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AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT
for the

2025 DEC 19 AM 10:53

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: ______

Oleg Belach
Petitioner

v.

David Marin, et alt
Respondent
(name of warden or authorized person having custody of petitioner)

Case No. ED CV25-3452-SPG (RAO)
(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Oleg Belach
   (b) Other names you have used: N/A
2. Place of confinement:
   (a) Name of institution: Adelanto ICE Processing Center
   (b) Address: 10250 Rancho Road, Adelanto, CA 92301
   (c) Your identification number: A# [redacted]
3. Are you currently being held on orders by:
   ☒ Federal authorities ☐ State authorities ☐ Other - explain:
4. Are you currently:
   ☐ A pretrial detainee (waiting for trial on criminal charges)
   ☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
   If you are currently serving a sentence, provide:
   (a) Name and location of court that sentenced you:
   (b) Docket number of criminal case:
   (c) Date of sentencing:
   ☒ Being held on an immigration charge
   ☐ Other *(explain)*:

Decision or Action You Are Challenging

5. What are you challenging in this petition:

☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

☐ Pretrial detention

☒ Immigration detention

☐ Detainer

☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

☐ Disciplinary proceedings

☐ Other *(explain)*: ______

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: ______

(b) Docket number, case number, or opinion number: ______

(c) Decision or action you are challenging *(for disciplinary proceedings, specify the penalties imposed)*: ______

(d) Date of the decision or action: March 17, 2024

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Los Angeles ICE Field Office

(2) Date of filing: July 15, 2025

(3) Docket number, case number, or opinion number: A# [redacted]

(4) Result: Decision to Continue Detention

(5) Date of result: August 18, 2025

(6) Issues raised: No travel document obtained. Petitioner is not a flight risk or a danger to the community

(b) If you answered "No," explain why you did not appeal:

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: ICE Headquarters Post-Order Detention Unit, Washington, D.C.

(2) Date of filing: On or around October 15, 2025

(3) Docket number, case number, or opinion number: A# [redacted]

(4) Result: Petitioner has not been informed of any result

(5) Date of result: The case was allegedly reviewed December 1, 2025

(6) Issues raised: No travel document obtained. Petitioner is not a flight risk or a danger to the community

(b) If you answered "No," explain why you did not file a second appeal:

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a third appeal:
No more administrative remedies are available.

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court:
(2) Case number:
(3) Date of filing:
(4) Result:
(5) Date of result:
(6) Issues raised:

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court:
(2) Case number:
(3) Date of filing:
(4) Result:
(5) Date of result:
(6) Issues raised:

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence:

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☒ Yes ☐ No

If "Yes," provide:

(a) Date you were taken into immigration custody: June 4, 2025

(b) Date of the removal or reinstatement order:

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes ☒ No

If "Yes," provide:

(1) Date of filing:

(2) Case number:

(3) Result:

(4) Date of result:

(5) Issues raised:

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court:

(2) Date of filing:

(3) Case number:

(4) Result: ______

(5) Date of result: ______

(6) Issues raised: ______

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: ______

(b) Name of the authority, agency, or court: ______

(c) Date of filing: ______

(d) Docket number, case number, or opinion number: ______

(e) Result: ______

(f) Date of result: ______

(g) Issues raised: ______

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Violation of the Fifth Amendment of the U.S. Constitution - Substantive Due Process

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:
When ICE issued Petitioner an order of supervision, it found that he is neither a danger to the community nor a flight risk. When Respondents revoked the order of supervision, Petitioner had complied with every condition of the order and ICE had not secured the necessary travel document. No change in circumstances warranted the order's revocation.

(b) Did you present Ground One in all appeals that were available to you?
☐ Yes ☒ No There is no statutory exhaustion requirement

GROUND TWO: Violation of the Fifth Amendment to the U.S. Constitution-Procedural Due Process

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:
Revoking Petitioner's order of supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment of the U.S. Constitution.

(b) Did you present Ground Two in all appeals that were available to you?
☐ Yes ☒ No There is no statutory exhaustion requirement

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

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:
Under APA a court shall hold unlawful and set aside agency action not in accordance with law, the constitution, power, priviledge or immunity

(b) Did you present Ground Three in all appeals that were available to you?
☐ Yes ☒ No There is no statutory exhaustion requirement

GROUND FOUR: Violation of Administrative Procedure Act, U.S.C. §706(2)(A)-Arbitrary and Capricious

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Respondent's revocation of order of supervision was arbitrary and capricious because it violated statute, regulation, and the constitution, as described in the attached briefing

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes ☒ No there is no exhaustion requirement

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: N/A

SEE MORE GROUNDS IN ATTACHED PAGES

Request for Relief

15. State exactly what you want the court to do: Petitioner Requests that this Cort: a.) Exercise jurisdiction over this matter; b.) Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition; c) 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; Order Petitioner's immediate release; e) Award Petitioner's ~~(immediate release)~~ costs and reasonable attorney's fees; and f) Order such other relief as this Court may deem just and proper.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

Filed at the Office of Clerk of the Court

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 12.16.2025

Signature of Petitioner

Signature of Attorney or other authorized person, if any

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

Supporting Facts: Regulations that purport to Respondents authority to revoke and order of supervision on ~~ord~~ other grounds than those listed on statute are ultra vires and in excess of statutory authority becaus regulations cannot go around the plain text of the statute.

