**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
IN SEATTLE**

MASSERAY SIBY, *Petitioner*, v. DREW BOSTOCK, et. al., *Respondents*.	Case No. 2:26-cv-993 **AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Plaintiff hereby amends the original petition (ECF 1) pursuant to Rule 15(a)(1)(B) to make necessary corrections and additions.
2. Petitioner, Masseray Siby ("Petitioner" or "Mr. Siby") is a 56-year-old man who was born in Mauritania. He entered the United States in 2004 or 2005 without inspection in New York.
3. For nearly two decades, Respondents did not remove Petitioner from the United States, despite having a final order of removal. At various times, ICE has attempted to deport Mr. Siby to Mauritania, but those efforts have failed, because neither Mr. Siby nor Respondents have been able to obtain a Mauritanian passport or other travel documents. Petitioner entered the United States without a passport and lacks the means to prove his nationality or place of birth.

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4. At an ICE check-in on or about June 16, 2025, Petitioner was detained without notice, thereby revoking his conditions of release pursuant to his Order of Supervision ("OSUP"). At some point he was transferred to Northwest Immigrant Processing Center ("NWIPC") in Tacoma, Washington.
5. Petitioner was arrested on or about June 16, 2025, and has been incarcerated since that time. Under *Zadvydas v. Davis*, Petitioner has "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," since he has now been detained over nine months, a period presumptively unreasonable and unconstitutional. Moreover, Respondents have been unable to deport him after several attempts due to the apparent impossibility of obtaining the requisite documents to do so. The government's revocation of Petitioner's OSUP and subsequent detention were also unconstitutional and grounds for immediate release. Accordingly, to vindicate Petitioner's statutory and constitutional rights and to put an end to his continued arbitrary detention, this Court should grant the instant petition for a writ of habeas corpus.
6. At the time of filing the initial petition at 2:09pm PST on March 24, 2026 which commenced this action, online information shows that Petitioner remained in ICE custody at the NWIPC. But, less than two hours prior to filing, Petitioner's counsel received an automated message from the ERO e-file platform, cancelling a scheduled visit for that evening on the basis that Petitioner was "released" from the NWIPC. Accordingly, upon information and belief, Petitioner's counsel concluded that ICE was in the process of transferring him to another facility and filed a habeas petition on an emergency basis to prevent Respondents from moving Petitioner out of state.
7. Absent an order from this court, Petitioner may remain detained for many more months, if not years, but he is also in danger of being deported to a third country without notice in violation of due process and other rights.

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8. Petitioner asks this court to find that his prolonged incarceration is unreasonable and unlawful and to order his immediate release.

JURISDICTION

9. Upon information and belief, Petitioner was detained in the custody of Respondents at Northwest Immigrant Processing Center ("NWIPC") in Tacoma, Washington as of March 24, 2026. At some time that day, Respondents placed him on a flight to a different facility outside of Washington. Though Petitioner may have been on a flight to a different state at the time of initial filing, there is no evidence or allegation that Petitioner had entered a jurisdiction other than the Western District of Washington ("WDWA") by the time of filing. Even assuming Petitioner was midflight at the time of filing, he remained within this court's jurisdiction. *Ex parte Endo*, 323 U.S. 283, 306–07 (1944).

10. Jurisdiction is proper pursuant to Article 1 § 9, clause 2 of the United States Constitution (the Suspension Clause); the Due Process Clause of the Fifth Amendment to the Constitution; 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); and Article III of the Constitution. 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. The government has waived its sovereign immunity and permitted judicial review of agency action under 5 U.S.C. § 702. Moreover, sovereign immunity does not bar claims against federal officials seeking solely to prevent future violations of federal law.

11. The federal habeas statute empowers this Court to decide the legality of Petitioner's detention and directs courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243; see also *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) ("[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that

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context that its protections have been strongest."). The common law gave courts power to release a petitioner to bail even absent a statute contemplating such release. *Wright v. Henkel*, 190 U.S. 40, 63 (1903) ("[T]he Queen's Bench had, 'independently of statute, by the common law, jurisdiction to admit to bail.'"") (quoting *Queen v. Spilsbury*, 2 Q.B. 615 (1898)).

VENUE

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Western District of Washington the judicial district in which Petitioner currently is detained. Even if he was no longer detained at the NWIPC in Tacoma, Washington at the time of filing, he remained subject to this district, thus venue is proper.

13. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause 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.*

15. 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

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a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

16. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

17. Petitioner Masseray Siby[1], a citizen of Mauritania, was ordered removed following proceedings in October 2008. He has been detained for over nine (9) months now and at the time of initial filing was believed to be in ICE custody in Washington State. He is in the custody, and under the direct control of Respondents and their agents.

18. Respondent Drew Bostock is the Director of the Seattle Field Office of ICE's Enforcement and Removal Operations division. As such, Drew Bostock is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

19. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

20. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

21. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for

[1] While previously detained at NWIPC, his name was incorrectly transposed as Siby Masseray.

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Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

22. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

23. Respondent Bruce Scott is employed by GEO Group as Warden of the NWIPC where Petitioner has been detained. While an automated message sent at 11:20am PST states Petitioner was released from NWIPC, it is unclear whether he is technically still in Respondent Bruce Scott's physical custody. He has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens. He is sued in his official capacity.

STATEMENT OF FACTS

24. Petitioner Masseray Siby is a 56-year-old citizen of Mauritania. He has been in the United States for about 22 years, after entering the United States via the New York border. He did not have any documents regarding his nationality or birth at the time of entry and has since been unable to obtain such documents. Mr. Siby is completely illiterate and has limited English speaking and comprehension skills. His primary language is Solnineke.

25. Mr. Siby applied for asylum before USCIS within a year of his entry but nonetheless USCIS referred his case to Immigration Court on April 8, 2005, finding he had not sufficiently established that his filing occurred within one year of entry and he had not established any exception to the one-year filing deadline. An immigration judge denied his requested relief of asylum and withholding of removal on September 26, 2006. He later appealed to the Board of Immigration Appeals ("BIA") and filed other requests at the BIA through counsel. During those proceedings, he was represented by Raymond Soloman, an attorney barred in New York who has subsequently been repeatedly

disciplined, most recently with an 18-month suspension. Attorney Soloman did not use an interpreter with Mr. Siby since they both speak Solninke. This means that no third party verified pleadings or reviewed important legal documents with Mr. Siby as part of Mr. Soloman's legal representation, documents that Mr. Siby was unable to read or understand on his own. The BIA appeal was denied, and a subsequent motion to reopen was unsuccessful, apparently due to untimely filing. Mr. Siby had difficulty evaluating his performance during the course of representation due to Mr. Siby's complete illiteracy and lack of English skills but he was nonetheless dismayed at Attorney Soloman's representation which included critical missed deadlines and other shortcomings. Mr. Siby does not possess complete records of those proceedings. His current counsel has submitted a FOIA request for the records but has yet to receive the responsive documents.

26. At some point shortly after one of the BIA appeals was denied in 2008, Petitioner received a letter from ICE directing him to prepare for deportation. Soon after that, ICE admitted to Mr. Siby that they had been unable to obtain travel documents given that he entered the United States with no passport, birth certificates, or other documents to confirm place of birth or nationality and the embassy had no record of his birth either. Unable to deport him, at that time ICE released him after he signed some documents, and subsequently required Petitioner to appear for six-month check-ins, (later that changed to annual check-ins), among other conditions of supervision. Petitioner consistently complied with the check-ins and other conditions.

27. Following the rejected late filing at the BIA, Mr. Siby's order of removal became final. Petitioner maintained work permission under an order of supervision and reported to ICE check-ins faithfully. Mr. Siby again tried to obtain a passport from the Mauritanian embassy, something he was required to do pursuant to an Order of Supervision ("OSUP"). See **Exhibit A,** filed herewith. He was unable, despite multiple attempts, to

obtain any documentation from the embassy, again because the Embassy could not verify his nationality.

28. In 2020, Mr. Siby started a farming business collective together with 55 others in New York and continued to work there, before he was detained at a routine check-in with ICE in New York, where he regularly resided. He worked part-time at the farm and part-time at a car wash prior to his detention. Petitioner has no criminal history and has contributed positively to his community through the farming collective and community building. He lived peacefully in New York until his sudden and unlawful ICE arrest in the summer of 2025. Prior to his arrest, Mr. Siby received a call from an ICE officer, who told him something to the effect of, "Trump doesn't want people like you here anymore". He was deprived of notice or opportunity to respond prior to ICE terminating his OSUP and taking him into their custody.

