

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CINDY ROSARIO RIVERA CALDERON,

A# 

Petitioner,

v.

KRISTEN SULLIVAN, Field Office Director,
Atlanta Field Office, Enforcement and
Removal Operations, U.S. Immigration
and Customs Enforcement;

DAVID J. VENTURELLA, Director, U.S.
Immigration and Customs Enforcement;

MARKWAYNE MULLIN, Secretary, U.S.
Department of Homeland Security;

TODD BLANCHE, Attorney General of
the United States;

JOSEPH EDLOW, Director, U.S.
Citizenship and Immigration Services;

MICAH BROWN, Field Office Director,
Atlanta Field Office, U.S. Citizenship
and Immigration Services;

Respondents.

Civil Action No.

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF EMERGENCY RELIEF REQUESTED**

Order to Show Cause Returnable Within Three Days — 28 U.S.C. § 2243

INTRODUCTION

1. Petitioner Cindy Rosario Rivera Calderon is the wife of a United States citizen and the mother of a United States citizen daughter. She was paroled into the United States by the Department of Homeland Security itself on April 11, 2022. For more than four years she has reported to U.S. Immigration and Customs Enforcement ("ICE") exactly as directed, has never missed a check-in, has never violated a condition of her release, and has no criminal record of any kind.
2. On Friday, August 21, 2026, she did what the Government asked her to do. She appeared at the U.S. Citizenship and Immigration Services ("USCIS") Atlanta Field Office, 2150 Parklake Drive, Atlanta, Georgia, for the interview on her application to adjust status to lawful permanent resident based on her marriage to a United States citizen. She brought counsel. She answered the officer's questions. And when the interview ended, ICE officers took her into custody.
3. They did so on a stated premise that the Government's own records refute. The USCIS officer conducting the interview asserted repeatedly that Ms. Rivera Calderon had been served with a Notice to Appear and ordered removed by an immigration judge. That is not what happened. She was ordered removed by a Border Patrol agent on Form I-860 under 8 U.S.C. §

1225(b)(1). An immigration judge did no more than review a negative credible fear finding under 8 C.F.R. § 1003.42 — expressly declining to take testimony — and returned the case to DHS. No Notice to Appear was ever issued. No proceeding under 8 U.S.C. § 1229a was ever commenced. No immigration judge ever entered an order of removal against her.

4. The distinction is not a technicality. It determines which detention authority applies, what process was owed before her release was revoked, and whether any agency forum exists in which she could contest her custody. It is also the difference between a person who had a hearing and a person who never did.
5. Undersigned counsel is informed and believes that, before the interview concluded, ICE officers told the attorney accompanying Ms. Rivera Calderon, in substance, that detention would not be necessary if USCIS approved the adjustment application. As of the filing of this Petition, USCIS has issued no decision. The application remains pending. ICE detained her anyway.
6. This Petition does not ask the Court to review, vacate, or set aside the expedited removal order. It asks something narrower and squarely within this Court's habeas jurisdiction: whether the Government may revoke a four-year grant of conditional liberty and imprison a person without the notice its regulations require, without the interview its regulations require, without the findings its regulations require, and on a factual premise that is wrong.

7. Where the Government revokes release, the person "will [be] notified of the reasons for revocation," and must be afforded "an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l)(1) (65 Fed. Reg. 80,294 (Dec. 21, 2000), as amended, 76 Fed. Reg. 53,791 (Aug. 29, 2011)). Revocation may be ordered only by the Executive Associate Commissioner, or by a district director who finds both that revocation is in the public interest and that circumstances do not reasonably permit referral. *Id.* § 241.4(l)(2). On the information available to counsel, none of this occurred.
8. Courts have granted the writ on these facts with striking consistency. *See, e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162–66 (W.D.N.Y. 2025) (ordering release where ICE revoked supervision without the required authority, findings, notice, or interview).
9. Ms. Rivera Calderon accordingly petitions for a writ of habeas corpus and asks this Court to issue an order to show cause returnable within three days, as 28 U.S.C. § 2243 directs, and to preserve its own jurisdiction by restraining Respondents from removing her from the United States or transferring her outside this District while that order is pending.