—o—

Ground Six- Ultra Vires Action

Supporting Facts: There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner. Petitioner has a statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

—o—

Ground Seven - Violation of the Accardi Doctrine

Supporting Facts: Under the Accardi doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Petitioner.

—o—

Ground Eight - Statutory Violation

Supporting Facts: Petitioner's continued detention by Respondents is unlawful and contravenes the pertinent statute and case law as per the Supreme Court decisions on the matter. Petitioner's 90-day statutory remoral period and six mont presumptively reasonably period for continued removal efforts have both passed. Respondents are unable to remove Petitioner to Russia because no travel documents have been obtained for him.

—o—

Ground Nine - Substantive Due Process

Supporting Facts: Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restrain. The Due Process Clause of the Fifth Amendment requires that detention serve a compelling goverment interest- removal of Petitioner. Petitioner, however, is not significantly likely to be removed in the reasonably foreseeable future.

—o—

Ground Ten - Procedural Due Process Violation

Supporting Facts: Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. Petitioner is this case has been denied that opportunity. There is no administrative mechanism in Place for Petitioner to obtain a decision from a neutral arbiter or appeal a custody decision that violates case law.

—o—

Note:

Petitioner # did not present the ground above in all appeals. There is no statutory exhaustion requirement.

Oleg Belach
A# [redacted]
Adelanto ICE Processing Center
10250 Rancho Road
Adelnto, CA 92301
[redacted]
Appearing Pro se

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Oleg Belach A# [redacted] Petitioner, v. David Marin, Warden, Adelanto ICE Processing Center; Thomas Giles, Director of the Los Angeles ICE Field Office; Todd Lyons, Acting Director of ICE; Kristie Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General of the United States, Respondents.	Case No. **PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241, BY A PERSON IN INDEFINITE ICE DETENTION**

INTRODUCTION

1. This case challenges the unlawful detention of Petitioner, Oleg Belach, who is currently in the custody of Immigration and Customs Enforcement)"ICE") at the Adelanto ICE Processing Center. Petitioner is neither a flight risk nor a danger to the community. But on or about June 4, 2025 ICE detained him 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 that provide for an opportunity for an orderly departure when the time came for Petitioner's removal from this country.

Petitioner has been detained in ICE custody longer than the six-month presumptively reasonably period for continued removal efforts.

2. ICE found that Petitioner was neither a flight risk nor a danger to the community when it previously released Petitioner from ICE detention on bond on July, 2012 and when it placed him on an order of supervision on May 2, 2024. Since July, 2012 Petitioner has fully abided by the terms of the bond and the order of supervision, including attending regularly scheduled check-ins with ICE.

3. But a regularly scheduled check-in with ICE on June 4, 2025, Respondents suddenly revoked Petitioner's order of supervision [and/or bond] and arrested him. Petitioner has been detained at Adelanto ICE Processing Center since then.

4. Respondent's actions violate the Due Process clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Acy ("INA") and implementing regulations, the Administrative Procedure Act ("APA"), and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions

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

PARTIES

6. Petitioner Oleg Belach, is currently detained at Adelanto ICE Processing Center in Adelanto, California.

7. Respondent David Marin, Warden of Adelanto ICE Processing Center, where Petitioner is detained under the authority of ICE is Petitioner immediate guardian.

8. Respondents Todd Lyons, Acting Director of ICE and Thomas Giles, Director of the Los Angeles ICE Field Office are Petitioner's immediate guardians. See *Vasquez v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000), cert. denied, 122 S. Ct. 43 (2001).

9. Respondent Kristie Noem is the Secretary of the Department of Homeland Security. She is responsible for the administration of ICE and the implementation and enforcement of the Immigration and Naturalization Act ("INA"). As such, Mrs. Noem is the legal custodian of Petitioner.