29. Upon information and belief, Respondents do not have the travel documents required to effectuate Petitioner's removal from the United States. Petitioner has visited the Mauritanian Embassy multiple times to get a passport or other travel documents but was never able to provide any travel documents or any other proof of Mauritanian citizenship.

30. Since being transferred from the NWIPC to Texas after his initial petition was filed on March 24th, ICE renewed their threat to Mr. Siby to deport him back to Mauritania. When he inquired about his lack of Mauritanian documents, he was told that "doesn't matter," thereby raising a concern of third country deportation.

31. Under the first Trump administration, Mauritania has subjected returned nationals to arrests and further detention upon arrival. See https://www.reuters.com/article/world/mauritanians-who-sought-refuge-in-us-face-deportation-then-jail-idUSKBN1OG1D9/. Travel documents issued by the Embassy were not recognized as proof of citizenship thereby denying legal rights to those

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deported from the US. *Id.* Petitioner is further vulnerable due to his black skin based on documented discrimination and mistreatment of black Mauritanians; according to Human Rights Watch, Mauritania expelled up to 50,000 black citizens after clashes with Senegal over border land in 1989, forcing them to surrender ID cards and nationality documents[2].

32. Recent Government practice reflects an increasing reliance on third-country removals in cases where the designated country of removal will not accept the noncitizen. In such cases, the Department of Homeland Security has sought to effectuate removal by transferring individuals to alternative countries, sometimes without confirmed acceptance or advance notice of the receiving country. See *Baltodano v. Bondi*, No. C25-1958-RSL, 2025 WL 3484769, (W.D. Wash. Dec. 4, 2025), at *7–10 (describing third-country removal practices and associated risks). This practice has included attempts to remove individuals who lack valid travel documents or verified nationality, raising concerns about whether the receiving country will admit the individual upon arrival.

LEGAL FRAMEWORK

Due Process Prohibits Prolonged Immigration Detention

33. 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 Respondents, 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).

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[2] Human Rights Watch/Africa. *Mauritania's Campaign of Terror: State-Sponsored Repression of Black Africans.* Human Rights Watch, April 8, 1994. ISBN: 1-56432-133-9. Library of Congress Catalog Card Number: 94-75822. Printed in the United States of America.

34. "It is well established that the Fifth Amendment entitles [noncitizens] 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 forms 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).

35. This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious."). It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.* at 690.

36. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during "the removal period," which is defined as the 90-day period beginning on "the latest" of either "[t]he date the order of removal becomes administratively final"; "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order"; or "[i]f the [noncitizen]is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement."

37. Although 8 U.S.C. § 1231(a)(6) permits detention "beyond the removal period" of noncitizens who have been ordered removed and are deemed to be a risk of flight 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's demands, limits [a noncitizen's] post-removal-period detention to a period reasonably

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necessary to bring about that [noncitizen's] removal from the United States." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

38. 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 noncitizen's due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

39. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 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 risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

40. The first justification of preventing flight, however, is "by definition . . . weak or nonexistent 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*, 406 U.S. 715, 738 (1972)). As for the second justification of 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.

41. Thus, under *Zadvydas*, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699–700. If removal is reasonably foreseeable, "the habeas court should consider the risk of the [noncitizen's] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period." *Id.* at 700.

42. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six 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 six months" and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005).

43. When seeking to proceed pursuant to a removal order, such removal must be to a country that will accept the noncitizen. See 8 U.S.C. § 1231(b).

Due Process Governs Decisions to Revoke an Order of Supervision

44. "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690 (2001).

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45. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).

46. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a non-citizen's order of supervision. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified).

Statute and Regulation Govern Procedures for Revoking an Order of Supervision

47. 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").

48. 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).

49. 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

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supervised release that are appropriate in the circumstances . . . ." *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

50. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release"). Because "[r]egulations cannot circumvent the plain text of the statute[,]" courts question whether these regulations are ultra vires of statutory authority. *See, e.g.*, *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

51. It is clear, however, that regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intends 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 at 161 (finding a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision).

52. 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). This Court has found procedural due process violations based on similar facts. *See, e.g.*, *Vo v. Scott,* 26-cv-135-JNW (W.D. Wash. Feb. 17, 2026); *Aslan v. Wamsley*, et al., 25-cv-02698-JNW, 2026 WL 238675, at *3 (W.D. Wash. Jan. 29, 2026). The remedy for Respondents' regulatory failure is Petitioner's release, returning him to the status quo before his release was improperly revoked. *YANG, v. SCOTT et al.*, No. 2:26-CV-00469-JNW, 2026 WL 632661, at *5 (W.D. Wash. Mar. 6, 2026) (citing multiple courts applying this standard.)

