**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

W.A.G.

*Petitioner,*

v.

RAUL MALDONADO, in his official capacity as Warden of the Metropolitan Detention Center; LaDeon FRANCIS, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Todd LYONS, in his official capacity as Acting Director U.S. Immigrations and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General,

*Respondents.*

Case No. 25-6904

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT**

## INTRODUCTION

1. Petitioner W.A.G. ("Mr. A.G." or "Petitioner")[1] is a Nicaraguan national who fled Nicaragua to escape persecution based on his political beliefs after he was brutally attacked by members of the ruling party. Respondents are unlawfully detaining Mr. A.G. at the Metropolitan Detention Center ("MDC") in Brooklyn, New York in violation of his statutory and constitutional rights. Moreover, Petitioner's detention is causing a significant risk of life-threatening health complications due to serious intestinal health issues.

2. In Nicaragua, Mr. A.G. faced severe persecution. [redacted], assaulted Mr. A.G. in his home because he opposed [redacted] Mr. A.G. suffered severe injuries from the

[1] Petitioner has filed a Motion For Leave To Proceed Under Pseudonym concurrently with the instant Petition.

assault, leading to his hospitalization for thirty days. After taking over a month to recover, Mr. A.G. fled to the United States.

3. On or about May 23, 2021, Mr. A.G. entered the United States and turned himself in to immigration officials. Because he had a previous order of removal from 2007, the Department of Homeland Security ("DHS") reinstated Petitioner's removal order pursuant to 8 U.S.C. § 1231(a)(5) and then released Mr. A.G. on an Order of Supervision ("OSUP") into the United States.

4. Prior to his arrest, Petitioner had been living with his family members in Huntington Station, New York. DHS issued him an Employment Authorization Document ("EAD") based on the Order of Supervision and he was working to support his family. Mr. A.G.'s EAD remains valid and does not expire until [redacted] 2026. Since being placed on an OSUP—for over four years—Mr. A.G. complied with the conditions in the OSUP and required check-in appointments. Mr. A.G. has no criminal history in any country. Despite all this, on September 3, 2025, Immigration and Customs Enforcement ("ICE") stopped Mr. A.G. along with several other coworkers while they were commuting to work and detained them.

5. Petitioner is detained in Respondents' custody pursuant to 8 U.S.C. § 1231 and his 'withholding-only' removal proceedings,[2] where he is seeking Withholding of Removal and relief under the Convention Against Torture, are pending at the Varick Street Immigration Court in New York.

6. Everyday Mr. A.G. remains at MDC, he faces a heightened risk of exacerbated, life-threatening health complications and even death, because he [redacted] [redacted] intestinal health issues causing [redacted] for which he requires immediate medical treatment.

[2] *See infra* ¶ 26.

7. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. *See, e.g., Funes Gamez v. Francis*, No. 25-cv-7429, 2025 WL 3263896, at *1 (S.D.N.Y. Nov. 24, 2025); *E.M.M. v. Almodovar*, No. 25-cv-8212, 2025 WL 3077995, at *6 (S.D.N.Y. Nov. 4, 2025); *Zhu v. Genalo*, No. 25-cv-6523, 2025 WL 2452352, at *9 (S.D.N.Y. Aug. 26, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025). Petitioner brings this action requesting immediate release on the terms of his OSUP.

## JURISDICTION

8. Federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by Immigration and Customs Enforcement ("ICE"). *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

9. This Court has subject matter jurisdiction over this Petition pursuant to Article I, §9, cl. 2 of the United States Constitution and 28 U.S.C. § 2241 *et seq.*, which pertains specifically to habeas corpus claims; 28 U.S.C. § 1331, which details federal question jurisdiction; and 28 U.S.C. § 1651, which outlines the All Writs Act.

10. Additionally, this Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has authority under the Article I, § 9, cl.2 of the Constitution, and the All Writs Act, 28 U.S.C. § 1651 to issue and enforce the writ of habeas corpus.

11. Pursuant to 5 U.S.C. §§702, 706, Respondents have waived sovereign immunity and consented to suit.

## VENUE

12. Pursuant to 28 U.S.C. §2241(d) which states, "Where an application for a writ of habeas corpus is made by the person in custody. . . the application [for writ of habeas corpus] may be filed in the district court for the district wherein such person is in custody." Further, pursuant to 28 U.S.C. § 1391, venue is also proper in the district where "a substantial part of events or omissions giving rise to the claim occurred."

13. Venue is proper in this Court because Mr. A.G. is currently detained at the Metropolitan Detention Center ("MDC") in Brooklyn, New York within the jurisdiction of this Court.

