class, requiring DHS to use the special *Zadvydas* procedures rather than the general § 241.4 regime. *Nguyen v. Hyde*, 788 F. Supp. 3d 144 (D. Mass. 2025) aggregated years of failed removal efforts and held that the 2020 MOU, standing alone, does not create SLRRFF for pre-1995 Vietnamese. *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP (E.D. Cal. June 30, 2025) and *Nguyen v. Scott*, No. 2:25-cv-01398-TMC (W.D. Wash. Aug. 21, 2025) adopted the same approach, emphasizing that only a handful of pre-1995 removals have occurred in recent years despite ICE's reliance on the MOU.

64. Because Petitioner's long-standing release on an OSUP rests on the government's implicit determination that his removal to Vietnam is not reasonably foreseeable under the governing bilateral framework, his

post-order custody and any revocation of release are governed first and foremost by the special procedures in 8 C.F.R. § 241.13, including the requirement of "changed circumstances" making removal significantly likely in the reasonably foreseeable future and the associated notice and informal-interview protections, rather than solely by the more general provisions of 8 C.F.R. § 241.4.

65. Further, those 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).

66. 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).

XI. Due Process and the Regulatory Process for OSUP Revocation

67. Once the government has exercised its discretion to release an individual from immigration detention, revocation of that liberty interest is a significant act that can only be carried out by high-level officials specifically designated in the regulations. Revocation of release under an OSUP implicates a protected liberty interest and must be accompanied by robust procedural and substantive safeguards. The agency must strictly follow its own regulations, as required by the *Accardi* doctrine, and must also provide constitutionally adequate notice and an opportunity to be heard before a neutral decisionmaker prior to revocation. The fact that only high-level officials may revoke these forms of release underscores the gravity of the liberty interest at stake and the need for accountability and individualized assessment.

68. Courts have consistently held that ICE's failure to provide the notice and informal interview required by 8 C.F.R. §§ 241.4(l)(1), 241.4(d), and 241.13(i)(3) violates both the regulations and due process. In *You v.*

Nielsen, 321 F. Supp. 3d 451 (S.D.N.Y. 2018), the court held that, even assuming ICE had authority to revoke release under § 241.4, it could not detain the petitioner without providing him with notice and an informal interview as the regulations require. In *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017), the court found OSUP revocation unlawful where ICE relied on the wrong regulation and failed to provide an informal interview "promptly after" return to custody or to give a reasoned written decision, holding that these failures violated 8 C.F.R. §§ 241.4 and 241.13 and the Fifth Amendment's Due Process Clause. In *Bonitto v. Bureau of Immigration & Customs Enforcement*, 547 F. Supp. 2d 747 (S.D. Tex. 2008), the court held that DHS's failure to conduct the mandatory 180-day post-order custody review and to give a reasoned written basis for continued detention violated 8 C.F.R. §§ 241.4 and 241.13 and the petitioner's procedural due process rights, emphasizing that those regulations "confer important rights upon aliens ordered removed" and must be followed. And in *Resil v. Hendricks*, Civil Action No. 11-2051 (JLL), 2011 WL 2489930 (D.N.J. June 21, 2011), the court described the regulatory post-order custody review scheme—including written notice, an interview, and a written decision under 8 C.F.R. § 241.4(k)(2)—as the mechanism by which DHS satisfies due process for post-order detention under 8 U.S.C. § 1231(a)(6). A recent order in the Southern District of

New York illustrated what procedural due process ICE must follow in order to revoke an OSUP and re-detain an individual like Petitioner. *See Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 WL 2452352, at *5–9 (S.D.N.Y. Aug. 26, 2025).

69. 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*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

70. "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). In addition to ICE's regulations that govern OSUP revocation, *Mathews v. Eldridge* requires a pre-deprivation hearing. Petitioner does not even have a determination from the appropriate district director that there is a "significant likelihood that the alien may be removed in the reasonably foreseeable

future." Thus, the first condition to the revocation has not yet occurred.

71. Even if the government were permitted to revoke an OSUP and re-detain a noncitizen after a prolonged period of supervised release, it may do so only upon a showing of "changed circumstances" that make removal significantly likely in the reasonably foreseeable future. As stated *supra*, courts have repeatedly held that ICE must identify specific, individualized changes—such as new evidence of flight risk, danger to the community, or a concrete development making removal newly feasible. Here, ICE has not identified any changed circumstances in Petitioner's case; there is no evidence of new travel documents, agreements with the destination country, or any other development that would make removal likely. The record reflects only continued compliance and stability, not any new basis for detention.