JURISDICTION

10. This Court has jurisdiction under 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, Section 9, Clause 2 of the United States Constitution; the Fifth Amendment; the Administrative Procedure Act, 5 U.S.C. §§ 702, 706; the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202; and the All Writs Act, 28 U.S.C. § 1651.
11. Petitioner is in the physical custody of Respondents within this District and is "in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2241(c)(3). Habeas is the historic remedy for that injury. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).
12. No jurisdiction-stripping provision applies. The Eleventh Circuit has held that 8 U.S.C. § 1252(a)(5) and § 1252(b)(9) operate only where a petitioner "seek[s] review of an order of removal," and that § 1252(g), "while it precludes review of the exercise of discretion by the attorney general, . . . does not proscribe substantive review of the underlying legal basis for those discretionary decisions and actions." *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1366–68 (11th Cir. 2006) (on transfer from the Northern District of Georgia). *See also Alvarez v. ICE*, 818 F.3d 1194, 1205 (11th Cir. 2016).

13. Section 1252(g) reaches only three discrete actions and "was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 485 n.9 (1999). Petitioner asks this Court to constrain no charging decision. She asks it to decide whether her imprisonment is lawful.
16. This Court additionally possesses authority under the All Writs Act to preserve the *status quo* and protect its own jurisdiction pending decision. 28 U.S.C. § 1651(a); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–04 (1966); *United States v. Shipp*, 203 U.S. 563, 573 (1906).

VENUE

17. Venue lies here under 28 U.S.C. § 1391(e) and the immediate-custodian rule of *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 442–47 (2004). Petitioner is detained at the ICE Atlanta Field Office, 180 Ted Turner Drive, SW, Atlanta, Georgia 30303, within the Atlanta Division. LR 3.1, NDGa. Although Petitioner resides in Camden County, Georgia, habeas venue follows the place of confinement.
18. Jurisdiction attaches at filing and is not defeated by a later transfer. *Ex parte Endo*, 323 U.S. 283, 306 (1944). Petitioner nevertheless asks the Court to restrain any transfer outside this District, because Respondents have stated an

intention to move her to the Stewart Detention Center in Lumpkin, Georgia, which lies outside this District.

PARTIES

19. Petitioner **Cindy Rosario Rivera Calderon** is a native and citizen of Honduras, A# [REDACTED] born in 1997. Her address of record is [REDACTED] [REDACTED] St. Marys, Georgia 31558. She is presently detained by Respondents at the ICE Atlanta Field Office.
20. Respondent **Kristen Sullivan** is the Field Office Director of the Atlanta Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, and is Petitioner's immediate custodian. She is sued in her official capacity. *See Padilla*, 542 U.S. at 435.
21. **No warden is named at this time.** As of the filing of this Petition, Petitioner remains held at the ICE Atlanta Field Office and has not been transferred to a detention facility. There is accordingly no facility warden to name. Respondents have informed counsel Daniela VanSuch that they intend to transfer Petitioner to the Stewart Detention Center. If they do, Petitioner will promptly move to add the warden of that facility as a Respondent in order to satisfy any requirement that the official with immediate physical custody — the person who holds the key to the door — be before the Court. Petitioner respectfully notes, however, that the officials who made the decision to detain

her, and who possess the authority to release her, are the DHS, ICE, and USCIS Respondents already named. A warden added later would be a custodian in the formal sense only.

22. Respondents **David J. Venturella**, Director of ICE, **Markwayne Mullin**, Secretary of Homeland Security, and **Todd Blanche**, Attorney General of the United States, are the federal officials with legal authority over Petitioner's custody and over the revocation of her release, and they are the officials who can undo it. Each is sued in his official capacity.
23. Respondents **Joseph Edlow**, Director of USCIS, and **Micah Brown**, Field Office Director of the USCIS Atlanta Field Office, are the officials charged with adjudicating Petitioner's pending Form I-130 and Form I-485. They are named because the relief sought includes preserving Petitioner's ability to receive a decision on the adjustment application, and because an officer of their agency mischaracterized her immigration history on the record of the August 21, 2026 interview. Each is sued in his or her official capacity.