## PARTIES

14. Petitioner W.A.G. is a native and citizen of Nicaragua, residing in [redacted] New York. Petitioner is detained in ICE custody at the MDC located in Brooklyn, New York.

15. Respondent Raul Maldonado Jr. is sued in his official capacity as Warden of the Metropolitan Detention Center in Brooklyn, New York. Respondent Maldonado is a legal custodian of Petitioner. His address is MDC Brooklyn, 80 29th St, Brooklyn, NY 11232.

16. Respondent LaDeon Francis is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security ("DHS"). In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Francis's address is New York ICE Field Office Director, 26 Federal Plaza, 7th Floor, New York, New York 10278.

17. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons's address is U.S. Immigration and Custom Enforcement, 500 12th Street SW, Washington, District of Columbia 20536.

18. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in DHS. In this capacity, she is responsible for the administration of immigration laws and is a legal custodian of Petitioner. She routinely transacts business in the Eastern District of New York. She is also responsible for United States Citizenship and Immigration Services ("USCIS") a component agency of DHS. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, District of Columbia 20528.

19. Respondent Pam Bondi is sued in her official capacity as Attorney General of the United States. As head of the U.S. Department of Justice, the agency that oversees the Executive Office for Immigration Review ("EOIR"), Attorney General Bondi is responsible for administration of the immigration laws as exercised by EOIR, She is legally responsible for the pursuit of Petitioner's detention and removal. Respondent Bondi's office is located at the Robert F. Kennedy Building, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia, 20530.

## LEGAL FRAMEWORK

### A. Due Process Requirements for Immigration Detention

20. "The Due Process Clause applies to all persons within the United States, including [noncitizens], 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.

21. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to detain a noncitizen or revoke a noncitizen'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). The Second Circuit has applied the *Mathews* tripartite test when assessing due process challenges to civil immigration detention. *See, e.g.*, *Black v. Decker*, 103 F. 4th 133, 147 (2d Cir. 2024); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

22. Courts have found due process violations where noncitizens who were previously released from detention by DHS—such as release on orders of supervision, orders of release on recognizance, bond, or parole—are re-detained without notice and an opportunity to be heard and without following governing regulations. *Zhu*, 2025 WL 2452352, at *9 ("ICE's failure to follow its own regulations and provide Petitioner with notice or an interview violated Petitioner's procedural due process rights."); *Al-Thuraya v. Warden*, No. 25-cv-2582, 2025 WL 2858422, at *6 (S.D.N.Y. Oct. 6, 2025); *Rojas Acevedo v. Almodovar*, No. 25-cv-7189, 2025 WL 3034183, at *6 (S.D.N.Y. Oct. 30, 2025); *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1030 (N.D. Cal. 2025); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032-33 (N.D. Cal. 2025).

**B. Reinstatement of Removal and Withholding-Only Proceedings**

23. The INA provides for removal proceedings to be the "sole and exclusive" procedures for removing people from the United States, subject to a few narrow exceptions. 8 U.S.C. § 1229a.

24. "Congress has created an expedited process for [noncitizens] who reenter the United States without authorization after having already been removed," set forth at 8 U.S.C. § 1231(a)(5). *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). Under that section, "If the Attorney General finds that [a noncitizen] has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the [noncitizen] is not eligible and may not apply for any relief under this chapter, and the [noncitizen] shall be removed under the prior order at any time after the reentry."[3]

25. Reinstatement is a summary proceeding conducted by an ICE official, which involves a determination of whether the noncitizen was subject to a prior order of removal, if the [noncitizen] was removed or departed voluntarily while under an order of removal, and whether the [noncitizen] unlawfully reentered the United States. *See* 8 C.F.R. § 241.8. If those three criteria are met, the ICE official can issue a notice of reinstatement. *Id.*

26. If the noncitizen indicates a fear of return to the ICE official, DHS must refer them to an asylum officer for a reasonable fear interview. *Id.* § 241.8(e); *see also id.* § 208.31. If the asylum officer finds that the noncitizen has a reasonable fear of persecution or torture, the officer must "issue a Form I-863, Notice of Referral to the Immigration Judge, for full consideration of the request for withholding of removal only" before the immigration court *Id.* § 208.31(e). These proceedings—where the noncitizen is not eligible to apply for asylum, but only for withholding of removal—are commonly referred to as "withholding-only" proceedings. *See Johnson*, 594 U.S. at 530.

[3] References to the Attorney General in § 1231 now refers to the Secretary of Homeland Security. *See* 6 U.S.C. § 557.