XII. Only High Level Authorized Officials Can Revoke an OSUP

72. 8 C.F.R. § 241.4(1)(2) instructs that an OSUP can be revoked by the service if, and only if, the Executive Associate Commissioner (District Director) decides to revoke it when, in the opinion of the revoking official:

(i) The purposes of release have been served;

(ii) The alien violates any condition of release;

(iii) It is appropriate to enforce a removal order or to

commence removal proceedings against an alien;

or

(iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

73. Internal delegation orders cannot override these regulatory assignments. Section 4(D)(3) of DHS Delegation Order 7030.2 2 expressly provides that any re-delegation to District Directors for Interior Enforcement "shall not be construed to delegate ... any authority or responsibility exceeding that provided to INS District Directors by chapter 8 of the Code of Federal Regulations as in force on February 28, 2003." The relevant CFR provisions do not include ICE Officers as low as the ones working at SDC among those empowered to revoke OSUPs. Thus, any attempt to re-delegate this authority—whether by general delegation order or internal agency memorandum—is ultra vires and invalid.

74. In other cases undersigned counsel has appeared in, Respondents have filed ERO Delegation order from 2019 purporting to delegate OSUP revocation duties to lower level deportation officers. Undersigned counsel submits that the 2019 ERO delegation order is ultra vires.

75. ERO's authority to issue such delegation orders is entirely derivative of,

and strictly limited by, the higher-level DHS Delegation Order 7030.2, which governs all delegations of authority within DHS—including those to ICE and its subcomponents such as ERO. Because ERO is a subcomponent of ICE, and ICE is subordinate to DHS, any delegation of authority by ERO must be expressly permitted by DHS Delegation Order 7030.2. If 7030.2 does not specifically authorize the delegation of OSUP revocation authority—or does not permit the high-level officials named in 8 C.F.R. § 241.4 to further delegate that authority to lower-level officials—then ERO DO 0001.1 cannot lawfully confer such powers. In other words, a subordinate delegation order like 2019 ERO DO 0001.1 cannot expand or create authority beyond what is expressly permitted by the higher-level DHS Delegation Order 7030.2. Therefore, any purported delegation of OSUP revocation authority in ERO DO 0001.1 exceeds the scope of authority permitted by DHS Delegation Order 7030.2 and is invalid.

76. The Supreme Court has repeatedly affirmed that when Congress or an agency regulation enumerates particular officials to exercise a power, only those officials may act. In *United States v. Giordano*, 416 U.S. 505, 514–16 (1974), the Court held that delegation to others was not permitted where the statute authorized only the Attorney General or specially designated Assistant Attorneys General to approve wiretap

applications (wiretap found unlawful when ordered by unauthorized person). The Court explained that the enumeration of authorized officials is both exclusive and exhaustive; delegation to others is impermissible absent explicit authorization. This principle was reaffirmed in *FEC v. Cruz*, 596 U.S. 289, 301 (2022), which held that an agency "literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute."

77. District courts have applied these principles in the immigration context, holding that revocations of release by officials not named in the regulation are invalid and require restoration of release status. *See, e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D.N.Y. 2023); *Zhu v. Genalo*, 2025 WL 2452352, at *2–3 (S.D.N.Y. Aug. 26, 2025); *see also United States. v. Wyder*, 674 F.2d 224, 227 (4th Cir. 1982); *Santamaria Orellana v. Baker*, 2025 WL 2841886, at *3 (D. Md. Oct. 7, 2025) (holding that regulation that gave Executive Associate Commissioner authority to revoke an alien's release and require return to ICE custody could not be exercised by Deportation Officer). The court in *Santamaria Orellana*, citing *Giordano*, noted that "[a] statutory or regulatory provision requiring that a decision affecting personal rights be made only by a designated senior official is fairly deemed to be an important procedural safeguard". *Id.* at *5. The court also directly addressed Due Process:

"Respondents nevertheless argue that the failure to adhere to this regulation does not amount to a due process violation. This Court, however, has already found in its earlier ruling in this case that the identified violations of the requirements of 8 C.F.R. § 241.4, including the requirement that an authorized official approve a Notice of Revocation of Release under 8 C.F.R. § 241.4(l)(2), implicate due process." *Id.* at *4.

78. District courts have enforced these delegation limits in the OSUP context. In *Rombot v. Souza,* 296 F. Supp. 3d 383 (D. Mass. 2017), the court held that ICE's revocation of supervised release was invalid where the decision was made by a field office director without clear regulatory authority and without the required public-interest finding, explaining that the regulations reserve revocation to the Executive Associate Commissioner or a properly delegated district-level official and that actions taken outside those delegations are void. In *Ceesay v. Kurzdorfer,* 781 F. Supp. 3d 137 (W.D.N.Y. 2025), the court similarly found that a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" was insufficient to confer OSUP-revocation authority and ordered the petitioner's release on that basis. And *Bonitto v. Bureau of Immigration & Customs Enforcement,* 547 F. Supp. 2d 747 (S.D. Tex. 2008), underscores that,

under the *Accardi* doctrine, DHS must comply with the allocation of authority and procedures in 8 C.F.R. §§ 241.4 and 241.13 when detaining someone beyond the removal period. *Ceesay* ordered the petitioner's release solely on this basis, underscoring that unauthorized revocation is void ab initio and cannot sustain detention.