The APA Sets Minimum Standards for Final Agency Action

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

54. 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).

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

56. The revocation here marked the consummation of ICE's decision-making process regarding Mr. Siby's custody.

57. The revocation here marked the consummation of ICE's decision-making process regarding Mr. Siby's custody. (And if the OSUP was not even officially revoked, that itself shows that the person was detained in violation of due process, as noted in *Romero v. Ladwig*, 3:25-cv-1106, ECF 28 (MDLA 2026), at 12.)

58. 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 Mr. Siby in violation of his rights under the Constitution, statute, and regulations.

The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

59. 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.").

60. *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*,

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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).

61. 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).

Third Country Removals

62. When an Immigration Judge orders a noncitizen removed, the Judge designates a country for removal and may list an alternate country; the designated country (or countries) are typically the noncitizen's country (or countries) of citizenship and/or nationality. 8 U.S.C. § 1231(b)(2)(D). If ICE is unable to remove a noncitizen to any of the countries on their order of removal, the INA permits the agency to remove that noncitizen to "any country whose government will accept the [noncitizen] into the country." 8 U.S.C. § 1231(b)(2)(E)(vii). Such removals are called "third country removals." *See D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass.), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1323697 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1453640 (D. Mass. May 21,

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2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, 786 F. Supp. 3d 223 (D. Mass. 2025).

63. The INA limits the government's authority to effectuate third country removals under 8 U.S.C. § 1231(b)(2). Through a form of protection called "withholding of removal," the INA prohibits the government from removing a noncitizen to any country, including a "third country," in which the noncitizen's "life or freedom would be threatened in that country because of the [noncitizen]'s race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). In addition to this statutory protection, the United States' obligations under the Convention Against Torture ("CAT"), codified by the Foreign Affairs Reform and Restructuring Act of 1988 (hereinafter "FARRA"), prohibit the government from removing a noncitizen to any country where the noncitizen would be more likely than not to be tortured. Pub. L. No. 105-277, div. G, Title XXII, §2242, 112 Stat. 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231).

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Fifth Amendment Right to Due Process

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

65. 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.

66. Petitioner has been detained by Respondents for over nine months. This prolonged detention has taken place *after* his removal period began.

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67. Petitioner's removal order became administratively final on October 2, 2008. The removal period began on that day and thus elapsed on December 31, 2008.

68. Petitioners' prolonged detention is not likely to end in the reasonably foreseeable future. Petitioner has had a removal order since 2008 and has attempted to get travel documents from the Mauritanian embassy unsuccessfully. Respondents have also not been able to effectuate removal. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

69. Additionally, the Immigration and Nationality Act at 8 U.S.C. § 1231(b) authorizes removal only to a country that will accept the noncitizen. The Ninth Circuit has consistently applied *Zadvydas* to require meaningful evidence that removal is actually practicable and not merely speculative. See, e.g. *Pelich v. I.N.S.*, 329 F.3d 1057 (9th Cir. 2003). While *Pelich* permits continued detention where a noncitizen obstructs removal, it sharply distinguishes cases where the foreign government and not the detainee, is the barrier to removal.

70. Where a receiving country declines to issue documentation despite repeated requests, removal is not merely delayed, it is functionally impossible. Courts routinely recognize that such circumstances satisfy *Zadvydas*. See *Zadvydas*, 533 U.S. at 690 (noting that removal becomes a "remote possibility" where no country will accept the individual).

71. For these reasons, Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of 8 U.S.C. § 1231(a)

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

73. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."). Because Petitioner's removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

COUNT THREE

Violation of the Fifth Amendment, 8 U.S.C. § 1231, Convention Against Torture, Implementing Regulations, and the Administrative Procedure Act

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

75. The Fifth Amendment, the INA, the CAT, and implementing regulations mandate meaningful notice and opportunity to respond to any attempt to remove Petitioner to a third country in reopened removal proceedings. They also require an opportunity for Petitioner to make a fear-based claim against removal to a third country in reopened removal proceedings. Respondents' policy for third-country removals violates all of these laws because it directs ICE agents to remove individuals to third countries without any notice or process *at all* where diplomatic assurances are received and, where no diplomatic assurances are received, to provide flagrantly insufficient notice (6-24 hours) and opportunity to respond, in violation of the statute, regulations, and Fifth Amendment.