27. "There are two paths for seeking withholding of removal." *Id.* "First, the [noncitizen] may seek statutory withholding under § 1231(b)(3)(A), which provides that 'the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that 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.'" *Id.* (quoting 8 U.S.C. § 1231(b)(3)(A)). "Second, the [noncitizen] may seek withholding under regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which prohibits removal of [a noncitizen] to a country where the [noncitizen] is likely to be tortured." *Id.* at 530-31 (citation omitted).

28. "If [a noncitizen] is granted withholding-only relief, DHS may not remove the [noncitizen] to the country designated in the removal order unless the order of withholding is terminated." *Id.* at 531.

29. Noncitizens with reinstated orders of removal, including those in withholding-only proceedings, are subject to detention under 8 U.S.C. § 1231. Under § 1231, noncitizens may be subject to mandatory detention "[d]uring the removal period," 8 U.S.C. § 1231(2)(A), which is defined as 90 days after a noncitizen is ordered removed, *id.* § 1231(1)(A). DHS may also release noncitizens subject to an order of supervision. *See* 8 C.F.R. § 241.4(d); *id.* § 241.5(a).

**C. Revocation of Order of Supervision**

30. Consistent with the Due Process Clause's mandate, regulations require notice and an opportunity to be heard before a noncitizen's order of supervision can be revoked.

31. The Executive Associate Director of ICE has the authority to revoke release under an order of supervision.[4] 8 C.F.R. § 241.4(*l*)(2). The district director may revoke release if "in the

[4] The regulation's reference to the Executive Associate Commissioner of the Immigration and Naturalization Services now means the Executive Associate Commissioner of ICE. *See* 8 C.F.R. § 1.2.

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." *Id.* The district director includes the field office director. *Id.* § 1.2.

32. Release may be revoked if: (1) "the purposes of release have been served"; (2) the noncitizen "violates any condition of release"; (3) revocation "is appropriate to enforce a removal order or to commence removal proceedings against" a noncitizen; or (4) "[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." *Id.* § 241.4(*l*)(2)(i)-(iv).

33. ICE is required to follow certain procedures when revoking orders of supervision. Upon revocation, the noncitizen must "be notified of the reasons for revocation of his or her release or parole" and "afforded an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." *Id.* § 241.4(*l*)(1). The notification must be in writing. *See Funes Gamez*, 2025 WL 3263896, at *14.

## STATEMENT OF FACTS

### A. Petitioner Flees Nicaragua to the United States

34. Mr. A.G. was born in 1983 in Managua, Nicaragua. Ex. A, Declaration of Mr. A.G. ("Pet. Decl.") ¶ 1. Mr. A.G is a [redacted] *Id.* ¶¶ 2-3. While living in Managua, Mr. A.G. would regularly protest against the [redacted] *Id.* ¶ 3. Starting in 2018, it became very dangerous to be outspoken about one's opposition

views and engage in the right to protest against [redacted]; the national guard was deployed against protesters and began killing those who opposed the government. *Id.*

35. The [redacted] marked the houses of people who opposed them with an "X", using spray paint. *Id.* ¶ 4. This put anyone with an "X" on their house in danger of being killed. *Id.* Mr. A.G.'s house was marked multiple times. *Id.* Despite his attempts to remove the "X" or cover them up, his house was repeatedly marked, putting a literal target on his home and his life. *Id.* This danger was realized when, in June 2020, [redacted] *Id.*

36. After the assault, Mr. A.G. was in the hospital, in critical condition, for thirty days in the intensive care unit, recovering from his injuries. *Id.* ¶ 7. Doctors told him that [redacted] *Id.* [redacted] *Id.* ¶ 9. After that attack, Mr. A.G. knew he had to flee to the United States for safety. *Id.* ¶ 10.

37. On or about May 23, 2021, Mr. A.G. entered the United States through Hidalgo, Texas. Mr. A.G. turned himself in to immigration officials on May 23, 2021 and DHS detained him under 8 U.S.C. § 1231(a)(5), INA § 241(a)(5), as he had a prior order of removal from 2007. Ex. B, Form I-871, Notice of Intent/Decision to Reinstate Prior Order; Ex. C, Form I-205, Warrant of Removal/Deportation dated June 3, 2021.

38. Mr. A.G. previously entered the United States on or around April 28, 2007 at the U.S.-Mexico border. *See* Pet. Decl. ¶ 11. He was apprehended on or around April 30, 2007 and placed in expedited removal proceedings. An expedited removal order was entered on April 30, 2007 and Mr. A.G. was removed from the United States to Nicaragua on June 1, 2007. Ex. D, Form I-860, Expedited Removal Order dated Apr. 30, 2007; *see also* Ex. B, Form I-871.

