

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA

FILED
DISTRICT COURT
SOUTHERN DIV.

KY MINH LU (A [REDACTED]),

Petitioner,

v.

WARDEN OF FOLKSTON ICE PROCESSING
CENTER, in their official capacity; KRISTEN
SULLIVAN, in her official capacity as Acting
Filed Office Director of the Immigration and
Operations Atlanta Field Office; KRISTI NOEM,
in her official capacity as Secretary of the
Department of Homeland Security; and PAMELA
BONDI, in her official capacity as Attorney
General of the United States,

Respondents.

Petition for Writ of
Habeas Corpus

Oral Hearing Requested

J. DIST. OF GA.

Civil Action No.

5:26cv277

INTRODUCTION

1. Respondents have unlawfully held Petitioner KY MINH LU in immigration detention at the GEO Folkston ICE Processing Center, Folkston Georgia on the June 18th 2025, even though the federal government has no ability to remove him from the United States in the reasonable foreseeable future. To this date, KY MINH LU has been in re-detention for over 8 months.
2. KY MINH LU is a non-citizen from Vietnam who has lived in the U.S. For approximately 36 years, and who currently resides at [REDACTED]. KY MINH LU has three children with his wife (all of them American citizens) and was working as a nail technician before his re-detention started.
3. In or around June 20th, 2006, KY MINH LU was ordered removed to Vietnam by an immigration judge in Georgia due to a prior state conviction.
4. After being ordered removed, KY MINH LU remained in immigration detention under the

custody of immigration and naturalization services ("INS") and eventually released on an Order of Supervision ("OSUP").

5. During KY MINH LU prior immigration detention, immigration officials have previously tried to request travel documents for his removal to Vietnam. KY MINH LU has previously been released from immigration custody because Vietnam would not accept him back for repatriation.
6. To the best of his knowledge, KY MINH LU has been on OSUP and has always complied with his check-ins and OSUP requirements.
7. ICE has not previously obtained KY MINH LU's travel documents from Vietnam to effectuate his removal. To the best of his knowledge, ICE has not recently obtained any travel documents on his behalf.
8. At this juncture, ICE has not asserted that KY MINH LU is a flight risk or danger to the community during his OSUP or during his first immigration detention.
9. At this juncture, ICE has not asserted that KY MINH LU has not complied with his OSUP.
10. At this juncture, ICE has not shown that Vietnam will accept KY MINH LU for repatriation in the reasonable foreseeable future.
11. Yet, 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.
12. Accordingly, KY MINH LU seeks a court order requiring his immediate release and enjoining Respondents from re-detaining him unless his removal becomes reasonably foreseeable.

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

JURISDICTION

14. This action arises under the Constitution of the United States and the immigration and Nationality Act (INA), U.S.C. § 1101 *et seq.*
15. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and article I, § 9, cl. 2 Of the United States Constitution (Suspension Clause).
16. This court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

17. Venue lies in the U.S. District of Georgia because the Petitioner is currently detained at the Georgia Folkston ICE Processing Center in Folkston Georgia. See 28 U.S.C. § 2241. In addition, venue is proper as Respondents are officers, employees or agencies of the United States; a substantial part of the events or omissions given rise to his claims occurred in this district; the petitioner resides in this district; and no real property is involved in this action. See 28 U.S.C. § 1391.

REQUIREMENTS OF 28 U.S.C. § 2243

18. The court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith", unless the petitioner is not entitled to relief 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed" *Id.* (emphasis added).
19. Courts have long recognized the significance of the habeas statute in protecting individuals

from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

20. Petitioner KY MINH LU is a resident of South Carolina who arrived in the U.S. as a refugee. He is presently being detained for immigration purposes at the direction of the DHS's ICE Georgia field office in Folkston Georgia.
21. The warden of Folkston ICE Processing Center, which is operated by GEO Group, INC., is KY MINH LU's immediate custodian. The warden is sued in their official capacity.
22. Respondent Kristen Sullivan is sued in her official capacity as the Acting Director of the Atlanta Field Office of ICE. In this capacity, she has responsibility for and authority over the detention and removal of non-citizens detained at Folkston and is authorized to release KY MINH LU. She is an immediate and legal custodian of KY MINH LU.
23. Respondent Kristi Noem is sued in her official capacity as Secretary of the Department of Homeland Security (DHS). DHS is responsible for the administration and enforcement of the immigration laws, and the Secretary has supervisory responsibility and authority over the detention of KY MINH LU and removal of non-citizen throughout the United States. ICE is a subdivision of DHS, and the Secretary is a legal custodian of KY MINH LU.
24. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. The Attorney General is the head of the Department of Justice, which encompasses the Board of Immigration Appeals (BIA) and the Ijs as sub-units of the Executive Office of Immigration Review (EOIR). The Attorney General supervises Ijs, including those who preside over the Atlanta Immigration Court, which hear cases from the Folkston ICE Processing Center, is responsible for the implementation and enforcement of the Immigration and Nationality Act,