EXHAUSTION OF REMEDIES

24. There is no administrative remedy to exhaust. The regulations provide that "there is no appeal from the district director's or the Executive Associate Commissioner's decision" on custody. 8 C.F.R. § 241.4(d). Because Petitioner was never placed in proceedings under 8 U.S.C. § 1229a, she has

no access to a custody redetermination hearing before an immigration judge.

The immigration judge's April 27, 2022 order states on its face: "This is a final order. There is no appeal available." Exhaustion is not statutorily required for a § 2241 petition of this kind and would in any event be futile.

25. Petitioner has concurrently filed a Form I-246 Application for a Stay of Deportation or Removal with ICE, attached as Exhibit 1. That application does not stay removal by operation of law and is not an adequate remedy for unlawful detention.

STATEMENT OF FACTS

A. Family and Community Ties

26. Petitioner is married to **Roberto Santiago Gonzalez**, a United States citizen. *See* Exhibit 2 (marriage certificate).
27. They have a United States citizen daughter, **G.S.R.**, born in 2023 in Vidalia, Georgia. She is referred to by her initials, and her year of birth only, in accordance with Federal Rule of Civil Procedure 5.2.
28. G.S.R. is three years old. She is under the continuing care of a pediatrician and a pediatric gastroenterologist in Georgia and is insured through Georgia Medicaid.
29. **G.S.R. carries three active diagnoses requiring ongoing monitoring and treatment.** First, abnormal results of liver function studies (ICD-10 R94.5).

She was hospitalized at five months of age for jaundice and elevated liver enzymes and has been followed by a pediatric gastroenterologist since. Liver-function testing in December 2025 returned values above the reference range, improved from prior results, and her gastroenterologist directed further follow-up. Second, a feeding disorder of infancy and early childhood (ICD-10 F98.29), for which she was referred to feeding therapy in December 2024 and subsequently to a nutritionist. Third, iron deficiency anemia (ICD-10 D50.8), for which she takes a ferrous sulfate solution orally twice each day. Her records additionally note developmental delay. Her most recent pediatric visit directed follow-up to recheck both the feeding disorder and the liver enzymes.

30. The supporting medical records are not attached. Petitioner has not filed G.S.R.'s pediatric records as exhibits in order to keep a three-year-old's medical history off the public docket. The facts stated above are established by the Declaration of Roberto Santiago Gonzalez, G.S.R.'s father, who has personal knowledge of her diagnoses, medications, providers, and appointment schedule. *See* Exhibit 3. Petitioner will produce the underlying records for *in camera* review, or file them under seal under Federal Rule of Civil Procedure 5.2(d), on request or on order of the Court.

31. Petitioner does not represent that G.S.R. is in acute medical crisis. Her most recent examination was largely unremarkable and her anemia had responded to treatment. What the record establishes is a three-year-old with three monitored chronic conditions requiring daily medication, specialist follow-up, feeding therapy, and nutrition care — a regimen that depends on a caregiver who can administer medication on schedule, keep appointments, and communicate with providers.
32. Petitioner is that caregiver. G.S.R. is not in daycare. Petitioner is the parent who administers her medication, takes her to her appointments, and communicates with her providers. Mr. Santiago Gonzalez is the household's sole earner and cannot assume that role without abandoning the family's only income. *See* Exhibit 3.

B. Entry, Expedited Removal, and Parole

33. Petitioner entered the United States on or about March 12, 2022 by crossing the Rio Grande near the Eagle Pass, Texas Port of Entry. She was encountered by the U.S. Border Patrol on March 14, 2022 and processed on Form I-213. *See* Exhibit 4.
34. Petitioner discloses that she made several earlier attempts to enter the United States and was on each of those occasions processed and expelled under Title 42 of the United States Code pursuant to the public-health orders then in

effect. A Title 42 expulsion is a public-health exclusion, not a removal under the immigration laws. Petitioner has never been removed or deported from the United States.