39. On June 3, 2021, at the Kingsville, Texas border patrol station, DHS processed him for reinstatement of the 2007 removal order. Ex. B, Form I-871. DHS also issued a Form I-205, Warrant of Removal/Deportation on June 3, 2021. Ex. C. Mr. A.G. reported a fear of return to Nicaragua and signed receipt of a reasonable fear notice. Ex. E, Reasonable Fear Interview Notice at 1.

40. On June 10, 2021, DHS released Petitioner under an Order of Supervision "due to Humanitarian Reasons/Fraihat." Ex. F, Form 1-268, Notice of Custody Determination dated June 10, 2021; Ex. G, Order of Supervision (listing conditions of OSUP). In doing so, ICE would have found that Petitioner was neither a flight risk nor danger to the community. *See* 8 C.F.R. § 241.4(d)(1) (allowing ICE to release a noncitizen who was ordered removed if the release will not pose a danger to the community or a significant risk of flight). DHS released Petitioner on June 11, 2021.

41. Upon release, Mr. A.G. reunited with his mother, who is a United States citizen, and his two sons, who applied for and received Special Immigrant Juvenile Status ("SIJS") based on abandonment by their mother. Their SIJ status provides them a pathway to U.S. permanent residency and citizenship. Both of his sons, who are now 21 years old, are waiting for their priority

dates to become current to adjust status to lawful permanent residence as SIJS recipients.[5] Pet. Decl. ¶ 13.

42. On [redacted] 2022, DHS issued Mr. A.G. an Employment Authorization Document ("EAD") based on his Order of Supervision release. Mr. A.G. renewed his work permit every year and it remains valid until [redacted] 2026. *Id.* ¶ 14. Prior to his detention, Mr. A.G. worked as a painter to support his family and provide for his children.

43. Mr. A.G. has abided by the conditions of his Order of Supervision. As mandated by his Order of Supervision, Mr. A.G. checked in with ICE on the dates and times he was scheduled from 2021 to 2024. *Id.* ¶ 16. Petitioner appeared at 26 Federal Plaza on June 21, 2021 and June 14, 2022 and completed his ICE check-in in-person. Ex. G at 2. On the mornings of June 14, 2023 and June 20, 2024, Petitioner attended the scheduled ICE appointment but was not allowed to enter 26 Federal Plaza by building security because of the amount of people present that day. Ex. H, ICE Check-in Emails. His former attorney sent ICE an email per the instructions provided to him explaining the issue and requesting another appointment date to report for supervision. *Id.* at 2, 4. The emails provided Mr. A.G.'s address and cell phone number. *Id.* While at these visits, ICE would not ask him any questions in particular but simply wanted him to appear and sign to note his presence. In 2025, the ICE check-ins stopped because his former attorney learned from ICE that he no longer had to check in. Pet. Decl. ¶ 16.

44. After his release from detention under the Order of Supervision, Mr. A.G. began experiencing medical problems involving [redacted] relating to the June 2020 assault, that went mostly untreated since he was unable to afford surgery. *Id.* ¶ 17. [redacted]

[5] The priority date establishes the person's "place in line" for being able to apply for a green card based on the availability of visas within their specific immigration category and country of nationality. Once the priority date becomes available, or is "current," the applicant can apply for adjustment of status and obtain lawful permanent resident status, if otherwise eligible.

[redacted] *Id.* In June 2023, he visited the emergency department at Huntington Hospital, *id.*, and was diagnosed with [redacted] *See* Ex. I, Medical Letter of Dr. Rayna Sobieski, MD ("Dr. Sobieski Ltr.") dated Dec. 8, 2025, ¶ 5. In July 2023, Mr. A.G. had surgery [redacted]

45. Prior to his ICE detention, Mr. A.G. was receiving regular treatment [redacted] Ex. I, Dr. Sobieski Ltr ¶ 12.

**B. Petitioner's Sudden Arrest and Detention by ICE**

46. On September 3, 2025, Mr. A.G. was carpooling to work with five other men and had to pick up another person at his home. Pet. Decl. ¶ 18. Mr. A.G. did not regularly work with this group, but he was offered work on a project that day and agreed. They waited in a vehicle outside their coworker's residence for him to be ready. *Id.* After the coworker came out of the house, they began to drive away, but a car drove in front of them and stopped. *Id.* ¶ 19. Inside of the car were ICE agents – they came out of their vehicle and told Mr. A.G. and the other men that they were looking for two people who allegedly resided at the house that the last person came out of. *Id.* ¶ 20. The people ICE were allegedly looking for were not present, Mr. A.G. did know

either of the people ICE asked about, and the other people in the car also said they did not recognize the people that they were looking for. Nonethless, the agents then asked everyone in the vehicle to show their identification documents. *Id.* ¶ 21.