10. Respondent Pamela Bondi is the Attorney General of the United States and is responsible for the administration of ICE and the implementation and enforcement of the INA. As such, Mrs Bondi has ultimate custodial authority over Petitioner.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the INA, 8 U.S.C. § 1101, *et seq*., and the APA, 5 U.S.C. § 551, *et seq.*

12. Venue is proper in the Central District of California because Respondent David Marin, Warden of the Adelanto ICE Processing Center is Petitioner's immediate custodian and under 28 U.S.C. § 1391(e)(1) because Respondents are officers of United States agencies, Petitioner currently resides within this District, and there is no real property involved in this action.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

13. Petitioner is 51 years old man who came to the United Sates in the year of 2000. He was born [redacted] in the Union of Soviet Socialist Republics ("USSR") and left Russia in June 1996. The Russian government issued Petitioner a Soviet Union passport. Petitioner and the family of his wife left Russia because a criminal group was threatening them. Petitioner's wife, son, his father-in-law, mother-in-law and two younger brothers-in-law all had to leave. [redacted]

[redacted]

what to do or if it was a good idea to settle in the United States. After 2 years in Los Angeles when they were not contacted by the criminals at all they decided they could set home in Los Angeles and applied for political asylum. On March of 2003 Petitioner and his wife did not attend to a court date because they never received the court notice and were ordered deported by the Immigration judge in absentia. They, however, were not informed of the fact. On December, 2011 Petitioner was arrested on charges for grand theft for a commercial burglary for stealing cloths with a value over $1,000, a felony.

On June, 2012 Petitioner had a conviction. He was not convicted to any time in prison, only time served in jail (around 5 months), and to two years probation. Immigration authorities took Petitioner to an immigration detention center and released him the following day on a $5000 bond. That is how Petitioner found out he had a deportation order. So we filed to re-open the case through counsel. The motion to re-pen was granted on June 20, 2012. On February 2, 2015 Petitioner had a second conviction for commercial burglary, and had a 2 years probation sentence. No jail time. Since his conviction did not have immigration consequences, ICE did not pick-up Petitioner or took away his bond. On February 4, 2020 Petitioner was arrested for driving a car without permission. He was convicted to 4 months in jail and 2 years probation, which does not have immigration consequences and ICE did not take me or took away the conditions of his bond. Petitioner does not deny the previous accusations of commercial burglary. But this third time the case was totally unfair. He was renting a car for a year and he was away in Florida when he had to return it. He called the owner and told him to charge him for an additional month or to take the deposit, that he will return the car in less than two weeks. The owner reported the car as stolen. Petitioner could have won this case but his detention was a problem for the wife and the family so he accepted a guilty plea deal to get out of detention as soon as possible. The owner of the car kept the deposit and still charged Petitioner for another month as well as for damages. Petitioner would argue this man presented the complain only to make a bigger profit.

On or about September 2023 Petitioner had a hearing with an immigration judge for his asylum application. The translator was not very good and Petitioner told to the judge three times the translation was not good. After the third time the judge said he was going to stop the hearing and that he was going to set up another date to find another translator. The next hearing was set up for February 15, 2024. When Petitioner and his wife showed up for Court on February 15, 2024 the judge told them they were there to hear his decision. They told the judge they had not had a hearing yet and the judge said it did not matter, that he had already reached his decision and that he was going to deny the petition. Petitioner asked why he was denying the case and the judge said that because he had lied on his new

Petition by claiming he was a national from Ukraine but later saying he was a Russian citizen. Petitioner tried to explain the judge how that was not a lie but the judge order him to be quite and said that he could not trust Petitioner, that Petitioner was a lair and that the decision was already taken.

Petitioner's order of removal became final March 17, 2024 and he did not file any appeals. On May 2, 2024 ICE put him in an order of supervision with an ankle monitor. He had to go to the ICE offices once a month. Once every two or three months ICE officers visited Petitioner's house. On May 9, 2025 USCIS accepted the application I-130 for Alien Relative based on his US citizen born daughter who is over 21 years now. The daughter petitioned for Petitioner and his wife.

The immigration judge had ordered Petitioner removed to Ukraine. Ukraine was part of the USSR but it is now an independent country. Petitioner is not and never has been a Ukraine citizen. He was born in USSR, not in Russia, but in Kazakhstan. Kazakhstan is now a different and independent country. Petitioner has never been in Ukraine in his life but his ethnicity or nationality is Ukrainian because his parents were Ukrainian as a nationality or ethnicity. His parents were Soviet Union citizens. Please remember that as the name says it, the USSR was kind of a "super-confederation" composed of 15 Republics. So we were said to be national of a Republic but citizen of the USSR. Because my parents were of the Ukrainian ethnicity we were called Ukrainian nationals in the USSR and that is still how it is seen in Russia that still remains a big confederation of nationalities or ethnicities because they did not let go of the nationalities the had conquered before the times of the creation of the Soviet Union as foe example the Chechen Republic. That does not mean we were Ukrainian citizens or that I was lying in my application.