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76. Prior to any third-country removal, Petitioner must be provided with constitutionally and statutorily compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country in reopened removal proceedings. *See Nguyen,* 796 F.Supp.3d 703, 739 (granting preliminary injunction against "removing Petitioner to a country other than [home country] without notice and a meaningful opportunity to be heard in reopened removal proceedings with a hearing before an immigration judge").

COUNT FOUR

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

77. Mr. Siby realleges all paragraphs above as if fully set forth here.

78. The Due Process Clause prohibits the federal government from imposing punishment as part of its effectuation of noncitizen removal. *Wong Wing v. United States*, 163 U.S. 228, 237 (finding that Congress cannot add punishment to immigration detention or deportation without a prior adjudication of guilt). Rather, the government may not impose punishment without "an adjudication of guilt in accordance with due process of law," *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (collecting cases), an adjudication which is not contemplated in the immigration removal proceeding context.

79. Throughout much of the past year, the Trump Administration has articulated clearly that their vastly expanded use of third country removals is in an explicit attempt to punish noncitizens whom they allege have violated administrative immigration laws and/or policies, without adjudication of guilt – or even allegation of misconduct – in regards to any other matter, *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *24 (W.D. Wash. Aug. 21, 2025) (citing official video of President Trump stating "[I]f

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illegal aliens choose to remain in America, they're remaining illegally and they will face severe consequences. Illegal aliens who stay in America face *punishments*, including significant jail time, enormous financial penalties, confiscation of all property, garnishment of all wages, imprisonment and incarceration, and sudden deportation in a place and manner solely of our discretion.") (emphasis added). In *Nguyen v. Scott,* a panel in the Western District of Washington held the petitioner likely to succeed on his claim "that ICE's practice of removing noncitizens to countries where they face imprisonment violates the Constitution's prohibition on 'punitive' third country removal." *Id.* at 23.

80. Thus, by subjecting Petitioner to unconstitutionally punitive third country removal practices, Respondents violate his rights under the Due Process Clause.

COUNT FIVE

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

81. Mr. Siby realleges all paragraphs above as if fully set forth here.

82. When ICE issued Mr. Siby an order of supervision, it found that he is neither a danger to the community nor a flight risk. No change in circumstances warranted the order's revocation. Mr. Siby's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

83. When a noncitizen has been released pursuant to an Order of Supervision, the government must make a determination that, *inter alia*, the noncitizen does not present a

danger to the community, does not present a flight risk, and is not likely to be removed in the reasonably foreseeable future. *See* 8 C.F.R. §§ 241.4(e), 241.13(f)–(h).

84. Therefore, redetention is only consistent with substantive due process if there is a change in circumstances leading the government to believe that the noncitizen now presents a danger or flight risk or is now likely to be removed in the reasonably foreseeable future.

85. Petitioner was released from immigration detention on an Order of Supervision after the government made a determination that, *inter alia*, the Petitioner did not present a danger to the community, did not present a flight risk, and was not likely to be removed in the reasonably foreseeable future. *See* 8 C.F.R. §§ 241.4(e), 241.13(f)–(h). See Exhibit A.

86. Just as there was no lawful reason to hold Petitioner in detention at the time that he was released, there is no lawful reason to hold him in detention now.

87. Petitioner's detention serves no lawful purpose and therefore it is not constitutional.

88. Because Respondents had no legitimate, non-punitive objective in revoking his order of supervision, Mr. Siby's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

89. Petitioner's immediate release is appropriate.

COUNT SIX

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

90. Mr. Siby realleges all paragraphs above as if fully set forth here.

91. *Mathews v. Eldridge*, 424 U.S. 319, 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue;

(2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

92. The first factor, the private interest at issue, favors Mr. Siby. "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.

93. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Mr. Siby. To safeguard against erroneous deprivations of liberty, the statute specifies the limited number of reasons that an order of supervision can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Mr. Siby, who is neither dangerous nor a flight risk.

94. The third factor, the government's interest, also favors Mr. Siby. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system.

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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.

95. For these reasons, revoking Mr. Siby's order of supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

COUNT SEVEN

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

96. Plaintiff realleges all paragraphs above as if fully set forth here.

97. 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).

98. 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).

99. Respondents' revocation of Mr. Siby's order of supervision was contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

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100. 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.