47. Mr. A.G. willingly provided his identification documents. *Id.* The agents looked up his information and mentioned his 2007 removal order. *Id.* The ICE agents told him that he had to go with them to the Central Islip ICE office to talk about it further and kept his identification documents *Id.* Mr. A.G. was not handcuffed, like the other men were. ICE took him in their vehicle to the ICE office at 535 Federal Plaza, Central Islip, NY.

48. When he arrived at the Central Islip ICE office, ICE was about to return his identification documents, but then an ICE agent told him in Spanish that he needed to verify the documents and took the documents back. *Id.* ¶ 22. An ICE agent then confiscated his personal belongings and told him in Spanish that he would not be released. *Id.* ¶ 23. The ICE agent asked him to sign a piece of paper, which he believed to be attesting that the property was his, and gave him a receipt for his property. *Id.*

49. The ICE agent asked him if he wanted to call the Nicaraguan Consulate and he said no. The ICE agent also asked him if he wanted to see a judge and he said yes. The ICE agent did not tell him why he was asking this or what the judge would be for. *Id.* ¶ 24.

50. Upon information and belief, ICE provided Mr. A.G. a document titled "Warrant for Arrest of Alien" dated September 3, 2025 stating that there is "probable cause to believe that Mr. A.G. is removable from the United States" based on "statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law." Ex. J, Form I-200 dated Sept. 3, 2025. The document is signed by Supervisory

Detention and Deportation Officer John and the certificate of service provides that Deportation Officer Martone served Mr. A.G. at the ICE office in Central Islip on September 3, 2025, and the contents of the notice were read to him in Spanish by "SDDO".

51. Upon information and belief, ICE provided Mr. A.G. a document titled "Notice of Revocation of Release" dated September 3, 2025. *See* Ex. K. The notice states that "it has been determined that you will be kept in the custody of [ICE] at this time. This decision has been made based on a review of your file and/or your personal interview, because your removal is now imminent. You were released on an Order of Supervision on or about June 11, 2021. Your removal is now pending, and you do not have any appeals or applications pending." *Id.* at 1. The notice is signed by Bryan J. Flanagan on September 3, 2025 on 2:52 p.m. *Id.* The notice states it was served personally on Mr. A.G. by Deportation Officer Martone at the ICE office in Central Islip on September 3, 2025. *Id.* at 2. The document is only in English with no Spanish translation, nor any certification that it was translated for Petitioner.

52. Upon information and belief, ICE provided Mr. A.G. a document titled "Alien Informal Interview Upon Revocation of Order of Supervision" dated September 3, 2025. *See* Ex. L, Informal Interview Notice. The "interviewing ICE officer" is listed as Deportation Officer Martone. The document is only in English with no Spanish translation, nor certification that it was translated into Spanish for Petitioner. *Id.* The document provides stock language that on September 3, 2025, "[ICE officer Martone] conducted an initial informal interview of the detainee listed above in order to afford the alien an opportunity to respond to the reasons for revocation of his or her order of supervision stated in the notification letter. *Id.* At the interview, the alien made the following oral response regarding the reasons for revocation:" After this paragraph there is a

single word, handwritten "Refused". The boxes to indicate whether the "detainee" did "provide a written statement" or "provide any documents" are not completed on the form. *Id.*

53. Mr. A.G. was not aware of an informal interview on September 3, 2025 where he had the opportunity to respond to the order of supervision revocation notification letter. Nor that he had an opportunity to provide a written statement or any documents. He was also not made aware that his release was being revoked due to his imminent removal.

54. ICE detained Mr. A.G. at 535 Federal Plaza in Central Islip for one full day. From there, ICE took him to Nassau County Jail, where ICE held him for approximately four more days. After leaving Nassau, ICE took him to 26 Federal Plaza, New York, NY, which he was told was full, and then to the Elizabeth Detention Center in New Jersey, where ICE held him for five days. On approximately September 11, 2025, ICE moved him to MDC in Brooklyn, New York where he is currently detained.