XIII. Changed Circumstances Required for Re-arrest Petitioner

79. Even if the government were permitted to revoke an OSUP and re-detain a noncitizen after a prolonged period of supervised release, it may do so only upon a showing of "changed circumstances" that make removal significantly likely in the reasonably foreseeable future (SLRRFF). *See* 8 C.F.R. § 241.13(i). This is not a mere formality: Courts have repeatedly held that **ICE must identify specific, individualized changes**—such as new evidence of flight risk, danger to the community, or a concrete development making removal newly feasible. *Roble v. Bondi*, 2025 WL 2443453 at *4 (D. Minn. Aug. 25, 2025) (the regulations place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future); *Hernandez Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("The[ ] regulations clearly indicate, upon revocation of supervised release, it is [ICE's] burden to

show a significant likelihood that the [noncitizen] may be removed."). Vague or generic assertions, or the mere passage of time, are insufficient. *See Phongsavanh v. Williams,* No. 4:25-CV-00426-SMR-SBJ, 2025 WL 3124032, at *4 (S.D. Iowa Nov. 7, 2025); *Liu v. Carter*, 2025 WL 1696526 (D. Kan. Jun. 17, 2025); *Sun v. Noem*, 2025 WL 2800037 (S.D. Cal. Sep. 30, 2025); *Sarail A. v. Bondi,* 2025 WL 2533673 (D. Minn. Sep. 3, 2025) (notification of "changed circumstances" without explanation is insufficient).

80. Here, ICE has not identified any changed circumstances in Petitioner's case; there is no evidence of new travel documents for him, nor any other concrete development that would make his removal significantly likely.

XIV. National Uniformity: Authority on "In Custody" Status

81. This Court may grant a writ of habeas corpus only to an individual who is "in custody." 28 U.S.C. § 2241(c). Whether a person is "in custody" within the meaning of § 2241 is a question of subject-matter jurisdiction. **To satisfy this "in custody" requirements, a petitioner need not be in physically detained.** *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California,* 411 U.S. 345, 350 (finding that a petitioner released on his own recognizance satisfied the "in custody" requirement of the federal habeas corpus statute in noting the Supreme

Court has "consistently rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirements"); *see also Harris v. Nelson*, 394 U.S. 286, 29 (1969) ("The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected."); *see also Jones v. Cunningham*, 371 U.S. 236, 240 (1963) ("History, usage, and precedent can leave no doubt that, besides physical imprisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus.").

82. Rather, it is sufficient that a petitioner has some other type of **restriction** on their liberty to proceed on a habeas action. *See Rumsfeld v. Padilla*, 542 U.S. 426, 427 (2004) (acknowledging that the Supreme Court has broadened its understanding of custody "to include restraints short of physical liberty"). Federal courts across the country have consistently recognized that significant restraints on liberty—such as those imposed by orders of supervision, electronic monitoring, and frequent reporting—constitute "in custody" for habeas purposes under 28 U.S.C. § 2241. *See* e.g., *Romero v. Sec'y, U.S. Dep't of Homeland Sec.*,

20 F.4th 1374, 1379 (11th Cir. 2021) (A non-detained foreign national subject to pre-deportation supervision and removal was "in custody" as described in 28 U.S.C. § 2241); *see also U. S. ex rel. Marcello v. Dist. Dir. of Immigr. & Naturalization Serv., New Orleans, La.*, 634 F.2d 964, 971 n. 11 (5th Cir. 1981) (finding that a noncitizen subject to pre-deportation supervision and a deportation order was "in custody" as required by 28 U.S.C. § 2241).

83. Indeed, Petitioner's prior unlawful detention, as well as the restraints on his liberty due to terms of his order of supervision and continued threat of removal based on his final order of removal notwithstanding his valid Deferred Action grant, continue to burden him with concrete, redressable injuries. *Peralta-Cabrera v. Gonzales*, 501 F.3d 837, 842–43 (7th Cir. 2007) (citations omitted) (explaining that the action was not moot even though the noncitizen had been removed from the United States because he continues to suffer legal consequences from his removal); *see also Rosales v. Bureau of Immigr. & Customs Enf't*, 426 F.3d 733, 735 (5th Cir. 2005) (citations omitted) (agreeing with precedent from the Second, Sixth, Ninth, and Tenth Federal Circuit Courts that "a final deportation order subjects a [noncitizen] to a restraint on liberty sufficient to place [the noncitizen] 'in custody' as required by the civil habeas statue 28 U.S.C. § 2241"). Based on the foregoing binding legal