That area of the world in very ancient and it has a large mosaic of ethnicities, nationalities, and races with many thousand of years old conflicts between the different peoples. Just think about this, from the point of view of that part of the world I am a national Ukrainian trying to return to Russia after all these years of war and hatred between Russia and Ukraine. And on on top of that I am trying to return with a Jewish wife and U.S. born Jewish children, because, even thought I am not Jewish, Judaism is transmitted through the mother, not the father.

Now, Petitioner became a Russian citizen in March 1996 after the collapse of the Soviet Union. At that time time they did not have Russian passports yet, so Petitioner and all his family were given Soviet Union passports.

On May 2024, Petitioner went to an interview with ICE officers who told him he had a deportation order to Ukraine. Petitioner told them he is not a Ukrainian citizen, but a Russian citizen. They had a photocopy of Petitioner's USSR passport. So they instructed Petitioner to contact the Russian embassy and apply for a new travel document. There was only the embassy of Russia in Washington, D.C. and the embassy required to make online appointments. Petitioner and his wife applied for an appointment every single month for a whole year (we could only apply once monthly). They showed the copies of the online results to the ICE officers every month when they went to report at ICE. If a Russian did not have his expired passport in hand they had to go in person to the embassy in Washington, D.C. The ICE officers told Petitioner every single month that if he did not bring the passport or leave the country they would arrest Petitioner. Petitioner told them he was trying his best, but that legally, he could not go out of the country without a passport. This went on for 13 months. They arrested Petitioner on June 4, 2025.

On June 12, 2025, and being already detained at Adelanto ICE Processing Center, ICE officers took Petitioner out of his dorm for an interview. They took Petitioner's picture for the application in the Ukraine embassy. Again, Petitioner told them he is not a Ukrainian citizen but a Russian citizen, but he signed the papers for the application requesting Ukrainian travel documents. The following day they came with a Russian application which Petitioner signed. They asked him where he was born and he told them Kazakhstan. They asked him if it was an independent republic now and he said it was. So the ICE officers told him they were going to apply for a travel document with Kazakhstan to which

Petitioner agreed. They made a second picture to apply for documents either in Russia, Kazakhstan or both.

On July 15, 2025 Petitioner received notice for the 90-day review. The review was supposed to be on August 18, 2025. On September 3, 2025 Petitioner sent a message on the tablet asking for the result of the review. The answer next day was that they had sent Petitioner's file to the Headquarters and that the decision had not been made yet. On October 1, 2025 Petitioner wrote a hard-copy request form asking what happened with the review because it was over a month from the review date. He received a Notice of the Decision to Continue Detention October 12, 2025. It informed Petitioner the decision had been made on October 1, 2025. Petitioner's Office responded his written request on October 15, 2025 and he said Petitioner's case was in the Headquarters in Washington D.C. and his next review was December 1, 2025. Petitioner has not received any official letters for the 180-days interview date or any responses to the December 1, 2025 review.

Petitioner has always been willing to be deported and has done all he could to obtain a Russian passport for him and his wife because the both of them are Russian citizens. They are not citizens of any other country. They have even gotten U.S. passports for their children so the children are ready to go with them when Petitioner and his wife get deported. But with the war between Russia and Ukraine and the US's support to Ukraine the relationship between the U.S. and Russia has not been the best. There was a long period in which there was not an ambassador in the Russian embassy. The embassy did not seem to be really functioning.

Petitioner needs to be out of detention because his wife had a surgery and since then she cannot do much physical activity or function as needed. Besides, Petitioner is the one who brings the largest part of the income for the family.

In the community people know "the Belaches" are going through hard times right now. They have a 6 years old son who is going to school and because of her surgery she has a lot of trouble getting him ready for school every morning and all by herself. Sometimes she is not doing well and they arrive to school late. The principal of the school has allowed them to arrive late because it is better than the son go to school for a few hours than not at all. Sometimes, she cannot take the son at all, so he is behind the rest of the class. This situation is affecting their 6 years old U.S. born son emotionally quite a bit. When the wife goes to immigration she has to take the son with her as per ICE instructions. She does not know how long is the interview going to take. The principal of the school understands the situation and allows my wife to bring the child when she can. For us is important our son's education but there are so many things going on that affect him. He is quite the intelligent fellow but sometimes he feels he is not as smart as the other children because he sees that everybody in class knows how to do things he cannot do. But all that happened was that he missed one or two key classes. Every month Petitioner's wife shows up to the ICE interview they tell her they are going to arrest her. But at the end of the interview they give her another date for the following month. This puts their son in a bad emotional state. He wonders if he is also going to be arrested and "put in jail" or if the mother is arrested where is going to be taken. He is always scared to go those appointment. In their way there he begs to go somewhere else and do not attend the appointment. Petitioner's unnecessary and unlawful detention is creating many bad situations in the family. It is a nonsensical detention because the chances to remove Petitioner and his wife are better if Petitioner is out of detention and trying to obtain their passport from the Russian embassy.