**C. Immigration Court Procedural History**

55. While Mr. A.G. was in detention, USCIS conducted a Reasonable Fear Interview and, on September 29, 2025, determined that Mr. A.G. expressed a reasonable fear of persecution or torture. On October 1, 2025, Mr. A.G. was placed in withholding-only proceedings in immigration court. *See* Ex. M, Form I-863, DHS Notice of Referral to Immigration Judge.

56. Petitioner appeared at his first master calendar hearing on October 9, 2025, *id.* at 2, and was connected with legal counsel. Counsel from Brooklyn Defender Services ("BDS") began representing Mr. A.G., pro bono.

57. On October 21, 2025, Mr. A.G.'s immigration counsel appeared at his master calendar hearing. Mr. A.G. was not produced for this hearing because the immigration court was

unable to secure a Spanish interpreter, and counsel waived his presence. The Immigration Judge scheduled another master calendar hearing for November 18, 2025.

58. On November 17, 2025, Mr. A.G. filed his Form I-589 application for withholding of removal and protection under the Convention Against Torture with the immigration court, which detailed his past persecution and fear of return to Nicaragua, the designated country on his removal order. He also expressed a fear of persecution and torture in many non-designated countries, *i.e.*, third countries, "including but not limited to Honduras, Guatemala, and El Salvador." He requested DHS provide notice of intent to remove to a non-designated country and an opportunity to apply for relief from removal to any non-designated country.

59. On November 18, 2025, Mr. A.G. and his BDS immigration counsel appeared at his next master calendar hearing. At this hearing, his immigration counsel told the Court that Mr. A.G. filed his I-589 on November 17, 2025 and asked for time to gather documents from Nicaragua before setting a final hearing date on the merits of his asylum claim. The Immigration Judge scheduled another master calendar hearing for December 2, 2025 where Petitioner anticipated an individual merits hearing would be scheduled.

60. At the master calendar hearing on December 2, 2025, DHS—for the first time—made an oral motion to "pretermit" Mr. A.G.'s I-589 application because of the Honduran Asylum Cooperative Agreement ("HACA"), effective date July 8, 2025.[6] According to the Executive Office for Immigration Review ("EOIR")'s own interpretation, pretermission under 8 C.F.R. § 1003.0(b) applies to legally insufficient applications for fear-based relief: "EOIR's interpretation of applicable law is that adjudicators may pretermit legally deficient asylum applications without

[6] See Agreement Between the Government of the United States of American and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Requests, 90 Fed. Reg. 30076 (July 8, 2025).

a hearing." DOJ, Policy Memo dated April 11, 2025, PM-25-28.[7] In support of their pretermission motion, DHS did not identify or present any evidence suggesting there is a legal deficiency in Mr. A.G.'s applications for fear-based relief, and simply asserted in their oral motion the existence of HACA as the basis for pretermission.

61. On December 11, 2025, Mr. A.G. filed his brief opposing DHS's motion to pretermit his application and submitted evidence in support of his fear of deportation to Honduras, including an updated Form I-589.

62. A master calendar hearing is scheduled for December 16, 2025.

63. DHS has failed to demonstrate that Honduras will receive Mr. A.G. and provide him a full and fair hearing for his fear-based relief. DHS has also not met its burden of demonstrate that Honduras is a safe third country. Petitioner must have the opportunity to apply for withholding of removal as to Honduras or any other third-country DHS intends to execute his removal. *See* Pet. Decl. ¶ 37.

64. In October 2025, Petitioner filed a Petition for Review in the U.S. Court of Appeals for the Second Circuit. Although the agency proceedings are ongoing, Petitioner submitted the petition for review to ensure compliance with the Supreme Court's ruling in *Riley v. Bondi*, No. 23-1270, 606 U.S. ___, 2025 WL 1758502 (June 26, 2025). The petition for review requests that his reinstated removal order dated June 3, 2021 be vacated because it was unlawfully issued.

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[7] *Available at* https://www.justice.gov/eoir/media/1396411; *see also Matter of HAAV*, 29 I&N Dec. 233 (BIA 2025) ("If the factual allegations underlying a claim for asylum, withholding of removal, or protection under the Convention Against Torture, viewed in the light most favorable to the respondent, do not establish prima facie eligibility for relief or protection, an Immigration Judge may pretermit the applications without a full evidentiary hearing on the merits of the claim.").