and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Bondi is a legal custodian of the petitioner.

FACTS ALLEDGED

25. KY MINH LU is a 45-year-old who was born in Vietnam.
26. KY MINH LU has been a resident of the U.S. For the past 35 years. He currently lives in Conway, SC with his wife and three children.
27. In 1990, at the age of 10 years old, KY MINH LU entered the U.S. as a refugee.
28. In or around 2004, KY MINH LU pleaded guilty to conviction, which resulted in removal proceedings against him.
29. On or around 2006, INS served a notice to appear to commence removal proceedings against KY MINH LU.
30. On or around June 20th, 2006, KY MINH LU was ordered deported to Vietnam by an immigration court judge due to his prior criminal conviction.
31. In or around late 2006, the U.S. government tried to request travel documents for his removal to Vietnam. Because Vietnam would not accept him for removal (even after filing for travel document forms), he was initially released in or around 2006 and placed on OSUP.
32. Although the OSUP includes a number of restrictions, it was presumably entered only after ICE made the determination that KY MINH LU was neither a danger to the community nor a flight risk. See 8 CFR § 241.4(e). Both of this case are true, and ICE has never indicated to the contrary.
33. In 2008, the U.S. and Vietnam signed a Memorandum of Understanding ("MOU") allowing for

the deportation of certain Vietnamese nationals with final order of removal who entered the U.S. after July 1995. However, KY MINH LU was not eligible for repatriation under this agreement because he arrived in the U.S. before July 1995.

34. In 2020, the U.S. and Vietnam signed a subsequent MOU to accept certain individuals with removal orders who arrived in the U.S. prior to July 1995. However, individuals must meet the specific requirements listed in the MOU before Vietnam can issue travel documents for a pre-1995 non-citizen with a final order of removal.
35. Since the signing of the 2020 MOU, between the U.S. and Vietnam, the U.S. has not attempted to request travel documents for KY MINH LU to Vietnam.
36. KY MINH LU has recently been checking in with ICE per his OSUP. Prior to his current re-detention, he last checked in with ICE on June 18th, 2024 with a report back date of June 18th 2025.
37. On June 18th 2025, KY MINH LU checked in with ICE in Atlanta GA. ICE officers arrested the Petitioner and placed him in immigration custody and detention.
38. KY MINH LU has never been told why he was re-detained, has never received a warrant to be taken into custody, has never been offered any hearing and has never been given a notice of revocation of his prior status.
39. At the time of this filing, it is believed that KY MINH LU remains detained within the custody of the GEO Folkston ICE Processing center.
40. At the time ICE revoked KY MINH LU's OSUP, there would be no reason to believe that KY MINH LU would be promptly removed from the United States because no recent travel documents were filed, approved or issued by Vietnam.
41. Throughout the years since his removal order, Ice has not shown that KY MINH LU is eligible

for repatriation to Vietnam.

42. When KY MINH LU reported for his ICE check-in and was re-detained, presumably his OSUP was effectively revoked. Contrary to known ICE regulations, 8 CFR § 241.4, and specifically sub-sections (g), (h), (I), (I), however, KY MINH LU was neither given any notice of any revocations of his OSUP nor did anyone explained why it was revoked or why he was being detained. No one explained anything about any efforts to deport KY MINH LU, or why he was taken into custody.

LEGAL FRAMEWORK

43. Pursuant to 28 U.S.C § 2243, the Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to respondent, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within *three days* unless for good cause additional time, not *exceeding twenty days*, is allowed." 28 U.S.C § 2243 (emphasis added).

