UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Ambroise GANKPA,

Petitioner

v.

Kenneth GENALO, Field Office Director of Enforcement and Removal Operations, New York Field Office, Immigration and Customs Enforcement; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General.

Respondents.

Case No.

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

INTRODUCTION

1. This case challenges the unlawful detention of Ambroise Gankpa ("Petitioner" or "Mr. Gankpa") who is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Metropolitan Detention Center. Mr. Gankpa, a chef and an actor, has lived in the U.S. for nearly 50 years, since he arrived as a teenager to work for adults who withheld his passport and other vital documents. For almost two decades, he has reported diligently to ICE pursuant to an Order of Supervision. Never in that time did he violate the terms of the order nor did he have any contact with law enforcement. On half a dozen occasions, he went to the consulate and later the embassy for Benin, the country where he lived as a child, to request travel documents. But Benin has continually declined to issue him a passport or other travel document, given insufficient evidence that he is a citizen of the country. That refusal over many years has rendered Mr. Gankpa

effectively stateless. Despite his statelessness, and lack of flight risk or danger to the community, ICE detained Mr. Gankpa without notice or opportunity to be heard on or about December 16, 2025. It did so without complying with the regulations governing revocation of an Order of Supervision and without providing him notice or an opportunity to be heard.

2. Since then, Mr. Gankpa has been detained in conditions indistinguishable from criminal incarceration, first at the Orange County Jail and now at the Metropolitan Detention Center in Brooklyn.

3. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and its implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

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

PARTIES

5. Petitioner, Mr. Gankpa, has lived in New York City since 1976. To his knowledge, he is a native of Benin. Prior to his detention on or about December 16, 2025, he was residing in the Bronx, New York. He is currently detained at Metropolitan Detention Center in Brooklyn, New York.

6. Respondent Kenneth Genalo is the Director of the New York Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Genalo is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity. Respondent Genalo's address is New York ICE Field Office Director, 26 Federal Plaza, New York, New York 10278.

7. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of Immigration and Customs Enforcement. As the Acting Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and routinely transacts business in this District. He supervises Respondent Kenneth Genalo. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

8. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

9. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. DHS's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

10. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

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 corpus petition and under 28

U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, and Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, venue lies in the United States District Court for the Eastern District of New York, the judicial district in which Petitioner currently is detained. 410 U.S. 484, 493-500 (1973).

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because Petitioner currently resides within this District, and there is no real property involved in this action.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

14. Petitioner is 65 years old and came to the United States from Benin nearly 50 years ago. He entered the United States on or about July 14, 1976 through John F. Kennedy Airport in New York City, when he was 15 years old. Petitioner has resided in New York City continuously since then.

15. Prior to coming to the U.S., Petitioner resided in Benin with his father. Petitioner was told by family members that his mother was born in the U.S. Virgin Islands and that she died in childbirth. He was also told that his father had served in the military in the Korean War. His only full sibling, an older sister, died when Petitioner was around 12 years old. When Petitioner was 15, his father sent him to the U.S. to work for a couple who resided in Manhattan. Petitioner believes that he entered the U.S. on his own valid Beninese passport, but he did not hold or present the passport at the airport and after he arrived in the U.S. his employers never returned the passport to him. Petitioner's father later passed away in Benin.

16. In 2007, more than three decades after arriving in the U.S., Petitioner was put in removal proceedings due to a criminal conviction. He was ordered removed on December 20, 2007,

and the BIA dismissed his appeal on March 28, 2008. As such, Petitioner's removal order was final on March 28, 2008. Upon information and belief, Petitioner has no criminal history since his removal order.

17. Upon information and belief, since ICE released Petitioner on an Order of Supervision in 2008, Petitioner has complied with all conditions of the order, including periodic check-ins with ICE and numerous failed attempts to acquire travel documents from the Benin consulate in New York City and the Embassy in Washington D.C. Petitioner personally visited the Benin consulate in New York and later the Embassy in Washington D.C. approximately six times to seek travel documents. Each time, the Benin authorities informed the Petitioner that they were unable to provide him with travel documents because they could not verify his identify, noting in particular that he does not speak any of the dialects spoken in Benin and they cannot find any family connections in Benin. On most of those occasions, Petitioner was issued a letter stating the consulate or embassy could not issue him a travel document. He provided these letters to ICE and believes they were placed into his immigration file.

18. Petitioner was issued an Employment Authorization Document (EAD) under the c18 category, for individuals who have a final order of removal and in compliance with the terms of their Order of Supervision. He renewed that EAD annually from 2008 to 2025. The cost for much of that time was $410 per year. His most recent EAD is scheduled to expire on March 5, 2026. He filed a renewal (at a cost of $510) most recently on November 15, 2025. USCIS scheduled him for a biometrics appointment in early December 2025 in the Bronx, which he attended.