35. On March 14, 2022, a Border Patrol agent issued a Notice and Order of Expedited Removal on Form I-860 (Event No. [REDACTED]), finding Petitioner inadmissible under 8 U.S.C. § 1182(a)(6)(C) and (a)(7). The order was issued by an immigration officer under 8 U.S.C. § 1225(b)(1). *See* Exhibit 5.
36. **Petitioner was detained by the Government from March 14, 2022 until April 11, 2022 — twenty-eight days — in connection with this same removal order.** That detention is described further in Count III below.
37. While detained, Petitioner expressed a fear of return to her home country. An asylum officer conducted a credible fear interview on or about April 12, 2022 and issued a negative determination. On April 19, 2022, DHS served a Notice of Referral to Immigration Judge. *See* Exhibits 6–7.
38. On April 27, 2022, Immigration Judge Ryan Fisher of the Atlanta Immigration Court conducted a credible fear review under 8 C.F.R. § 1003.42. The order records that the court *did not* take testimony. The judge found that Petitioner had not established a significant possibility of persecution or of intentional infliction of serious physical or mental harm, and ordered: "Affirmed, and the

case is returned to DHS for removal of the noncitizen." The order states: "This is a final order. There is no appeal available." *See* Exhibit 8.

39. **The immigration judge did not place Petitioner in removal proceedings under 8 U.S.C. § 1229a.** The alternative box on the order form — "Vacated, and the noncitizen is placed in removal proceedings before the immigration court under INA § 240" — was not selected. No Notice to Appear was ever issued to Petitioner. The assertion at the August 21, 2026 interview that she had an NTA and a judge-ordered removal was therefore incorrect.
40. Rather than remove her to her country of birth, **on April 11, 2022, ICE paroled Petitioner into the United States under 8 U.S.C. § 1182(d)(5)(A).** The Interim Notice Authorizing Parole states that it was "being issued to you in lieu of Form I-94, Arrival-Departure Record, see 8 C.F.R. § 235.1(h)(2)." *See* Exhibit 9.
41. That grant of parole is the legal foundation of Petitioner's pending adjustment application. A noncitizen who has been "paroled into the United States" is eligible to apply for adjustment of status under 8 U.S.C. § 1255(a). Because Petitioner is the spouse of a United States citizen and therefore an immediate relative, the bars of 8 U.S.C. § 1255(c) do not apply to her.
42. The parole authorization was valid for one year from April 11, 2022 and terminated by its own terms on April 11, 2023. Petitioner does not contend

that Respondents were required to give notice of that expiration; parole authorized for a fixed period terminates automatically at its expiration. § C.F.R. § 212.5(e)(1). The expiration of parole does not, however, unmake the historical fact that Petitioner was paroled into the United States, which is what § 1255(a) requires. Nor does it bear on the claims raised here, which concern the revocation of the separate Form I-220A release described below.

C. Four Years of Release and Unbroken Compliance

43. Following her parole, ICE released Petitioner on **Form I-220A, Order of Release on Recognizance** (ICE Form I-220A (10/20)), executed on or about November 17, 2022. *See* Exhibit 10.
44. Petitioner has remained on that Form I-220A release continuously since. She has never been placed on a Form I-220B Order of Supervision, notwithstanding the outstanding expedited removal order. In connection with certain check-ins conducted at the ICE Atlanta Field Office through a self-service kiosk, Petitioner received documents the agency generates as check-in receipts, sometimes referred to in practice as "I-220R." Those receipts confirm her appearances; they did not alter the terms of her release.
45. From 2022 through August 21, 2026, Petitioner reported to ICE for every scheduled check-in, including check-ins on or about February 25, 2026 and

April 7, 2026. She never failed to appear. She notified ICE of her change of address, and ICE confirmed the change on July 10, 2025. *See* Exhibit 11.