precedents from nearly every circuit court of appeals, Petitioner can potentially remain "in custody" as required by 28 U.S.C. § 2241 as he is subject to a final order of removal, subject an OSUP and Petitioner is under constant threat of deportation, either one of these conditions would be sufficient to place him "in custody" pursuant to the habeas laws. Petitioner is seeking an order from this Court that prevents ICE from unlawfully re-detaining him and removing him based on the law. This uniformity across various Federal Circuit courts around the country, as well as U.S. Supreme Court, underscores that people like Petitioner are considered "in custody" for the habeas statute even if he is not currently detained.

84. In conclusion, even though Petitioner is not incarcerated, he will be "in custody" for the purposes of the habeas statute at 28 U.S.C. § 2241, because he is subject to conditions and significant constraints on his liberty, which suffices for "in custody" requirement. The "in-custody" requirement is construed "very liberally." *Clements v. Florida*, 59 F.4th 1204, 1213 (11th Cir. 2023) (quoting *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015)). There are countless authorities on the matter, including for example, two binding authorities from the 11th circuit, *Romero v. Sec'y, U.S. Dep't of Homeland Sec.*, 20 F.4th 1374, 1379 (11th Cir. 2021) (A non-detained foreign national subject to pre-deportation

supervision and removal was "in custody" as described in 28 U.S.C. § 2241); *see* also *U. S. ex rel. Marcello v. Dist. Dir. of Immigr. & Naturalization Serv., New Orleans, La.*, 634 F.2d 964, 971 n. 11 (5th Cir. 1981) (finding that a noncitizen subject to pre-deportation supervision and a deportation order was "in custody" as required by 28 U.S.C. § 2241). Therefore, the custody requirement is not only satisfied by showing that a petitioner is in physical custody, but it can also be satisfied where a petitioner identifies "'a significant restraint'" on individual liberty that is not shared by the general public." *Whitfield v. United State Secretary of State*, 853 F. App'x 327, at 329 (11th Cir. 2021) (quoting *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015)).

85. In *Hensley v. Mun. Ct.*, 411 U.S. 345, 351 (1973), the Supreme Court explained that the "custody requirement of the habeas corpus statute is designed to preserve the writ of habeas corpus as a remedy for severe restraints on individual liberty." 411 U.S. at 351. The Court found that petitioner was in custody because he was subject to restraints on his liberty such that he could not "come and go as he pleas[ed]," and these restraints are not "shared by the general public." *Whitfield*, 853 F. App'x at 329 (quoting *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015)).

86. Recent decisions confirm that ICE's use of GPS ankle monitors and intrusive supervision conditions keeps a noncitizen "in custody" for

habeas purposes. In *Barreno v. Baltasar*, No. 25-cv-03017-GPG-TPO, 2026 U.S. Dist. LEXIS 9571 (D. Colo. Jan. 15, 2026), the court held that a petitioner released on bond but subjected to a GPS ankle monitor and reporting remained "in custody in violation of the Constitution or laws of the United States" under 28 U.S.C. § 2241 and ordered her release from custody, including removal of the ankle monitor and any conditions not expressly imposed by the immigration judge In doing so, the court relied on *NN v. McShane*, No. CV 25-5494, 2025 WL 3143594 (E.D. Pa. Nov. 10, 2025); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61 (D. Mass. 2025); and *Campbell v. Almodovar*, No. 1:25-CV-09509 (JLR), 2025 WL 3626099 (S.D.N.Y. Dec. 15, 2025), each of which rejected the contention that an ankle monitor is too slight a restraint to constitute custody. Similarly, in *Cortes v. Olsen*, No. 25 C 6293 (N.D. Ill. Nov. 3, 2025), the Northern District of Illinois held that a noncitizen subject to an electronic monitoring device and reporting requirements was "in ICE custody" for purposes of § 2241 and due process, notwithstanding her release from a detention center. These decisions reinforce that GPS ankle monitoring and intensive supervision conditions impose a "severe restraint on individual liberty" sufficient to qualify as custody for § 2241 purposes. See *Barreno v. Baltasar*, 2026 U.S. Dist. LEXIS 9571 (D. Colo. Jan. 15, 2026); *Cortes v. Olsen*, No. 25 C 6293 (N.D. Ill. Nov. 3, 2025).

XV. APA AND ACCARDI FRAMEWORK

The APA Sets Minimum Standards for Final Agency Action and authorizes judicial review of final agency action. 5 U.S.C. § 704.

87. 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).