There is another situation that is of concern for Petitioner. When Petitioner came into detention he was doing normally good when it came to his health. A couple of days after he was detained, Petitioner started to have a medical condition where he cannot control his facial expressions and the movement of his eyelids and the eyes themselves. During these spasms he has trouble to breath and a rasping sound comes from his throat or chest. It started with the eyelids closing and Petitioner not being able to open them up for some seconds. Then, after a while, he started to have breathing problems. When Petitioner lays down on bed the symptoms stop. So Petitioner spends a lot of time lying down so he does not have to go through the symptoms and what seems to be neck and face spasms and breathing difficulties. Meaning, he is active only 30 percent of the time. He has very short periods where his vision is very bad, he cannot see his surrounding for a few seconds several times a day. He cannot watch television or read a book even if he is lying in bed.

He has been putting a medical request twice a month praying for medical attention since the very first month. The first one was as early as June 8, 2025. He also wrote about a bone from the spine that is sticking out very prominently and causes a lot of neck and upper back pain. He cannot be comfortable in any position. Most recently he put a request for a nail fungus problem. He was taken to medical 3 days after he put the nail fungus complaint. He saw a nurse and explained both of his more serious conditions to her and his symptoms. He was giving nail fungus medication and she said she was setting up an appointment for him with a doctor. A week more passed and a doctor saw him, the doctor said the medical department has to send him for an MRI and also to X-Rays for the vertebrae that seems to be sticking out of his spine. (You can see with the naked eye how bad it is protruding out of place. Maybe the neck and head spasms Petitioner is having are damaging his spine.) There is also a bump growing on top of Petitioner's left eyebrow.

The doctor advised Petitioner these tests are done outside the detention center and that ICE has to approve the tests and that the approval may take 3-4 months. Petitioner worries that if the condition is not addressed promptly it could become irreversible and part of the condition involves his inability to control his breathing, which could mean that if the condition gets more severe Petitioner's breathing could be even more difficult or simply impossible; leading to brain damage or to Petitioner's death. Petitioner fears that one day, when he loses his sight, it will not be for a few seconds but could become a permanent condition.

Petitioner made poor choices for which he had encounters with the judicial system and which led to convictions. But Petitioner learned his lesson and is rehabilitated. The proof is that his last encounter with the justice system for something he was really responsible for was in 2015. More than 10 years ago. Even his last conviction for something he did not do was in 2020. More than 5 years ago.

Also, during the over six months in detention, Petitioner has not broken any rules in the detention facility and has stayed out of trouble.

14. For all the above Petitioner should be released from detention and granting petitioner orderly departure is in order.

15. Since ICE released Petitioner on bond on or about June 2012 and on an order of supervision on May 2, 2024, Petitioner has complied with all conditions of the bond and the order, including periodic check-ins with ICE. No circumstances have changed that make Petitioner a flight risk or a danger to the community.

16. At a regularly ICE scheduled check-in on June 4, 2024, ICE suddenly revoked Petitioner's order of supervision and arrested him/her.

17. Upon information and believe, 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.

18. Upon arrest, ICE transfer Petitioner to the Adelanto ICE Processing Center, at Adelanto, California where he is currently detained. A detention that has become very punitive for Petitioner as you can see reading item # 14 above, which include many hardships for Petitioner and his family and serious and maybe life threatening conditions for Petitioner.

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

20. At the time ICE revoked Petitioner's order of supervision, the agency had not secured travel documents necessary for removal from the United States.

LEGAL FRAMEWORK

Due Process Governs Decisions to Revoke an Order of Supervision

21. "The Due Process Clause applies to all persons withing 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 restrain-lies at the heart of the liberty that Clause protects." Id. at 690 (2001).

22. Under substantive process doctrine, a restrain on liberty like revocation of a noncitizen'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).

23. "Procedural Due Process imposes constrains on governmental decisions which deprive individuals of liberty," like the decision to 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).

Statute and Regulation Govern Procedures for Revoking an Order of Supervision

24. A noncitizen 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 proscribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (titled "Supervision after 90-day period").

25. A noncitizen 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).

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

27. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a noncitizen 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(1)(2); see also *id.* § 241.13(i) (permitting revocation of an order of supervision only if a noncitizen "violates 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 the person is a risk to the community, unlikely to comply with the order of removal, or was removed on specified grounds).

28. 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(1)(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(1)(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. Kurdorfer*, 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).

