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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

HIEP VAN NGUYEN [redacted] Petitioner, vs. JONATHON HORTON, *in his official capacity as Sherriff of Etowah Detention center*, and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*, and GEORGE STERLING, *Field Office Director ICE Atlanta Field Office*, and KRISTI NOEM, *Secretary of Homeland Security* PAMELA BONDI, *U.S. Attorney General* Respondents.	)	CASE NO.:

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

I. INTRODUCTION

1. This case challenges the unlawful detention of Petitioner, Hiep Van NGUYEN (Petitioner), who is currently in the custody of Immigration and Customs Enforcement (ICE) at Etowah Detention Center in Gadsden, Alabama. Petitioner is neither a flight risk nor a danger to the community.
2. Petitioner, Hiep Van NGUYEN, is a 59-year-old Vietnamese national who has resided in Enterprise, Alabama, for over 20 years. She has been living in the U.S. since 1989, most recently with her long-time U.S. citizen partner. She immigrated to the United States 36 years ago as a Lawful Permanent Resident as a refugee. Based

on information and belief, she was ordered deported in 2015 by an Immigration Judge due to criminal convictions. *See* Exhibit 1, EOIR automated case information. Notwithstanding the removal order against her, she was granted a deferral of removal and was put on an Order of Supervision (OSUP) by ICE, which she has complied with since 2015 until today, for approximately 10 years. *See* Exhibit 2.

3. Ms. Hiep Van NGUYEN was detained by ICE on or about September 24, 2025, following a routine check-in with ICE as she was complying with her OSUP. ICE detained her without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules, as well as in violation of a treaty between the United States and Vietnam.

4. According to 2008 U.S.-Vietnam Repatriation Agreement, officially titled *Vietnam (08-322) – Agreement on the Acceptance of the Return of Vietnamese Citizens*, this agreement **explicitly excluded** Vietnamese nationals who arrived in the United States **before July 12, 1995** from being subject to deportation. The relevant clause states: "Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995." *See* Exhibit 3.

5. ICE found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention nearly 10 years ago in 2015 under an order of supervision. Since then, Petitioner has fully abided by the order's terms, including attending regularly scheduled check-ins with ICE. She has applied for and been granted, an Employment Authorization Document ("EAD"), which she was able to renew every two years since then.

6. But at a regularly scheduled check-in with ICE on September 24, 2025, Respondents-Defendants suddenly revoked Petitioner's order of supervision and arrested her without notice. Petitioner has been moved and currently detained at Etowah Detention Center in Gadsden, Alabama since then.
7. Respondents-Defendants' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.
8. Petitioner therefore brings this action for injunctive, habeas corpus, and declaratory relief ordering Respondents to be directed her immediate release from custody.

II. JURISDICTION

9. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution (Suspension Clause). This Court's subject matter jurisdiction further arises under Article III, Section 2 of the Constitution because Petitioner is raising the constitutional issues. Petitioner is seeking immediate judicial intervention to remedy ongoing violations of her constitutional rights by Respondents. In addition to the United States Constitution, this action arises under the Immigration & Nationality Act of 1952, as amended (INA), 8 USC § 1101 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. § 551, *et seq*. This Court may also exercise jurisdiction pursuant to 28 USC § 1331 because this action arises under federal law and may grant relief pursuant to the Declaratory Judgement Act, 28 USC

§ 2201 *et seq.*, and the All Writs Act, 28 USC § 1651.

10. The Eleventh Circuit has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law. Even though the government may detain individuals during removal proceedings, *Denmore v. Kim*, 538 U.S. 510, 523, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003), there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. *Id.*; *Frech v. U.S. Att'y Gen.*, 491 F.3d 1277, 1281 (11th Cir. 2007) ("It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment.") (citing *Reno v. Flores*, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993)). Courts must review immigration procedures and ensure that they comport with the Constitution. See also *J.G. v. Warden, Irwin Cnty. Detention Ctr.*, 501 F.Supp.3d 1331 (M.D. Ga. 2020).

11. In this case, Petitioner asserts substantial constitutional violations—including deprivation of liberty without due process, arbitrary and capricious agency action, and the de facto revocation of employment authorization without notice or opportunity to be heard. These claims fall squarely within the scope of habeas review preserved by statute and recognized by controlling precedent. Accordingly, this Court has both the authority and the obligation to adjudicate the constitutional and statutory claims presented in this Petition and to grant appropriate relief to remedy ongoing violations of Petitioner's rights.

12. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain *habeas corpus*

jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioner.

III. VENUE

13. Venue is proper in the United States District Court for the Northern District of Alabama because Petitioner is currently detained at the Etowah Detention Center, within the Northern Division, Alabama, in DHS's custody; Respondent Jonathon Horton, Sherriff for Gadsden, Alabama, is in charge of the Etowah detention center and is Petitioner's immediate custodian and Respondents exercise authority over his custody in this jurisdiction. See 28 U.S.C. §§ 2241(d), 1391(e). Respondents-Defendants are officers of United States agencies, Petitioner currently resides within this District, and there is no real property involved in this action.

IV. PARTIES

14. Petitioner, Hiep Van NGUYEN, is a 59-year-old Vietnamese national who has resided in Enterprise, Alabama, for over 20 years, with her long-time U.S. citizen partner. She has been living in the U.S. since 1989. She immigrated to the United States 36 years ago as a Lawful Permanent Resident which she obtained on a refugee basis.
15. Based on information and belief, she was ordered deported in 2015 by an

Immigration Judge due to criminal convictions. *See* Exhibit 1, EOIR automated case information. Notwithstanding the removal order against her, she was granted a deferral of removal and was put on an Order of Supervision (OSUP) by ICE, which she has complied with since 2015 until today, for approximately 10 years. *See* Exhibit 2.

16. Petitioner was detained by ICE on or about September 24, 2025, following a routine check-in with ICE as she was complying with her OSUP. ICE detained her without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules.

17. Petitioner is currently detained at the Etowah Detention Center in Gadsden, Alabama. Prior to Petitioner's detention, she was residing in Enterprise, Alabama.

18. Respondent Jonathon Horton is the Sherriff of Gadsden, Alabama, with supervisory authority over Etowah Detention Center. As such, Respondent Horton is responsible for the operation of the Detention Center where Petitioner is detained. Because ICE contracts with private prisons such as Etowah to house immigration detainees, Respondent Horton has immediate physical custody of the Petitioner.

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

20. Respondent George Sterling is the Atlanta Field Office Director for Immigration and Customs Enforcement (hereinafter "FOD"). As such, Respondent Sterling is responsible for the oversight of ICE operations at the Folkston Detention Center. Respondent Sterling is being sued in his official capacity.

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

22. Petitioner Pamela Bondi is the Attorney General of the United States and is sued in her official capacity.

IV. EXHAUSTION OF REMEDIES

23. No statutory exhaustion requirement applies to habeas cases. Moreover, ICE's unilateral policy violation revoking Peittioner's OSUP without notice leaves no administrative avenue to secure release; additional agency steps would be futile. An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it. *Gibson v. Berryhill*, 411 U. S., at 575, n. 14; *Houghton v. Shafer*, 392 U. S. 639, 640 (1968). *See* also *Santiago-Lugo v. Warden*, 785 F.3d 467 (11th Cir. 2015). However, even if there were any available remedies, the habeas statute does not require the Petitioner to exhaust them.

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

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

V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

26. Petitioner, Hiep Van NGUYEN, is a 59-year-old Vietnamese national who has resided in Enterprise, Alabama, for over 20 years with her long-time U.S. citizen partner of 20 years. She has been living in the U.S. since 1989. She immigrated to the United States 36 years ago as a Lawful Permanent Resident, a status she obtained after her admission as a refugee. She has U.S. citizen and Lawful Permanent Resident siblings living in the U.S. and has been gainfully employed.

27. Petitioner was ordered deported in 2015 by an Immigration Judge due to criminal convictions. *See* Exhibit 1, EOIR automated case information. From first review of Petitioner's allegations in support of removal it seems to undersigned counsel that the removal order may be able to be challenged, however a full review of her immigration court records need to be completed. However, notwithstanding the removal order against her, she was granted a deferral of removal and was put on an Order of Supervision (OSUP) by ICE, which she has complied with since 2015 until today, for approximately 10 years. *See* Exhibit 2. During this time, she reported to ICE as instructed, received multiple Employment Authorization Documents from USCIS and cooperated with the authorities.

28. Since ICE released Petitioner on an order of supervision on or about 2015, Petitioner has complied with all conditions of the order, including periodic check-ins with ICE.

No circumstances have changed that make Petitioner a flight risk or danger to the community.

29. Throughout this time, Petitioner understood from a release notification accompanying the order of supervision that ICE would give "the opportunity to prepare for an orderly departure" after securing Petitioner's travel documents.