88. ICE's revocation of an order of supervision —or the imminent threat thereof— is a final agency action subject to this Court's review.

89. Any revocation or re-detention decision would mark the consummation of ICE's decision-making process regarding Petitioner's custody and supervision. Recent decisions have reiterated that agencies are "generally required to follow their own regulations," and failure to do so renders their actions invalid. *See Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020).

90. Such an action would also be one by which rights or obligations have been determined, or from which legal consequences would flow, because it would lead to Petitioner's detention in violation of his rights under the Constitution, statute, and regulation.

The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

91. 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.").

92. *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).

93. 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).

94. ICE's Detention and Removal Operations Field Policy Manual (DROPPM) [4], prescribes mandatory procedures for the revocation of orders of supervision or release, including: (1) a complete review of the circumstances surrounding the alleged violation; (2) prompt service of a Notice of Revocation of Release stating the reasons for revocation; and (3) an informal interview with the noncitizen to afford an opportunity to respond to the reasons for revocation. In Petitioner's case, ICE failed to conduct a timely review, failed to provide prompt and accurate notice.

95. Chapter 17.12(b) of the DROPPM prescribes a non-discretionary process for revocation of an OSUP. Specifically, **before revocation, ICE must conduct a complete review of the circumstances surrounding the**

[4] As the full DROPPM is 629 pages, only the cover pages and two pages referenced herein re OSUP are included.

alleged violation; promptly serve the alien with a Notice of Revocation of Release stating the reasons for revocation; and conduct an informal interview with the alien to afford an opportunity to respond to the reasons for revocation. *Id.* If the alien is not released after the informal interview, ICE must initiate the Post Order Custody Review ("POCR") process. This process is not a mere technicality. The interview requirement is designed **to ensure that revocation decisions are based on accurate, individualized information and that the affected individual has a meaningful opportunity to contest the alleged violation before liberty is withdrawn.** The absence of this process increases the risk of arbitrary and capricious actions and erroneous deprivation of liberty, and it undermines the reliability and fairness of the agency's actions. Disclaimer language such as "Nothing in this manual may be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States, its agencies or officers, or any other person" does not foreclose Petitioner's argument. *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1022–23 (D.C. Cir. 2000).

96. The DROPPM and related regulations also require that revocation be based on individualized findings of changed circumstances, such as new evidence of flight risk, danger to the community, or a significant

likelihood of removal in the reasonably foreseeable future. No such findings were made in Petitioner's case. Instead, the record reflects that he had a long history of compliance, no new criminal conduct, and strong family and community ties. ICE's assertion that his ankle monitor was tampered with was unsupported and contradicted by the facts.

97. Courts applying *Zadvydas* have treated the individualized POCR and § 241.13 review process—written notice, an opportunity to submit evidence, and a reasoned written decision—as the minimum process required for post-order detention under § 1231(a)(6). Courts treat § 241.13 as the controlling regulation for detainees who have shown "good reason to believe" there is no significant likelihood of removal in the reasonably foreseeable future, with § 241.4 supplying the background custody-review mechanics.

98. Even where statutory frameworks grant ICE broad discretion in detention and release decisions, federal courts retain jurisdiction to review whether the agency complied with its own regulations, procedures and prior written commitments in the OSUP and its revocation procedures. This is supported by Eleventh Circuit precedent (*Gonzalez v. Reno*, 325 F.3d 1228 (11th Cir. 2003) ("[A]gencies must respect their own procedural rules and regulations...[and] the courts retain the authority to check...for procedural compliance", 1349),

Kurapati v. USCIS, 775 F.3d 1255 (11th Cir. 2014), as well as various district court cases, for example *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485 (S.D. Fla. Aug. 8, 2025), *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017) (Arbitrary OSUP revocation without adherence to agency rules is unlawful).

XVI. CAUSES OF ACTION AND CLAIMS FOR RELIEF

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

99. Petitioner realleges and incorporates all paragraphs above as if fully set forth here.

100. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

101. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This vital liberty interest is at stake when an individual is subject to detention by the federal government.

102. Under the civil-detention framework set out in *Zadvydas* and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose.

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

104. Now, despite Petitioner's full compliance with every condition of his Order of Supervision for approximately twenty-two years, ICE has given no notice of any change in circumstances that would warrant revocation. There are no criminal issues, Petitioner has complied with the OSUP, and there are no new adverse factors to justify detention.