**D. Health Complications in Detention**

65. While detained, Mr. A.G. has suffered severe health complications from his [redacted]. *See* Ex. I, Dr. Sobieski Ltr. ¶¶ 10-17; *see generally* Ex. N, Declaration of Sabrina Sekaran, LMSW ("Sekaran Decl."). Ex. I, Dr. Sobieski Ltr. ¶ 16. [redacted] Mr. A.G. was very concerned with his health and requested medical appointments daily for four weeks. Pet. Decl. ¶ 28. It was not until October 30, 2025 that Mr. A.G. was finally able to go to the infirmary where they drew blood and ran tests, but did not give him his results. *Id.* ¶ 29. He also saw a doctor on November 7, 2025 and November 13, 2025, where more tests were run but he was never informed of his results. *Id.* Further, he has not received medical treatment or medication for his symptoms besides having tests run. *Id.* ¶ 30; Ex. N, Sekaran Decl. ¶ 18.

66. Despite MDC staff relaying to Mr. A.G.'s social worker that his tests were normal and showed no significant findings, on or about November 7th, Mr. A.G. was taken to the emergency room following a medical visit at MDC. Ex. N, Sekaran Decl. ¶ 17; Pet. Decl. ¶ 29. He reported that the doctor found [redacted].

67. Mr. A.G. reports that he only gets 510 minutes, the equivalent of 8.5 hours, of time on the phone every month. Pet. Decl. ¶ 31. This means he must limit his time to speak with his family significantly to ensure he is able to speak with them throughout the month. He also feels particularly vulnerable because he is unable to practice his faith as he did in the past, attending Church every week with his aunt. *Id.* ¶ 32.

68. At MDC, Mr. A.G. is in a very small cell, which he shares with one other person. *Id.* ¶ 33. He is able to leave the cell three times a day but is not given any rehabilitative time where they are permitted to go outdoors. *Id.* ¶ 34.

69. Since arriving at MDC in September 2025, Mr. A.G. has been extremely worried about his health because he is unable to [redacted] Mr. A.G. is fearful that if he does not receive proper medical attention or at the very least, a proper medical evaluation, his condition could worsen and even become fatal. *Id.* ¶¶ 27-29.

## CAUSES OF ACTION

### COUNT ONE
### Violation of the Immigration and Nationality Act and Implementing Regulations

70. Mr. A.G. repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

71. 8 C.F.R. § 241.4(*l*) governs the procedures for the revocation of OSUPs. Only the Executive Associate Director of ICE or, in certain circumstances and upon making specific findings, the field office director. 8 C.F.R. § 241.4(*l*)(2); *id.* § 1.2. Additionally, the noncitizen must be "notified of the reasons for revocation of his or her release or parole" in writing and provided "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." *Id.* § 241.4(*l*)(1); *Funes Gamez*, 2025 WL 3263896, at *14 (notice must be in writing).

72. Respondents failed to comply with these requirements twice over. First, Bryan Flanagan—the officer who signed Petitioner's Notice of Revocation of Release—does not have the authority to revoke release unless he is the field office director and "in [his] opinion, revocation

is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate" Director of ICE. 8 C.F.R. § 241.4(*l*)(2). This regulation requires the field office director to "make certain findings." *Ceesay*, 781 F. Supp. 3d at 162. Here, "there is no evidence that [Mr. Flanagan] made the findings that a district director is required to make before revoking [Petitioner's] release." *Id.* Respondents therefore violated 8 C.F.R. § 241.4(*l*)(2).

73. Alternatively, if Mr. Flanagan is not the field office director, then he does not have authority at all to revoke release.

74. Second, Respondents failed to provide Petitioner with the requisite notice. The ICE officers only gave Mr. A.G. a notice in English that his release was being revoked. Mr. A.G. cannot speak or read English and could not understand what the notice was communicating. There is no certification that the form was translated to Mr. A.G. in Spanish or that a form in Spanish was provided to him. The notice is therefore inadequate. And despite the documentation that Mr. A.G. received an informal interview, the officers did not explain to Mr. A.G. in Spanish that his release was being revoked and did not actually provide him with an informal interview to challenge the basis for the revocation.

75. Therefore, Respondents violated 8 C.F.R. § 241.4(*l*). The proper remedy for failure to comply with these regulations is release. *See, e.g.*, *Ceesay*, 781 F. Supp. 3d at 170 (ordering release); *Funes Gamez*, 2025 WL 3263896, at *26 (same); *E.M.M.*, 2025 WL 3077995, at *6 (same).

**COUNT TWO**
**Violation of Fifth Amendment Right to Procedural Due Process**

76. Mr. A.G. repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

77. The procedural component of the Due Process Clause prohibits the government from depriving an individual of a protected interest without notice and an opportunity to be heard. *Mathews*, 424 U.S. at 333.