Due Process Governs Decisions to Revoke an Order of Supervision

44. The Due Process Clause applies to all persons within the U.S. Including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation modified).
45. Under substantive due process doctrine, a restraint on liberty such as revocation of a non-citizen order of supervision is only permissible if it serves a "legitimate non-punitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized to legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).
46. "It is well established that the Fifth amendment entitles (non-citizens) to due process of law in

deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment-from government custody, detention, or other for of physical restraint-lies at the heart of the liberty that (the Due Process) Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

47. This fundamental due process protection applies to all non-citizen, including both removable and inadmissible non-citizens. *See Id.* At 721 (Kennedy, J., dissenting) ("Both removable and inadmissible (non-citizens) are entitled to be free from detention that is arbitrary or capricious."). It also protects non-citizens who have been ordered removed from the United States and who face continuing detention. *Id.* At 690.
48. Furthermore, 8 U.S.C § 1231(a)(1)-(2) authorizes detention of non-citizens during "their removal period", which is defined as the 90-day period beginning on "the latest" of either "the date the order of removal becomes administratively final", if the removal order is judicially reviewed and if a court orders a stay of removal of the non-citizen, the date of the court final order"; or if the non-citizen is detained or confined (except under an immigration process), the date the non-citizen is released from physical detention or confinement."
49. Although 8 U.S.C § 1231(a)(6) permits detention "beyond the removal period" of non-citizen who have been ordered removed and are deemed to be a flight risk or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that "the statute, read in light of the Constitution demands, limits a non-citizen post-removal-period detention to a period reasonably necessary to bring about that non-citizen removal from the United States." 533 U.S. At 689. "Once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.
50. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that non-citizen due process right to liberty. 533 U.S. At 701. In this circumstance, if the non-citizen "provides good reason to believe there is no significant

likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebuke that showing". *Id.*

51. The Court's ruling in *Zadvydas* is rooted in due process' requirement that there be "adequate procedural protections" to ensure that the Government's asserted justification for a non-citizen's physical confinement "outweighs the "individual's constitutionally protected interest in avoiding physical restraint." *Id.* At 690 (quoting *Kansas v. Hendicks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risk of danger to the community. *Zadvydas* 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a non-citizen based on any other justification. Neither potential justification for KY MINH LU's continued detention applies.
52. The first justification of preventing flight, however, is "by definition...weak or non-existent where removal seems a remote possibility." *Zadvydas* 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is no longer practically attainable, detention no longer bears a reasonable relation to the purpose for which the individual was committed" *Id.* (quoting *Jackson v. Indiana*, U.S. 715, 738 (1972)). As for the second justification protecting the community, "preventive detention based on dangerousness" is permitted "only when limited to specially dangerous individuals and subject to strong procedural protections." *Zadvydas* 533 U.S. At 690-91.
53. Thus, under *Zadvydas* "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorize by statute." *Id.* at 699-700. If removal is reasonably foreseeable, "the habeas court should consider the risk of non-citizens committing further crime as a factor potentially justifying the confinement within that reasonable removal period. *Id.* At 700.
54. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds 6 months and deportation is not reasonably foreseeable. See *Zadvydas* 533 U.S. At 701 (stating that "Congress previously doubted the constitutionality of detention for more than 6 months" and, therefore, requiring the opportunity for release when deportation is not reasonably

foreseeable and detention exceeds 6 months); see also *Clark v. Martinez*, 543 U.S. 371, 386 (2005).

Statute and Regulation Govern Procedures for Revoking an Order of Supervision

55. 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) ("Supervision after 90-day period").
56. 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).
57. But even where initial detention past the 90-day removal period is authorized, if "removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by § 1231(a)(6). In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances..." *Zadvydas v. Davis*, 533 U.S. 678, 699-700.
58. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision might 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 circumstances, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(1)(2); see also *Id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release"). Because regulations 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).

59. 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(1)(1).

The APA Sets Minimum Standards for Final Agency Actions

60. The administrative procedure that authorizes judicial review of final agency actions. 5 U.S.C. § 704.
61. 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).
62. ICE's revocation of an order of supervision (effectively done in KY MINH LU's case) is a final agency action subject to this court's review.
63. The revocation here marked the consummation of ICE's decision-making process regarding petitioner's custody.
64. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain petitioner in violation of his rights under the Constitution's statute, and regulation.