105. Moreover, according to a bi-national treaty, 2008 U.S.-Vietnam Repatriation Agreement, officially titled *Vietnam (08-322) – Agreement on the Acceptance of the Return of Vietnamese Citizens,* **ICE cannot remove Petitioner from the United States.** This agreement **explicitly excluded** Vietnamese nationals who arrived in the United States **before July 12, 1995** from being subject to deportation. This exclusion was based on the historical context: many of these individuals were refugees fleeing post-war persecution and had been protected from deportation under this agreement. The relevant clause states:

"**Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995.**" *See also Nguyen v. Hyde*, 788 F. Supp. 3d 144 (D. Mass. 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP (E.D. Cal. June 30, 2025) and *Nguyen v. Scott*, No. 2:25-cv-01398-TMC (W.D. Wash. Aug. 21, 2025).

106. Because Petitioner's removal is not reasonably foreseeable, any re-detention would not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

107. Respondents' threatened revocation of Petitioner's order of supervision, and the imminent prospect of his re-detention, therefore violate 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

108. Petitioner realleges and incorporates all paragraphs above as if fully set forth here.

109. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*,

424 U.S. 319, (1976). Pursuant to Mathews, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

110. The first factor, the private interest at issue, favors Petitioner as Petitioner's liberty interest is paramount. "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. ICE had already decided fourteen years ago in 2012 that Petitioner is not a flight risk, and does not pose a danger to the community. Petitioner has complied with all reporting requirements over the past fourteen years and does not have any adverse factors or new criminal behavior that would have led to the recent arrest. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a

bail determination, is "without question, a weighty one." *Landon v. Plasencia*, 459 U.S. at 34, 103 S.Ct. 321.

111. 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, 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 high (as they failed to provide notice and an opportunity to be heard). 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. Likewise, the risk of erroneous deprivation of liberty is heightened when the same enforcement-oriented officers who arrest individuals also control the decision to revoke supervised release without any neutral decisionmaker or meaningful adversarial hearing. *Marcello v. Bonds*, 39 U.S. 302, 305-306 (1955).

112. The third factor, the government's interest, also favors Petitioner. When the government ignores law (and agency breaks its own regulations,

policies and procedures) 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.

113. Moreover, according to a bi-national treaty, **ICE cannot remove Petitioner from the United States in the reasonably foreseeable future**. This agreement **explicitly excluded** Vietnamese nationals who arrived in the United States **before July 12, 1995** from being subject to deportation. The government must be held to follow its own agreements and therefore cannot foreseeably remove Petitioner. *See also Nguyen v. Hyde,* 788 F. Supp. 3d 144 (D. Mass. 2025); *Hoac v. Becerra,* No. 2:25 cv 01740 DC JDP (E.D. Cal. June 30, 2025) and *Nguyen v. Scott,* No. 2:25 cv 01398 TMC (W.D. Wash. Aug. 21, 2025).

114. Because Petitioner does not have a passport or any travel document, ICE

cannot remove him in the reasonably foreseeable future.

115. For these reasons, revoking or acting to revoke Petitioner's order of supervision—without prior notice, findings, or an opportunity to be heard, and in light of current ICE practices of detaining supervised individuals during routine check-ins—would violate procedural due process under the Fifth Amendment to the U.S. Constitution.

116. ICE has not identified any recent and changed circumstances that would justify revocation or escalation of Petitioner's Order of Supervision. Petitioner has not violated supervision, has no new criminal history, and continues to reside at the same address with his family. There is no evidence of increased flight risk, danger to the community, or any development making removal newly foreseeable. Absent such individualized findings, escalation to detention would be arbitrary, contrary to law, and in violation of due process.

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

117. Petitioner realleges and incorporates all paragraphs above as if fully set forth here.

118. 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).

119. 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).

120. Respondents' anticipated revocation of Petitioner's order of supervision, and the policies and practices giving rise to his imminent risk of detention, are contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

121. Any such revocation or detention would also not be 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.

122. Petitioner's order of supervision has remained valid for approximately fourteen years, and there is no indication that any authorized ICE official has made findings required under 8 C.F.R. § 241.4(l)(2) that revocation is in the public interest or that circumstances warrant referral to the Executive Associate Director. Nor is there any evidence that the authority to revoke has been lawfully delegated in Petitioner's case.

123. Before taking any action to revoke the order, subject Petitioner to ISAP or ankle monitoring or re-detain Petitioner, Respondents have not made findings that he is dangerous or unlikely to comply with a removal order, as required by statute. Numerous courts have set aside continued post-order detention or revocations of Orders of Supervision where ICE failed to follow the mandatory procedures in 8 C.F.R. §§ 241.4 and 241.13. In *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017), and *Bonitto v. Bureau of Immigration & Customs Enforcement*, 547 F. Supp. 2d 747 (S.D. Tex. 2008), the courts granted habeas relief where ICE either relied on inapplicable regulations or bypassed the required revocation procedures, including providing notice, conducting the informal interview, and performing post-order custody reviews with reasoned written decisions mandated by those regulations. These courts treated such violations as both contrary to law and contrary to constitutional right under 5 U.S.C. § 706(2)(A)–(B).