46. She complied with every USCIS request, appearing for biometrics on June 20, 2024, appearing for a scheduled interview on May 8, 2025 (which USCIS itself cancelled that day), and appearing for the rescheduled interview on August 21, 2026. *See* Exhibits 12–14.

D. The Pending Applications and the Approved Waiver

47. Mr. Santiago Gonzalez filed a Form I-130 Petition for Alien Relative on Petitioner's behalf on January 17, 2023; USCIS issued a receipt notice on January 20, 2023. **The Form I-130 remains pending.** *See* Exhibit 15.

48. Because Petitioner is the spouse of a United States citizen, she is an immediate relative for whom an immigrant visa number is immediately available, and she was therefore eligible to file her adjustment application while the Form I-130 remained pending. The Form I-130 was filed online. Online filing was not available for a concurrently filed Form I-485, so Petitioner filed the Form I-485 by mail, which was the only option available to her. USCIS issued receipt notices for the Form I-485 (receipt number ) and for Form I-765 (employment authorization document) on May 2, 2024.

49. USCIS issued a Request for Evidence on September 28, 2024, which Petitioner answered. USCIS approved Petitioner's Form I-765 employment

authorization in category (c)(9) on January 30, 2025, valid through January 29, 2030. The Form I-485 remains pending and undecided. *See* Exhibits 16–19.

50. USCIS received Petitioner's Form I-212, Application for Permission to Reapply for Admission After Deportation or Removal, on March 26, 2026 (receipt number , and **approved it on July 16, 2026**. *See* Exhibit 20.
51. On July 28, 2026, USCIS issued a notice scheduling Petitioner's adjustment interview for August 21, 2026. On August 5, 2026, USCIS issued a courtesy notice requesting additional relationship evidence in advance of that interview. Petitioner submitted a complete evidence package with a cover letter on August 21, 2026. *See* Exhibits 21–23.

E. The Detention

52. On August 21, 2026, Petitioner appeared as directed at the USCIS Atlanta Field Office, 2150 Parklake Drive, Atlanta, Georgia 30345, accompanied by Daniela VanSuch, Esq., of Bilbao Law LLC, who is counsel of record on her USCIS filings. Ms. VanSuch is not counsel of record in this action.
53. During the interview, the USCIS officer stated repeatedly that Petitioner had been issued a Notice to Appear and ordered removed by an immigration judge.

Those statements were incorrect. *See Declaration of Daniela VanSuch, Esq. Exhibit #24.*

54. The officer did not adjudicate the application. As of the filing of this Petition, no decision has issued on either the Form I-130 or the Form I-485.
55. ICE officers present at or near the interview informed Ms. VanSuch, in substance, that Petitioner would not need to be detained if USCIS approved the adjustment application. *See Declaration of Daniela VanSuch, Esq.*
56. Notwithstanding that representation, and notwithstanding that USCIS had made no decision, ICE officers took Petitioner into custody at the conclusion of the interview on August 21, 2026 at approximately 9:00 a.m. EST.
57. Respondents did not serve Petitioner with written notice of the reasons for the revocation of her release, as 8 C.F.R. § 241.4(l)(1) requires.
58. Respondents have not afforded Petitioner the initial informal interview that 8 C.F.R. § 241.4(l)(1) requires promptly after return to custody, and have identified no forum in which she may contest the revocation.
59. On information and belief, the revocation was not ordered by the Executive Associate Commissioner, and no official made the findings that 8 C.F.R. § 241.4(l)(2) requires before a district director may revoke release.
60. Respondents have identified no condition of release that Petitioner violated, because there is none. They have made no finding that she is a danger to the

community — she has no criminal record — and no finding that she is a flight risk, which her unbroken record of appearing when directed, including at the very interview where she was arrested, refutes.

61. Respondents have informed counsel that Petitioner will be transferred to the Stewart Detention Center and that her removal to Honduras is imminent. Respondents have not produced a travel document, a removal itinerary, or any document recording a changed circumstance, and have identified none of these to counsel.

CLAIMS FOR RELIEF

COUNT I.