The *Accardi* doctrine Requires Agencies to Follow Internal Rules

65. Under the *Accardi* doctrine, a foundational 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 righteous than otherwise would be required.").

66. *Accardi* is not "limited to rules attaining the status of normal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency actions 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 of investigating tax fraud).
67. Where a release notification issued alongside an order of supervision instructs that non-citizen. with final order of removal will be given an opportunity to prepare for an "orderly departure," ICE failed to follow that instruction and thus violated *Accardi*. 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 of sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3D 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

CLAIMS FOR RELIEF

COUNT ONE

VIOLATIONS OF 8 U.S.C. § 1231(a)

68. The foregoing allegations are allegations are re-alleged and incorporated here.
69. KY MINH LU is currently in the custody of the Respondent under or color of the authority of the United States, based on his detainment at the GEO FOLKSTON ICE PROCESSING CENTER IN FOLKSTON GEORGIA.
70. KY MINH LU's detention violates 8 U.S.C§1231(a)
71. KY MINH LU is being detained for immigration purposes when ICE knows that it cannot effect his prompt removal from the united states, that KY MINH LU is neither a flight risk nor a

danger, and that he has not violated condition of his order of Supervision. Thus, ICE has no permissible basis for deprivation KY MINH LU of his liberty, in violations of U.S.C. § 1231(a) as well as its respective implementing regulations. A judicial order requiring KY MINH LU immediate release from custody would remedy Respondent's unlawful conduct.

COUNT TWO

VIOLATIONS OF THE FIFTH AMENDMENT'S RIGHT TO DUE PROCESS

72. Petitioner continued detention by Immigration and Custom Enforcement (ICE) is unlawful and contravenes 8 U.S.C § 1231(a) (b) as interpreted by the U.S supreme Court in Zadvydas . Under the Due Process Clause of the Fifth Amendment, alien is entitled to a timely and meaningful opportunity to demonstrate the s/he should not be detained .Petitioner in this case been denied that opportunity. ICE does not make decision concerning aliens' custody status in neutral and impartial manner .The failure of Respondent to provide a neutral decision maker to review the continued custody of Petitioner violates Petitioner's rights to procedural due process.

COUNT THREE

VIOLATIONS OF FIFTH AMENDMENT'S RIGHT TO SUBSTANTIVE DUE PROCESS

73. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

74. The Due process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law" U.S Const. Amend. V.

75. Petitioner has either been detained or his liberty severely restricted while on an order of supervision by respondent since his release from state custody. Over six years of actual and constructive detention has taken place after his removal period began. *See Jones V. Cunningham*, 371 U.S. 236 (1963).

76. Immigration and Custom Enforcement (ICE) detention is unlawful and contravenes 8 U.S.C § 1231(a) (b) as interpreted by the U.S supreme Court in *Zadvydas*. Six month presumptively reasonable period for continued removal effort has expired . Petitioner still has not been removed, and for the reasons outline above in the previous paragraphs . Petitioner removal is not reasonably foreseeable. The Supreme Court held in *Zadvydas* and *Martinez* that ICE's continue detention of someone after six months without deportation is not reasonable foreseeable unreasonably and in violations of U.S.C. § 1231 (a)533 U.S. At 701.

COUNT FOUR

VIOLATIONS OF FIFTH AMENDMENT OF THE U.S CONSTITUTION

PRECEDURAL DUE PROCESS

77. Plaintiffs re-allege all paragraphs above as if fully set forth here.

78. *Mathews v. Eldridge* , 424 U.S. 319, 333, instructs court to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue;(2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value , if any , of additional procedural safeguards; and, (3) the government's interest , including fiscal and administrative burden that additional or substitute procedural requirement entail.

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

80. The second factor ,the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, factor Petitioner. To safeguards 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 followed when doing so, including giving 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 person who is either dangerous nor flight risk.

81. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people, such as Mr. KY MINH LU, 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 respondent comply with law, requiring respondent to instead provide notice and meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

82. For these reason, revoking Petition's order of supervision without providing notice and meaningful opportunity to respond violated procedural due process under the fifth Amendment to the U.S. Constitution.