124. 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 Petitioner 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. Moreover, according to a bi-national treaty, **ICE cannot remove Petitioner from the United States in the reasonably foreseeable future.** This agreement **explicitly excluded** Vietnamese nationals who arrived in the United States **before July 12, 1995** from being subject to deportation. The government must be held to follow its own agreements and therefore cannot foreseeably remove Petitioner.

125. Nor have Respondents provided Petitioner with notice of any intent to revoke supervision or an opportunity to respond as required by 8 C.F.R. § 241.4(l)(1).

126. Accordingly, any attempt to revoke Petitioner's order of supervision or place him in detention would be unlawful and must be set aside because it would be 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

127. Petitioner realleges and incorporates all paragraphs above as if fully set forth here.

128. 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).

129. Any attempt by Respondents to revoke Petitioner's order of supervision or to detain him at his next check-in would be arbitrary and capricious because it would violate statute, regulation, and the Constitution, as described above.

130. 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).

131. Any such decision by Respondents would run counter to the evidence before the agency, which shows that Petitioner has consistently complied with his supervision, has never violated a condition of his order, and presents no evidence of flight risk or danger to the community.

132. Moreover, any decision to revoke or detain would have "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).

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

134. Second, Respondents would fail 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. Moreover, according to a bi-national treaty, **ICE cannot legally remove Petitioner from the United States even if they had obtained a travel document for Petitioner.**

135. Third, Respondents would fail 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.

136. Fourth, Respondents would fail to consider Petitioner's substantial reliance interest, created by the agency's consistent practice over two decades of allowing him to remain under supervision and instructing that individuals under such orders will be given an opportunity to arrange for an orderly departure once travel documents are obtained.

137. A noncitizen released from immigration custody acquires a protected

liberty interest in remaining at liberty, grounded in the government's own determination that the individual is neither a flight risk nor a danger to the community. This interest is heightened by the individual's reliance on that status to build family, community, and employment ties. Before this liberty can be withdrawn, both the regulatory and constitutional framework require meaningful process—including advance notice and an opportunity to be heard before a neutral decisionmaker. As the Supreme Court has emphasized, "The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

138. Numerous recent cases from district courts across the country have reached the same conclusion: noncitizens released on recognizance cannot be arbitrarily re-detained without individualized findings, notice, and a meaningful opportunity to be heard. These courts have granted habeas relief and injunctive orders where the government failed to honor the reliance interests and procedural safeguards inherent in its own release decisions. Arbitrary re-detention, absent evidence of noncompliance, flight risk, or danger, is unlawful and subject to judicial

remedy.[5]

139. For these and other reasons, any attempt by Respondents to revoke Petitioner's order of supervision or detain him during his next check-in would be arbitrary and capricious and should be declared unlawful and

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[5] *Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 WL 2452352, at *5–9 (S.D.N.Y. Aug. 26, 2025); *Cifuentes Rivera v. Arnott*, No. 4:25-cv-00570-RK, Dkt. No. 19 (W.D. Mo. Oct. 7, 2025) (holding that under an Order of Supervision pursuant to immigration regulations, 8 C.F.R. §§ 241.4 and 241.13, the petitioner was entitled to an informal interview upon detention based on a revocation of her supervised release order, which she can "contest and challenge, the reasons for her detention"); *Diaz v. Wofford*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *3-5 (D. Ariz. Sept. 5, 2025) (granting preliminary injunction requiring petitioner's immediate release and permanently enjoining the government from re-detaining petitioner without due process compliance based on application of section 1226 where the DHS's failure to follow the regulation procedures in 8 C.F.R. 241.8 and failing to provide notice as required under 8 C.F.R. 241.4 where petitioner was released on own recognizance due to lack of space, was a derivative applicant on his wife's asylum application, and there was no evidence petitioner failed to comply with his terms of supervision); *M.S.L. v. Bostock*, No. 25-cv-01204, 2025 WL 2430267 (D. Or. Aug 21, 2025) (granting temporary restraining order requiring petitioner's immediate release where the DHS's failure to provide notice as required under 8 C.F.R. § 241.4 and there was no evidence petitioner failed to comply with her terms of supervision); *see also Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass 2017) (holding ICE violated the Due Process Clause of the Fifth Amendment by detaining petitioner without advance notice, a hearing, or an interview, despite his full compliance with the conditions of his release. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D.N.Y. 2023) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so). *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]."

enjoined.

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

140. Petitioner realleges and incorporates all paragraphs above as if fully set forth here.

141. 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).

142. "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).

143. 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.