Violation of Respondents' Own Regulations — 8 C.F.R. § 241.4(l) (*Accardi*)

62. Petitioner incorporates and realleges paragraphs 1-61 above as if fully set forth herein.
63. An agency is bound by its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954). "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).
64. Section 241.4(l)(1) requires, upon revocation, (a) notification of the reasons for revocation, and (b) a prompt initial informal interview at which the detained person may respond to those reasons. 8 C.F.R. § 241.4(l)(1). Section

241.13(i)(3) imposes materially identical requirements. Respondents provided neither.

65. Section 241.4(l)(2) vests revocation authority in the Executive Associate Commissioner, and permits a district director exhibitto revoke release only "when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." 8 C.F.R. § 241.4(l)(2). On information and belief, the revocation here was neither ordered by the Executive Associate Commissioner nor accompanied by the required findings.
66. The *Ceesay* court examined this exact regulatory structure and held that a revocation by an official without delegated authority, and without the findings the regulation requires, was invalid — and that the petitioner was "entitled to release on that basis alone." *Ceesay*, 781 F. Supp. 3d at 159–62. It further held that the notice and interview requirements apply "regardless of the reason for the revocation." *Id.* at 163–64.
67. Respondents will likely invoke 8 C.F.R. § 241.4(l)(2)(iii), which permits revocation when "[i]t is appropriate to enforce a removal order." Counsel discloses that provision candidly. It does not save this detention for three reasons. *First*, subsection (l)(2) supplies permissible *grounds*; subsection (l)(1) supplies mandatory *procedures*. The procedures apply whatever the

ground. *Ceesay*, 781 F. Supp. 3d at 163–64; *Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 WL 2452352, at *6–7 (S.D.N.Y. Aug. 26, 2025). *Second*, the discretion the provision confers must actually be exercised by an authorized official, on the record, at the time — post-hoc rationalization cannot cure its absence. *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947); *Munagi v. McDonald*, No. 25-13175, 2025 WL 3688023, at *2 (D. Mass. Dec. 19, 2025). *Third*, the stated basis here was that Ms. Rivera Calderon had been ordered removed by an immigration judge following a Notice to Appear. That is false, and a discretionary judgment resting on a false premise is not a lawful exercise of discretion.

COUNT II.

Procedural Due Process — Fifth Amendment

68. Petitioner incorporates and realleges paragraphs 1-61 above as if fully set forth herein.
69. "Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty" the Due Process Clause protects, and that Clause "applies to all persons within the United States, including aliens." *Zadvydas*, 533 U.S. at 690, 693.
70. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), each factor favors Petitioner. Her liberty interest is at its zenith. The risk of erroneous deprivation

is not theoretical but realized: this detention rests on a demonstrably incorrect account of her immigration history. And the Government's interest is minimal, because the process omitted — written reasons and a prompt informal interview — is the very process the Government wrote for itself and routinely provides.

71. **This Court's sister district has already so held on closely comparable facts.** In *Banjoko v. Rambosk*, No. 2:26-cv-58-KCD-DNF, 2026 WL 772462, (M.D. Fla. Mar. 19, 2026), the Middle District of Florida held that even where ICE lawfully revoked an order of supervision and served written notice that satisfied both the regulations and the Constitution, the Due Process Clause was nonetheless violated because “ICE provided no mechanism to contest the revocation.” *Id.* at *9. The court further observed that a review held more than three months after custody begins is “simply too little” to satisfy due process. **Petitioner's case is stronger in every particular.** The petitioner in *Banjoko* was a lawful permanent resident whose status was revoked following a federal conviction for conspiracy to commit witness tampering; he was ordered removed in proceedings under 8 U.S.C. § 1229a; he was released on a Form I-220B order of supervision; ICE served him with written notice of revocation that the court found adequate; and the Government documented a changed circumstance, a renewed diplomatic effort to obtain travel documents from

Nigeria. Petitioner has no criminal record of any kind, was never placed in proceedings under § 1229a and has never had a hearing, was released on a Form I-220A, received no notice of revocation at all, and confronts a record in which Respondents have documented no changed circumstance whatever.