29. Upon revocation of an order of supervision, ICE must give a noncitizen 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

30. The APA authorizes judicial review of final agency action. 55 U.S.C. § 704.

31. Final agency actions are those (1) that "mark the consummation of the agency decision-making process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

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

33. The revocation here marked the consummation of ICE's decision making process regarding Petitioner's custody.

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

The Accardi Doctrine Requires Agencies to Follow Internal Rules

35. Under the *Accardi* doctrine, a foundational principal 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."

36. *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

denials 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).

37. Where a release notification issued alongside an order of supervision instructs that a noncitizen 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. Sessions*, 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).

Detention Beyond Six Months

38. In Zadvydas v. Davis, 533 U.S.C. 678 (2001), the U.S. Supreme Court held that 8 U.S.C. § 1231(a)(6), when read in light of the Constitutions demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." 533 U.S. at 689. A "habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699. If the individual's removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute." *Id.* at 69-700. In *Clark v. Martinez*, 543 U.S. 371 (2005), the U.S. Supreme Court held that Zadvydas applies to aliens found inadmissible as well as removable.

39. In determining the length of a reasonable removal period, the Court adopted a "presumptively reasonable period of detention" of six months. *Id.* at 701. After six months, the government bears the burden of disproving an alien's "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." See *Zhou v. Farquharson*, 2001 U.S. Dist. LEXIS 18239, *2-*3 (D. Mass. Oct. 19, 2001) (quoting and summarizing *Zadvydas*.) Moreover, "for detention to remain reasonable, as the period of prior post-removal-confinement grows, what counts as the

'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701. ICE's administrative regulations also recognize that the ICE Headquarters Post-Order Detention Unit ("HQPDU") has a six month period for determining whether there is a significant likelihood of an alien's removal in the reasonably foreseeable future. See 8 C.F.R. § 241.4(k)(2)(ii).

40. Alien who have been detained beyond the presumptive six months should be released where the government is unable to present documented confirmation that the foreign government at issue will agree to accept the particular individual in question. See *Agbada v. John Ashcroft*, 2002 U.S. Dist. LEXIS 15797 (D. Mass. August 22, 2002) (court "will likely grant" Habeas petition after fourteen months if ICE is "unable to present documented confirmation that the Nigerian government has agreed to [petitioner's] repatriation"); *Zhou*, 2001 U.S. Dist. LEXIS 19050 at *7 (W.D. Wash. February 28, 2002) (government's failure to offer specific information regarding how or when it expected to obtain the necessary documentation or cooperation from the foreign government indicated that there was no significant likelihood of petitioner's removal in the reasonably foreseeable future). See *Zadvydas v. Davis*, 533 U.S. 678, 702 (2001) (Petitioner need not show 'the absence of *any* prospect of removal' only that 'there is no significant likelihood of removal in the reasonably foreseeable future.' ")

CLAIMS FOR RELIEF

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

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

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

43. When Respondents revoked the order of supervision, Petitioner had complied with every condition of the order and ICE had not secured the necessary travel documents for removal. No change in circumstances warranted the order's revocation.

44. 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.

45. 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 Processing

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

47. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitutive procedural requirements entail.

48. The first factor, the private interest at issue, favors Petitioner. "Freedom from imprisonment-from government custody, detention, or other forms of physical restrain-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.

49. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. The safeguard against erroneous deprivation 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. 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.

50. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people 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 and order of supervision reduces fiscal and administrative burdens on the government.

51. 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 Rights

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

53. 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 rights, power, privilege, or immunity." 5 U.S.C. § 706(2)(A),(B).

54. 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).

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

56. 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.

57. 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.

58. 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.

59. 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 he had not. Nor could Respondents make findings that the purpose 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.

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

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

62. Petitioner alleges all paragraphs above as if fully set forth here.

63. 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)

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

65. 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).

66. Respondent's 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 detention. Petitioner has never violated a condition of his order of supervision and no new facts or changed circumstances suggests he would.

67. 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).

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

69. 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.

70. Third, Respondents failed to consider reasonable alternatives to revoking Petitioner's order of supervision that were before the agency, like simple 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 interest in effectuating a removal order and save it the expense of detention not needed to guarantee Petitioner's appearance.

71. Fourth, Respondent's failed to consider Petitioner's substantial reliance interest, created by its instruction on Petitioner's release notification, that presented the conditions of supervision which Petitioner never violated.

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

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

74. 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).

75. "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).

76. 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 who 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.

77. Regulations that purport to give Respondent authority to revoke an order of supervision on grounds other than those listed on § 1231(a)(6) are ultra vires and in excess of statutory authority because "[r]egulations cannot circumvent the plain text of the statute." *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018).

78. Respondent's 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

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

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

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

Count Seven
Violation of the *Accardi* Doctrine

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

83. 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").