101. Upon information and belief, Mr. Siby'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.

102. Before revoking the order, Respondents did not make findings that Mr. Siby is dangerous or unlikely to comply with a removal order, as required by statute.

103. 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 Mr. Siby's conduct indicated release would no longer be appropriate. 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 Mr. Siby's removal.

104. Nor did the Respondents give Mr. Siby notice of the reasons for revocation and opportunity to be heard.

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

COUNT EIGHT

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

106. Mr. Siby realleges all paragraphs above as if fully set forth here.

107. 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).

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

109. 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).

110. Respondents' decision to revoke Mr. Siby's order of supervision ran counter to the evidence before the agency that Mr. Siby would comply with a demand to appear for removal without detention.

111. The revocation also "failed to consider important aspects of the problem" before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

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

113. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Mr. Siby, who is neither a flight risk nor a danger to the community, including financial and administrative costs incurred by the agency due to unnecessary detention.

114. Third, Respondents failed to consider reasonable alternatives to revoking Mr. Siby's order of supervision that were before the agency, like simply continuing release under

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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 Mr. Siby's appearance.

115. Fourth, Respondents failed to consider Mr. Siby's substantial reliance interest, created by its instruction on Mr. Siby's release notification, the agency would give an opportunity to arrange for an orderly departure once it obtained travel documents.

116. For these and other reasons, Respondents' revocation of Mr. Siby's order of supervision was arbitrary and capricious and should be held unlawful and set aside.

COUNT NINE

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

117. Mr. Siby realleges 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 . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

119. "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).

120. 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

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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.

121. 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)

122. Respondents' revocation of Mr. Siby'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 TEN

Ultra Vires Action

123. Mr. Siby re-alleges all paragraphs above as if fully set forth here.

124. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Mr. Siby.

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

COUNT ELEVEN

Violation of the *Accardi* Doctrine

126. Mr. Siby realleges all paragraphs above as if fully set forth here.

127. Under the *Accardi* doctrine, Mr. Siby has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v.*

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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").

128. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Mr. Siby's order. "As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release" and Mr. Siby "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).

129. Respondents also violated agency instructions in Mr. Siby's release notification to give an opportunity to prepare for an orderly departure when they revoked Mr. Siby's order without advance notice.

130. Under *Accardi*, Respondents' revocation of the order of supervision and decision to ignore instructions in the release notification should be set aside for violating agency procedures, rules, or instructions.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests 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 detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, the *Accardi* doctrine, and the *Zadvydas* framework;
4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
5) Order Respondents to, within 24 hours of his release, provide the Court with a declaration confirming that Petitioner has been released from custody;
6) Enjoin removal to a country not listed on his removal order as punitive;
7) Order that Respondents may not remove Petitioner to any third country because Respondents' third-country removal program seeks to impose unconstitutional punishment on its subjects, including imprisonment and other forms of harm;
8) Alternatively, in the event that Respondents attempt to remove Petitioner to a country not listed on his order of removal, order Respondents and those with whom they contract to comply with the following: (1) provide written notice to Petitioner and his counsel of the third country to which Petitioner may be removed, in a language that Petitioner can understand; (2) following notice, provide meaningful opportunity, and a minimum of ten days, for Petitioner to raise a fear of return for eligibility for CAT and withholding protections; (3) if Petitioner demonstrates "reasonable fear," move to reopen the proceedings; and (4) if Petitioner is not found to have demonstrated "reasonable fear," provide meaningful opportunity, and a minimum of 15 days, for Petitioner to seek to move to reopen immigration proceedings.
9) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;

10) Order Respondent's to return Petitioner's personal property they seized when detaining him upon Petitioner's release (including iPhone, ring, wallet and contents of wallet); and

11) Grant any further relief this Court deems just and proper.

Respectfully submitted,

DATED: March 30, 2026

/s/Anessa Novasio
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VERIFICATION OF PETITIONER

On behalf of Masseray Siby, the Party in custody, I verify the facts contained in the Petition for Writ of Habeas Corpus, upon information and belief, having reviewed the relevant records and pleadings and conferred with Petitioner. Petitioner has not verified himself because he was moved to Texas after the original Petition in this matter was filed.

Date 03/30/2026

Signature: /s/ Anessa Novasio
Anessa Novasio
Attorney for Petitioner

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CERTIFICATE OF SERVICE

The undersigned hereby certifies I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

Date 03/30/2026

/s/Anessa Novasio
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