72. Petitioner also had a substantial reliance interest, built over four years of compliance, in the continuation of a release the Government granted and repeatedly renewed. Its summary revocation, without notice or any opportunity to respond, violated the Fifth Amendment. *Accord Ceesay*, 781 F. Supp. 3d at 166 ("[B]ecause ICE did not follow its own regulations in deciding to re-detain [petitioner], his due process rights were violated and he is entitled to release.").
73. Petitioner submits that release is the appropriate remedy: here no notice issued at all, no authorized official appears to have acted, and the asserted basis was factually false. In the alternative, and at minimum, Petitioner asks the Court to order the process described in the Prayer for Relief on a 48-hour clock.

COUNT III.

Detention Unauthorized by Statute — 8 U.S.C. § 1231(a)(6) and *Zadvydas*

74. Petitioner incorporates and realleges paragraphs 1-61 above as if fully set forth herein.

75. Detention under 8 U.S.C. § 1231(a)(6) is authorized only to the extent it bears a reasonable relation to the purpose of effectuating removal. *Zadvydas*, 533 U.S. at 690, 699–701. Where removal is not reasonably foreseeable, continued detention is not authorized.
76. Any changed circumstance justifying revocation must have existed at or before the revocation; later-manufactured justifications do not suffice. *Munagi*, 2025 WL 3688023, at *2.
77. Prior detention on the same removal order should count toward the six-month period. Petitioner was held in Government custody from March 14, 2022 to April 11, 2022 — twenty-eight days — under the same expedited removal order that Respondents now invoke. *Zadvydas* measures the reasonableness of civil confinement by its cumulative burden on liberty, reasoning that "as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701. Nothing in that reasoning suggests the clock resets each time the Government releases and then re-detains the same person on the same order. Petitioner accordingly submits that the twenty-eight days already served should be credited against any presumptively reasonable period.
78. Counsel discloses the limits of that argument. The March–April 2022 detention preceded the immigration judge's April 27, 2022 concurrence in the

negative credible fear finding, and was therefore detention under 8 U.S.C. § 1225(b)(1) rather than post-order detention under § 1231(a)(6); the removal period defined by 8 U.S.C. § 1231(a)(1)(B) had not yet begun. Counsel has located no controlling authority aggregating pre-removal-period and post-removal-period detention for *Zadvydas* purposes. Petitioner raises the point to preserve it, and because twenty-eight days is not the difference between lawful and unlawful detention on this record.

79. Counsel acknowledges that *Zadvydas*'s six-month presumption has not run as to this custody, and Petitioner does not rest on that presumption. She contends the detention is unlawful from its inception because it was imposed without the authority and process the statute's implementing regulations require.

COUNT IV.

Arbitrary and Capricious Agency Action — 5 U.S.C. § 706(2)(A)

80. Petitioner incorporates and realleges paragraphs 1-61 above as if fully set forth herein.
81. **Counts IV and V are pleaded in this action's complaint capacity, not as habeas claims.** This filing is styled, and is brought, both as a petition for a writ of habeas corpus under 28 U.S.C. § 2241 and as a complaint for declaratory and injunctive relief. Counts I through III seek release and are habeas claims. Counts IV and V seek declaratory and injunctive relief against

final agency action and are brought under 28 U.S.C. § 1331 and 5 U.S.C. §§ 702 and 706, on a jurisdictional basis independent of § 2241.

82. Agency action must be set aside where it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An agency must "examine the relevant data and articulate a satisfactory explanation for its action." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
83. The decision to revoke Petitioner's release rested on a material factual error — the belief that she had been served with a Notice to Appear and ordered removed by an immigration judge — and articulated no explanation at all. It ran counter to the evidence before the agency: an approved Form I-212, a pending adjustment application and I-130 petition filed by a United States citizen spouse, a valid employment authorization document, four years of perfect compliance, and no criminal history.

COUNT V.