84. 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 those 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).

85. Under *Accardi*, Respondent's 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.

Count Eight
Statutory Violation

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

87. Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231(a)(6) as interpreted by the U.S. Supreme Court in *Zadvydas*. Petitioner's 90-day statutory removal period and six-month presumptively reasonably period for continued removal efforts have both passed. Respondents are unable to remove Petitioner to Russia or any other country because no travel documents have been obtained for him. In *Martinez*, the U.S. Supreme Court held that the continued indefinite detention of someone like Petitioner under such circumstances is unreasonable and not authorized by 8 U.S.C. § 1231(a)(6).

Count Nine
Substantive Due Process

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

89. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restrain. See e.g., Tam v. INS, 14 F. Supp. 2d 1184 (E.D. Cal 1998) (aliens retain substantive due process rights).

90. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. While Respondents would have

an interest in detaining Petitioner in order to to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. The U.S. Supreme Court in *Zadvydas*, thus interpreted 8 U.S.C. § 1231(a) to allow continued detention only for a period reasonably necessary to secure the alien's removal, because any other reading would go beyond the government's articulated interest-to effect the alien's removal. See *Kay v. Reno*, 94 F. Supp. 2d. 546, 551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner's substantive due process rights were violated, and noting that "If deportation can never occur, the government's primary legitimate purpose in detention – executing removal – is nonsensical.") Because Petitioner is unlikely to be removed to Russia or any other country for want of travel documents or a passport, his continued indefinite detention violates substantive due process.

Count Ten
Procedural Due Process Violation

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

92. Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. Petitioner in this case has been denied that opportunity. There is no administrative mechanism in place for Petitioner to obtain a decision from a neutral arbiter or appeal a custody decision that violates *Martinez*. See generally 8 C.F.R. § 212.12. The custody review procedures for noncitizens are constitutionally insufficient both as written and as applied. A number of courts have identified a substantial bias within ICE toward the continued detention of aliens, raising the risk of an erroneous deprivation to constitutionally high levels. See e.g., *Phan v. Reno*, 56 F. Supp. 2d 1149, 1157 (W.D. Wash. 19999) ("INS does not meaningfully and impartially review the Petitioner's status."); *St. John v. McElroy*, 917 F. Supp. 243, 251 (S.D.N.Y. 1996) ("Due to political and community pressure, INS, an executive agency, has ever incentive to continue to detain aliens with aggravated felony convictions, even though they have served

their sentences, on the suspicion that they may continue to pose a danger to the community."); see also *Rivera v. Demore*, No. C 99-3042 THE, 199 WL 521177, *7 (N.D. Cal. Jul. 13, 1999) (procedural due process requires that aliens release determination be made by impartial adjudicator due to agency bias).

PRAYER FOR RELIEF

WHEREFORE Petitioner requests that this Court:

a. Exercise jurisdiction over this matter;

b. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

c. 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;

d. Order Petitioner's immediate release;

e. Award Petitioner costs and reasonable attorney's fees; and

f. Order such other relief as this Court may deem just and proper.

Respectfully Submitted

Signature

12. 16. 2025

Date

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Oleg Belach
A#[redacted]

Petitioner,

v.

David Marin, Warden, Adelanto ICE Processing Center; Thomas Giles, Director f the Los Angeles ICE Field Office; Todd Lyons, Acting Director of ICE; Kristie Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General of the United States,

Respondents.

MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO 18. U.S.C. § 3006A

Petitioner is a citizen of Russia. Petitioner is in ICE custody in the United States, but has been ordered removed to Russia by an immigration judge. Petitioner's removal order is final, but Petitioner cannot be removed to Russia or any other country. Thus, Petitioner remains indefinitely detained in ICE custody, and has been confined for a period longer than the law mandates. Under 8 U.S.C. § 1231(a)(1)-(2), once an alien has been ordered removed, the Attorney General must carry out the removal within a period of 90 days, during which time the alien shall be detained. The post-removal-period provision of the same statute, 8 U.S.C. § 1231(a)(6), allows for certain aliens to be detained beyond the removal period, but the Supreme Court explicitly limited this detention period in *Zadvydas v. Davis*, 533 U.S. 678 (2001). In that case, the Court held that § 1231(a)(6) restricts an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal, and that it "does not permit indefinite detention." *Zadvydas*, 533 U.S. at 689. The Court found that a presumption of exists that an alien may not be held longer than six months; the general rule is that an alien may no longer be confined where there is "no significant likelihood of removal in the reasonably foreseeable future," *Id.* at 701. In *Clark v. Martinez*, the Supreme Court extended this holding to inadmissible aliens. 125 S. Ct. 716, 722 (2005).