78. Due process requires that a noncitizen previously released from custody receive a pre-deprivation hearing before the government can re-detain them. *See Guillermo M. R.*, 791 F. Supp. 3d at 1036. Or, at the very minimum, due process requires DHS to follow its own regulations before re-detaining noncitizens who were previously released. *See Zhu*, 2025 WL 2452352, at *9 ("ICE's failure to follow its own regulations and provide Petitioner with notice or an interview violated Petitioner's procedural due process rights."). Petitioner's detention violates the Due Process Clause because no change in Petitioner's case compels a change in his custody status. In re-detaining Petitioner, Respondents have offered no indication that any permissible statutory purpose is served. His detention is not rationally related to any immigration purpose.

79. Respondents failed to provide Mr. A.G. with a pre-deprivation hearing or follow DHS's own regulations governing the revocation of release. Therefore, Respondents violated Mr. A.G.'s procedural due process rights.

80. The proper remedy for this violation is release. *See Zhu*, 2025 WL 2452352, at *10 (ordering release).

**COUNT THREE**
**Violation of Fifth Amendment Right to Substantive Due Process**

81. Mr. A.G. repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

82. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 833 (2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The requirement that deprivation of liberty be specific and

non-punitive was violated here. The Fifth Amendment guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Civil detention is unconstitutionally punitive when it is not "reasonably related to a legitimate goal." *Id.* at 538-39.

83. In the immigration context, the only legitimate government objectives for detaining a noncitizen are preventing danger to the community and flight risk. *Zadyvdas v. Davis*, 533 U.S. 678, 690-91 (2001).

84. When DHS initially issued Petitioner the OSUP, it determined that he was not a danger to the community or a flight risk. Petitioner has complied with every condition of his OSUP. There are no changed circumstances that justify the OSUP's revocation.

85. The Notice of Revocation of Release's, Ex. K, conclusory assertion that Mr. A.G.'s removal is imminent bears no reasonable relationship to the two permissible purposes of immigration detention: preventing danger to the community or flight risk prior to removal.

86. Respondents have no legitimate, non-punitive basis for revoking Petitioner's OSUP and detaining him. Therefore, Mr. A.G.'s detention is unconstitutionally punitive and violates his substantive due process rights. The proper remedy is release.

**COUNT FOUR**
**Violation of the Administrative Procedure Act**
**(Detention is Arbitrary and Capricious; Contrary to Constitutional Right; In Excess of Statutory Authority; and Without Observance of Procedure Required by Law)**

87. Mr. A.G. repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.

88. The Administrative Procedure Act (APA) enables courts to "hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power,

privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law." 5 U.S.C. § 706(2).

89. As explained, *supra*, Mr. A.G.'s detention violates the Constitution and the regulations governing revocation of release under OSUP and is therefore not in accordance with law and contrary to a constitutional right. Additionally, the Notice of Revocation of Release does not make the requisite findings that 8 C.F.R. § 241.4(*l*)(2) requires, and the conclusory assertion that Mr. A.G.'s removal is imminent is unsupported and unreasoned. The Notice is therefore arbitrary and capricious under the APA.

**COUNT FIVE**
**Violation of the *Accardi* Doctrine**
**(Respondents Failed to Follow 8 C.F.R. § 241.4(*l*))**

90. Mr. A.G. repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

91. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

92. Here, as explained *supra*, Respondents failed to follow the regulations governing revocation of release under 8 C.F.R. § 241.4(*l*). This constitutes an *Accardi* violation.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Enjoin Respondents from removing Petitioner from the United States and transferring Petitioner outside the jurisdiction of this District pending these proceedings;
3) Declare that Petitioner's arrest and detention violate the Due Process Clause of the Fifth Amendment; the INA and implementing regulations; the APA; and the *Accardi* doctrine;
4) Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody where Respondents may impose only the restraints on Petitioner's liberty that existed prior to his detention on September 3, 2025, and enjoin Respondents from re-detaining Petitioner without notice and an opportunity to be heard before a neutral arbiter and in which Respondents bear the burden to establish that Petitioner is not a danger or a flight risk that cannot be mitigated by bond and in which alternatives to detention and ability to pay are considered;
5) Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of return, as required by 28 U.S.C. § 2243;
6) Award Petitioner reasonable attorneys' fees and costs for this act under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
7) Grant Petitioner any other relief this Court deems just and proper.

Dated: December 16, 2025
Brooklyn, New York

Respectfully submitted,

*/s/ Lucas Marquez*
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**Application to appear as a law graduate pending*