144. 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). Any attempt by Respondents to revoke Petitioner's order of supervision or detain him under such regulations would therefore be in excess of statutory authority and must be held unlawful and set aside, particularly where removal is not reasonably foreseeable under the 2008 U.S.–Vietnam Repatriation Agreement.

COUNT SIX
Ultra Vires Action

145. Petitioner realleges and incorporates all paragraphs above as if fully set forth here.

146. There is no statute, constitutional provision, or other source of law that authorizes Respondents to revoke Petitioner's order of supervision or place him in detention absent the findings required by 8 U.S.C. § 1231(a)(6) and its implementing regulations.

147. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

COUNT SEVEN
Violation of the *Accardi* Doctrine

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

149. 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").

150. Respondents' de facto revocation and modification of terms of Petitioner's OSUP and anticipated actions to revoke Petitioner's order of supervision and redetain him would violate agency regulations governing who and upon what findings such actions may lawfully occur. "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). These decisions apply the Accardi doctrine in the post-order detention context, holding that DHS's failure to follow its own custody-review and OSUP-revocation regulations invalidates continued detention. *Bonitto v. Bureau of Immigration & Customs Enforcement,* 547 F. Supp. 2d 747 (S.D. Tex. 2008), found that DHS's failure to conduct the 180-day POCR required by § 241.4(k)(2) violated procedural due process and ordered compliance with the regulatory scheme. *Resil v. Hendricks,* No. 11-2051 (JLL), 2011 WL 2489930 (D.N.J. June 21, 2011) likewise treated the individualized POCR process as the minimum due process required for post-order detention under § 1231(a)(6). *Ahmad v. Whitaker*, CASE NO. C18-287-JLR-BAT (W.D. Wash. Dec. 4, 2018), and *Alam v. Nielsen,* 312 F. Supp. 3d 574 (S.D. Tex. 2018) applied the same principles to revocations of supervised release under §§ 241.4 and 241.13.

151. Respondents routinely fail to follow internal agency instructions contained in Petitioner's release notification, which require that individuals under supervision be given an opportunity to prepare for an orderly departure prior to any change in custody status. Revocations by unauthorized officials are both ultra vires and "important procedural safeguards" whose violation itself raises due-process concerns.

152. Under *Accardi*, any action by Respondents to revoke Petitioner's order of supervision or to disregard the instructions contained in his release notification would violate agency procedures, rules, or instructions and should be set aside.

XVII. CONCLUSION AND PRAYER FOR RELIEF

153. The imminent and unlawful detention of Petitioner violates Petitioner's due process rights. But for intervention by this Court, Petitioner has no means of stopping re-detention or effectuating release from ICE custody. Taken all the previous evidence and legal context, we note that the escalation of supervision into detention would cause immediate and severe harm. Petitioner is a primary provider for minor U.S. citizen children in his household, including a child who receives therapy services, and he supports his elderly U.S. citizen father. Detention would disrupt medical care, financial stability, and essential caregiving responsibilities. These harms cannot be remedied after the fact and strongly favor immediate judicial intervention.

WHEREFORE, Petitioner prays that this Court grant the following relief: Assume jurisdiction over this matter;

a) Order Respondents to file a response (Order to Show Cause) within 3 days of the filing of this petition;

b) Grant Petitioner a writ of habeas corpus;

c) Enjoin Respondents from removing or transferring Petitioner outside the territorial jurisdiction of this Court during the pendency of this action, to the extent necessary to preserve this Court's jurisdiction over his habeas and related claims challenging his detention, the revocation or escalation of his Order of Supervision, and associated custody conditions, without adjudicating or enjoining the underlying removal order itself;

d) Order that Petitioner be reinstated to his prior, long-standing Order of Supervision conditions and enjoin DHS from any escalation of conditions of supervision—such as electronic GPS monitoring, home-visit enforcement operations, or in-person reporting requirements more restrictive than his prior OSUP conditions—unless and until Respondents comply with all statutory, regulatory, and constitutional due process protections governing such changes;

e) **Enjoin** Respondents from re-detaining Petitioner or revoking his Order of Supervision absent strict compliance with all governing regulations, including a showing of specific, individualized changed circumstances making his removal significantly likely in the reasonably foreseeable future, supported by a written decision from a duly authorized official in strict compliance with 8 C.F.R. § 241.13

and due process;

f) Award attorney's fees and court costs to Petitioner; and

g) Grant such other and further relief as this Court deems proper or equitable under the circumstances.

Respectfully Submitted,

This 3rd day of February, 2026.

/s/ Karen Weinstock
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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 Petitioner and have reviewed various immigration documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 U.S.C. § 2242.

This 3rd day of February, 2026.

/s/ Karen Weinstock
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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1 and 7.1(D), that the filing(s) filed herewith have been prepared using Century Schoolbook, 13 point font.

/s/ Karen Weinstock
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