COUNT FIVE

VIOLATION OF ADMINITRATIVE PROCEDURE ACT, 5 .U.S.C§ 706(2)

(A),(B) CONTRARY TO LAW AND CONSTITUTIONAL RIGHT

83. Plaintiffs re-allege all paragraphs above as if fully set forth here.

84. Under the APA, a court shall “hold unlawful and set aside agency action.....found to be..... not in accordance with law “contrary to constitutional

right, power , privilege, or immunity.” 5 U.S.C.§(2)(A),(B).

85. 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 agency itself is charged with administering.” *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original)
86. Respondent's revocation of Petitioner's order of supervision was contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.
87. The revocation was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances, as cited and discussed in the Statutory Framework section above.
88. Petitioner's order of supervision was not revoked by the ICE Executive Associate Director. The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. Nor had the officer been delegated authority to revoke an order of supervision.
89. Before revoking the order, Respondent's did not make any findings that Petitioner is dangerous or unlikely to comply with removal order ,as required by statute.
90. Even assuming that regulations purporting to offer additional jurisdictions for revocation of an order of supervision are not ultra vires , respondents did not comply with them. Respondents could not make findings that Petitioner's conduct indicated release would no longer be appropriate or that Petitioner violated any condition of release , because he had not. Nor could Respondent 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.

91. Respondent did not give Petitioner any notice of the reason for revocation or any opportunity to be heard.

92. The revocation should be held unlawfully and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

COUNT SIX

VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706 (2)(A)

ARBITRARY AND CAPRICIOUS

93. Petitioner re-alleges all paragraphs above as forth here.

94. Under the APA, a court shall “hold unlawfully and set aside agency action... found to be arbitrary [or] capricious” 5 U.S.C. § 706(2)(A).

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

96. 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).

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

98. The revocation also “failed to consider important aspect of the problem” before Respondent, making it arbitrary and capricious for multiple other reasons. *Dep's of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1910(2020).

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

100. Second, Respondent failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner, who is neither a flight risk nor a danger to the community and for whom the agency does not have travel document needed to effectuate removal, including financial and administrative costs incurred by the agency due to unnecessary detention.

101. Third, Respondent failed to consider reasonable alternative to revoking Petitioner's order of supervision that were before the agency, like simply continuing release under the order supervision and scheduling a future time and date to appear for removal.

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

103. For these and other reason, Respondent's revocation of Petitioner's order of supervision was arbitrary and capricious and should be held unlawful and set aside.

COUNT SEVEN

VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706 (2)(C)
IN EXCESS OF STATUTORY AUTHORITY

104. Petitioner re-alleges all paragraphs above as if fully set forth here.

105. 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). 76 .“ An agency literally has no power to act-including its regulation-unless and until congress authorized it to do so by statute.” *FEC v. Crus* U.S. 289, 301(2022)(internal quotation marks and citation omitted).

106. 8. U.S.C. § 1231 (a)(6) only authorized 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 form of supervised release that are appropriate in the circumstances...”*Zadvydas v. Davis*, 533 U.S. 678, 699-700.

107. Regulations that support to give Respondent authority to revoke an order of supervision on ground 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) 78. Respondent's apparent revocation of Petitioner's order of supervision was based on ultra vires regulations. So it was in excess of statutory authority and should be held unlawful and set aside.

COUNT EIGHT

ULTRA VIRES ACTION

108. Plaintiffs re-alleges all paragraphs above as if fully set forth here.
109. There is no statute, constitutional provision, or other source of law that authorizes Respondent to detain Petitioner.
110. Petitioner has non-statutory right of action to declare unlawful, set aside, and enjoin Respondent's ultra vires actions.

COUNT NINE
VIOLATIONS OF THE ACCARDI DOCTRINE

111. Petitioner re-alleges all paragraphs above as if fully set forth here.
112. 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 allegations That agency failed to follow its rules in a hearing he should receive a new hearing").
113. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked petitioner's order. "As a result, the 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.
114. Respondents also violated agency instructions in Petitioner's release notification to give an opportunity to prepare for an orderly departure when they revoked order without advance notice.
115. Under *Accardi*, Respondent's revocation of the order of supervision and decision to ignore the instructions in the release notification should be set aside for violating agency procedures, rules, or instructions.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully request this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;
- (3) Declare that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1231(a), the INA and implementing regulations, the APA, and the *Accardi* doctrine;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- (5) Grant any further relief this Court deems just and proper.

Dated this 19th day of February, 2026.



KY MINH LU

Petitioner