30. But at a regularly ICE scheduled check-in that occurred on September 24, 2025, ICE officers in Alabama suddenly revoked Petitioner's order of supervision and arrested Petitioner without warning or notice or opportunity to be heard.

31. Upon information and belief, the official responsible for revoking Petitioner's order of supervision did not first refer the case to the ICE Executive Associate Director, did not make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director, and had not been delegated authority to revoke an order of supervision.

32. Upon arrest, ICE transferred Petitioner to the Etowah County jail, where Petitioner is currently detained. Petitioner has unique medical needs and hardships that will be filed under seal or discussed directly with the Court in order to prevent harm to Petitioner. Therefore, her detention is punitive and unusually harsh and inappropriate due to her medical circumstances.

33. Upon information and belief, at no time following Petitioner's arrest did ICE explain why it revoked Petitioner's order of supervision or give Petitioner an opportunity to respond to those reasons.

34. Upon information and belief, at the time ICE revoked Petitioner's order of supervision, the agency had not secured travel documents necessary for removal from the United States.

35. Moreover, according to a bi-national treaty, 2008 U.S.-Vietnam Repatriation Agreement, officially titled *Vietnam (08-322) – Agreement on the Acceptance of the Return of Vietnamese Citizens*, **ICE cannot remove Petitioner from the United States**. This agreement **explicitly excluded** Vietnamese nationals who arrived in the United States **before July 12, 1995** from being subject to deportation. This exclusion was based on the historical context: many of these individuals were refugees fleeing post-war persecution and had been protected from deportation under this agreement. The relevant clause states: "**Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995.**" *See* Exhibit 3.

36. As of the filing of this Petition, Petitioner remains in ICE custody at Etowah County jai, confined solely because of DHS' unlawful revocation of Petitioner's Order of Supervision.

VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

37. Habeas corpus relief extends to a person "in custody under or by color of the authority of the United States" if the person can show she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(1),

concern the continuation or execution of confinement). The U.S. Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004), (citing U.S. Const., Art. I, § 9, cl. 2). This includes immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

38. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall … dispose of [] as law and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553 U.S. 723, 779– 80 (2008) (citations omitted). "[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." Id. at 787. The Petitioner seeking habeas relief must demonstrate he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

Due Process Governs Decisions to Revoke an Order of Supervision

39. "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).

40. 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).
41. "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

42. 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").
43. 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).

44. But even where initial detention past the 90-day removal period is authorized, if "removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

45. 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).

46. 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 intend to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. See *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (finding a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision).

47. **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).

The APA Sets Minimum Standards for Final Agency Action

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

49. Final agency actions are those (1) that "mark the consummation of the agency's decisionmaking 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).

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

51. The revocation here marked the consummation of ICE's decisionmaking process regarding Petitioner's custody.

52. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Petitioner in violation of her rights under the Constitution, statute, and regulation.

The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

53. 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.").

54. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under Accardi, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

55. 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).

VII. CAUSES OF ACTION AND CLAIMS FOR RELIEF

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

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

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

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

59. Under the civil-detention framework set out in *Zadvydas* and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement

serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose.

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

61. When Respondents revoked the order of supervision, Petitioner had complied with every condition of the order for over 10 years and ICE had not secured necessary travel documents for removal. No change in circumstances warranted the order's revocation. There are no new criminal issues, Petitioner has complied with the OSUP and has no new adverse factors to justify detention.

62. Moreover, according to a bi-national treaty, 2008 U.S.-Vietnam Repatriation Agreement, officially titled *Vietnam (08-322) – Agreement on the Acceptance of the Return of Vietnamese Citizens*, **ICE cannot remove Petitioner from the United States**. This agreement **explicitly excluded** Vietnamese nationals who arrived in the United States **before July 12, 1995** from being subject to deportation. This exclusion was based on the historical context: many of these individuals were refugees fleeing post-war persecution and had been protected from deportation under this agreement. The relevant clause states: "**Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995.**" *See* Exhibit 3.

63. Petitioner'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.

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

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

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

66. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, (1976). Pursuant to Mathews, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

67. The first factor, the private interest at issue, favors Petitioner as Petitioner's liberty interest is **paramount**. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690. ICE had already decided 10 years ago in 2015 that Petitioner is not a flight risk, and does not pose a danger to the community. Petitioner has complied with all reporting requirements over the past 10 years and does not have any adverse factors or new criminal behavior that would have led to the recent arrest. Being free

from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is "without question, a weighty one." L*andon v. Plasencia*, 459 U.S. at 34, 103 S.Ct. 321. Petitioner is being held at a county jail in the same conditions as criminal inmates and is far from his family.

68. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also favors Petitioner. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that an order of supervision can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain (as they failed to provide notice and an opportunity to be heard). Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk. Likewise, the risk of erroneous deprivation of liberty is great due to the lack of a non-independent adjudicator as ICE officers under the current Trump administration are subject to daily arrest quotas of noncitizens. *Marcello v. Bonds*, 39 U.S. 302, 305-306 (1955).

69. The third factor, the government's interest, also favors Petitioner. When the government ignores law (and agency breaks its own regulations, policies and procedures) that ensures notice and an opportunity to respond to a person at risk of

revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

70. Moreover, according to a bi-national treaty, **ICE cannot remove Petitioner from the United States.** This agreement **explicitly excluded** Vietnamese nationals who arrived in the United States **before July 12, 1995** from being subject to deportation. The government must be held to follow its own agreements and therefore cannot foreseeably remove Petitioner. *See* Exhibit 3.

71. For these reasons, revoking Petitioner'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 THREE

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

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

73. 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).

74. 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).

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

76. 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.

77. Petitioner's order of supervision was not revoked by the ICE Executive Associate Director. The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. Nor had the officer been delegated authority to revoke an order of supervision.

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

79. Even assuming that regulations purporting to offer additional justifications for revocation of an order of supervision are not ultra vires, Respondents did not comply with them. Respondents could not make findings that Petitioner's conduct indicated release would no longer be appropriate or that Petitioner violated any condition of release, because Petitioner had not. Nor could Respondents make findings that the purposes of release had been served or that it was appropriate to enforce a removal

order, because it had yet to make final arrangements for Petitioner's removal. Moreover, according to a bi-national treaty, **ICE cannot remove Petitioner from the United States**. This agreement **explicitly excluded** Vietnamese nationals who arrived in the United States **before July 12, 1995** from being subject to deportation. The government must be held to follow its own agreements and therefore cannot foreseeably remove Petitioner. *See* Exhibit 3.

80. Nor did the Respondents give Petitioner notice of the reasons for revocation and opportunity to be heard.

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

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

83. 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).

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

85. 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).

86. Respondents' decision to revoke Petitioner's order of supervision ran counter to the evidence before the agency that Petitioner would comply with a demand to appear for removal without detention. Petitioner has never violated a condition of her order of supervision and no new facts or changed circumstances suggest she would.

87. 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).

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

89. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner, who is neither a flight risk nor a danger to the community and for whom the agency does not have travel documents needed to effectuate removal, including financial and administrative costs incurred by the agency due to unnecessary detention. Moreover, according to a bi-national treaty, **ICE cannot legally remove Petitioner from the United States even if they had obtained a travel document for Petitioner**. *See* Exhibit 3.

90. Third, Respondents failed to consider reasonable alternatives to revoking Petitioner's order of supervision that were before the agency, like simply continuing release under the order of supervision and scheduling a future time and date to appear for removal. This alternative would vindicate the government's interests in effectuating a removal order and save it the expense of detention not needed to guarantee Petitioner's appearance.

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

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

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

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

94. 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).

95. "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).

96. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

97. 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)

98. Respondents' revocation of Petitioner's order of supervision was based on ultra vires regulations. So it was in excess of statutory authority and should be held unlawful and set aside.

Count Six
Ultra Vires Action

99. Plaintiffs reallege all paragraphs above as if fully set forth here.

100. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner.

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

Count Seven
Violation of the *Accardi* Doctrine

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

103. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

104. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Petitioner's order. "As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release" and Petitioner "is entitled to release on that basis alone." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); see also, e.g., *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

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

106. 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.

CONCLUSION

The continued detention of Petitioner violates due process rights. But for intervention by this Court, Petitioner has no means of release from ICE.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Grant Petitioner a writ of habeas corpus;

(3) Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this Petition;

(4) Order Petitioner's immediate release;

(5) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;

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

(7) Declare the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) ultra vires, or alternatively, violates Petitioner's Due Process;

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

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

Respectfully Submitted,

This 25th day of September, 2025.

~~Karen Weinstock~~
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's partner and have reviewed various immigration documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

This 25th day of September, 2025.

Karen Weinstock
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