The question as to whether Petitioner's detention is in violation of the laws of the United States is one for a Federal Court to hear. 28 U.S.C. § 2241. Accordingly, Petitioner files the accompanying habeas corpus petition, pursuant to 28 U.S.C. § 2241, requesting that this Court order Petitioner's release.

Therefore, Petitioner requests that this Court appoint counsel to represent Petitioner in this habeas action.

I. The Court Should Exercise Its Discretion to Appoint Counsel

Assuming that a Petitioner has shown financial need, a District Court may appoint counsel in a habeas proceeding under 28 U.S.C. § 2241 when the "interest of justice so require." 18 U.S.C. § 3006A(a)(2)(B). Petitioner has been detained for over six months now, out of work, and without perceiving any income. Therefore, Petitioner cannot afford to retain counsel.

Courts have often examined three elements in in determining whether appointment of counsel is necessary; the likelihood of success on the merits, the complexity of the legal issues involved in the case, and the ability of the Petitioner to present the case in light of its complexity. See, e.g., *Clerk v. Wong*, 2025 U.S. Dist. LEXIS 111109, United States District Court for the Easter District of California, 2025 LX 168527 ("The test for 'exceptional circumstances' requires the Court to evaluate the plaintiff's likelihood to succeed on the merits and the ability of the plaintiff to articulate its claims on its own in light of the complexity of the legal issues involved.") quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

Petitioner has been held in custody for 6 months since he was detained by ICE on June 4, 2025. He was ordered removed on March of 2003. Respondents have not being able to remove Petitioner since then and removal in the reasonably foreseeable future is unlikely. Under the Supreme Court's decision in *Zadvydas*, Petitioner's continued detention is presumptively unreasonable. Thus, Petitioner has a high likelihood of success on the merits.

Moreover, Petitioner would encounter great difficulty in presenting this habeas corpus case alone. The House Report on the predecessor of § 3006A(a)(2)(B) recognized that habeas corpus proceedings often present "serious and complex issues of law and fact" that would necessitate the assistance of counsel. H.R. Rep. No. 1546, 91st Cong. 2d Sess. (1970), *reprinted in* 1970 U.S.C.C.A.N. 3982, 3993. In addition, the congressional report on § 2006A(2)(B) stated that a court *should* appoint counsel when "necessary to insure a fair hearing." *Id.* The complexity of a habeas case will pose an especially great obstacle to Petitioner.

In light of the complicated issues involved in habeas cases and Petitioner's inability to adequately present the case at bar, as well as Petitioner's likelihood of success on the merits, this Court should exercise its discretion to appoint counsel under 18. U.S.C. 3006A(a)(2)(B).

II. Appointment a Counsel Is Necessary Because Discovery is Imperative

The rules governing habeas proceedings *require* the appointment of counsel in certain circumstances. [1] Under Rule 6(a), 28 U.S.C. foll. § 2254, a judge must appoint counsel for a Petitioner

[1] The rules cited in Sections II and III typically govern those habeas cases brought under § 2254, These rules, however, may be applied to habeas cases that do not fall under § 2254 – such as those cases arising under § 2241 – at the discretion of the court. Rule 1(b), 28 U.S.C. foll. § 2254.

if it is necessary for effective utilization of discovery procedures. ICE has information and documents relevant to Petitioner's habeas petition, and without the assistance of counsel, Petitioner will not be able to effectively pursue discovery and, as a result, will not adequately present his claims. Petitioner needs to discover the information ICE has regarding what efforts have been made to obtain travel documents from Russia, what answers Russia has given to ICE because, 7 years ago, when Petitioner requested a Russian travel document and sent a copy of his passport, the Russian embassy sent the information to Russia, the Russian officials back home were unable to find Petitioner information in any system. Thus, the aid of an attorney is especially important in this case, given Petitioner's lack of familiarity with the legal procedure involved in requesting and obtaining discovery. Moreover, even if Petitioner were to obtain documents in discovery, without the assistance of counsel, Petitioner would not be capable of analyzing them to determine his likelihood of being removed in the foreseeable future.

III. An Evidentiary or Motions Hearing May Be Necessary

Under Rule 8(c), 28 U.S.C. foll. § 2254, the court is required to appoint counsel in a habeas proceeding if an evidentiary hearing is needed. An evidentiary hearing will likely be necessary in this case. Regardless of any other issue, if an evidentiary hearing is scheduled, the court must appoint counsel for Petitioner.

IV. Conclusion

For the above reasons, this Court should appoint counsel to assist Petitioner in the instant habeas proceedings challenging Petitioner's detention by ICE, pursuant to the Supreme Court decision in *Zadvydas* and *Martinez,* as well as under *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); the APA and the *Accardi* doctrine.

Respectfully Submitted

Signature

12.16.2025

Date

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