Deprivation of the Opportunity to Receive a Decision on a Pending Statutory Application

84. Petitioner incorporates and realleges paragraphs 1-61 above as if fully set forth herein.

85. Congress authorized adjustment of status and directed the Attorney General to adjudicate applications for it. 8 U.S.C. § 1255. USCIS accepted Petitioner's application, took her biometrics, scheduled her interview, and conducted it. The agency has not decided it.
86. Removing Petitioner from the United States before that adjudication concludes would extinguish the benefit Congress created, not by denying it on the merits, but by placing her beyond the reach of the process. One component of the Department would defeat the work of another, and would do so at the precise moment the applicant had done everything the Government asked of her.

**REQUEST FOR AN ORDER TO SHOW CAUSE RETURNABLE WITHIN
THREE DAYS**

88. The three-day return Petitioner requests is not an extraordinary favor. It is the ordinary command of the habeas statute.
89. Section 2243 provides that a court entertaining a habeas application "shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. It further provides that the writ or order to show cause "shall be returned within three days unless for good cause additional time, not

exceeding twenty days, is allowed." *Id.* And it directs that the court "shall summarily hear and determine the facts, and dispose of the matter as law and justice require." *Id.*

90. Nothing on the face of this Petition suggests Petitioner "is not entitled" to the writ. To the contrary, it alleges that Respondents revoked a four-year conditional release without the notice, without the interview, without the authorized decisionmaker, and without the findings that 8 C.F.R. § 241.4(l) requires — and did so on the stated but incorrect premise that she had been ordered removed by an immigration judge following a Notice to Appear. Courts confronting materially identical allegations have granted the writ. *E.g.*, *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162–66 (W.D.N.Y. 2025).
91. The equities reinforce what the statute already requires. Petitioner is the full-time caregiver for a United States citizen child with ongoing medical needs; her husband is the household's only earner and cannot assume that care without losing the family's income. Three days is what Congress specified, and this record supplies no good cause to extend it.
92. Petitioner separately moves, by contemporaneous Emergency Motion, for a temporary restraining order barring her removal or transfer while that return is pending. The two forms of relief are distinct: the order to show cause is the

statutory response to this Petition, while the restraining order preserves this Court's jurisdiction to act on it.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Issue an order to show cause, directed to Respondents and returnable within three days as provided by 28 U.S.C. § 2243, why the writ should not be granted;
- b. Pending resolution of that order, enjoin Respondents from removing Petitioner from the United States and from transferring her outside the Northern District of Georgia, in aid of this Court's jurisdiction under 28 U.S.C. § 1651(a);
- c. Order Respondents to produce the administrative record of the revocation of Petitioner's release, including the A-file, any notice of revocation, any warrant, any travel document or removal itinerary, and any document reflecting the identity of the revoking official and the findings made;
- d. Declare that Respondents' revocation of Petitioner's conditional release violated 8 C.F.R. § 241.4(l), the Fifth Amendment, and 5 U.S.C. § 706(2)(A);

- e. Grant the writ and order Petitioner's immediate release on the conditions of her Form I-220A release that governed before August 21, 2026;
- f. In the alternative, order Respondents to afford Petitioner, within 48 hours, written notice of the reasons for revocation and the informal interview required by 8 C.F.R. § 241.4(l)(1), and to release her if those requirements are not met;
- g. Award costs and attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- h. Grant such other relief as law and justice require. 28 U.S.C. § 2243.

Respectfully submitted this 21st day of August, 2026.

/s/ James M. Slater

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(Pro Hac Vice Application Filed Herewith)

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VERIFICATION

I, Vilerka S. Bilbao, Esq., declare under penalty of perjury under the laws of the United States pursuant to 28 U.S.C. § 1746 that I have read the foregoing Petition; that the factual allegations concerning Petitioner are true and correct to the best of my knowledge, information, and belief; and that those allegations made on information and belief are based on information available to counsel at the time of filing, Petitioner being presently detained and without unrestricted access to counsel.

Executed on August 21, 2026.

/s/ Vilerka S. Bilbao
Vilerka S. Bilbao, Esq.