19. Upon information and belief, since the Petitioner was released from custody and issued an Order of Supervision in 2008, no circumstances have changed so as to suggest that Benin

will now issue him a travel document nor that Petitioner now poses a flight risk or danger to the community.

20. For his most recent regularly ICE scheduled check-in on December 16, 2025, Petitioner arrived at 7:30 a.m. and waited until 3:30 p.m. to see an officer. Petitioner ultimately spoke to an official from ICE ERO who scheduled him to return for another check-in in January 2026. But as he began to leave the ICE ERO office to walk to the elevator bank, he was stopped by ICE agents, at least one of whom was masked, who informed him they would instead be detaining him. When the Petitioner asked why, given that he had not violated the terms of his order of supervision, the ICE agents informed the Petitioner that everyone on orders of supervision was now being detained. At no point did an ICE officer give Petitioner an individualized reason for his detention. He does not recall receiving a notice of revocation of his order of supervision, nor being interviewed as part of the revocation process. While at 26 Federal Plaza, he was asked to sign around 8 pages of documents, but was not provided with copies of any of those documents. ICE agents also took and retained all of the documents in Petitioner's possession at the time, including his order of supervision showing his history of past check-ins.[1] Counsel later found one page of the OSUP, attached as Exhibit A, among Petitioner's property.

21. At no time following Petitioner's arrest did ICE provide an individualized explanation for why it revoked Petitioner's order of supervision nor why they were detaining him after 18 years at liberty. ICE also did not provide the Petitioner a meaningful opportunity to respond to those reasons.

[1] ICE had previously taken and retained Petitioner's order of supervision paperwork when the form no longer had new space to document check-ins that he had attended and issued him a new blank form.

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

23. After he was detained, Petitioner spent the night at 26 Federal Plaza. The next day, December 17, he was transferred to Orange County Jail (OCJ) in Goshen, New York, where he was detained until February 3, 2026.

24. In January, while he was at OCJ, Petitioner was directed to again complete a form requesting a travel document from the Embassy of Benin, which he did.

25. On Friday, January 30, an ICE officer at OCJ told Petitioner that ICE was unable to get him a travel document to Benin. The officer asked him to complete another form requesting a travel document, which he did.

26. On February 3, 2026, ICE transferred the Petitioner to the Metropolitan Detention Center (MDC), in Brooklyn, New York where he is currently detained. At the time of his transfer on February 3, all of the legal paperwork that he had with him at OCJ—including a copy of his application for a travel document from Benin—was taken from him, as it was from other detainees with whom he was transferred. ICE officers informed him the papers would be kept with his property at 26 Federal Plaza. Petitioner's counsel has since been able to recover some documents from Petitioner's property, but it does not appear those documents include the ones taken from him upon his transfer from OCJ to MDC. The documents contained only one page of his most recent OSUP, which is included herein as Exhibit A.

27. The Petitioner suffers from arthritis as well as neck, knee, back, and thigh pain due to a work injury that occurred on September 9, 2022. After the accident, Petitioner was prescribed medication for pain and inflammation, which he regularly. Since the Petitioner's detention, he has been unable to access his medication. His daily pain has significantly increased from sleeping on the floor when he was at 26 Federal Plaza and metal beds while at OCJ and now at MDC. Since detained, Petitioner has only been offered Motrin for his pain.

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

LEGAL FRAMEWORK

29. An order of removal issued by an Immigration Judge becomes administratively final when, at the conclusion of 8 U.S.C. § 1229a removal proceedings, a noncitizen waives their right to appeal or the Board of Immigration Appeals completes its review of any appeal. 8 C.F.R. § 1241.1(b). A detained noncitizen's detention is authorized pursuant to 8 U.S.C. § 1231 after the order becomes administratively final. ICE then has a ninety-day period, known as the removal period, to secure the noncitizen's removal. 8 U.S.C. § 1231(a)(1). If ICE is unable to remove a noncitizen within the removal period, detention is no longer mandatory. Instead, 8 U.S.C. § 1231(a)(6) provides that certain noncitizens "may be detained beyond the removal period and, if released, shall be subject to [certain] terms of supervision."

30. Noncitizens released from detention under 8 U.S.C. § 1231 may be subject to "various forms of supervised release that are appropriate in the circumstances[.]" *Zadvydas*, 533 U.S. at 700. A noncitizen subject to an order of removal who is released "shall be subject to [certain] terms of supervision in paragraph (3)." 8 U.S.C. § 1231(a)(6). These certain terms include

requirements that the noncitizen appear periodically before an immigration officer, obey reasonable written restrictions, and other conditions. 8 U.S.C. § 1231(a)(3). ICE has promulgated two regulations regarding the release of noncitizens with a final order of removal on an Order of Supervision (OSUP). 8 C.F.R. § 241.4; 8 C.F.R. § 241.13.

31. The first of the two regulations governing OSUP revocation is 8 C.F.R. § 241.4(l). This section provides that "upon revocation of the order, the [noncitizen] will be notified of the reasons for revocation and afforded an initial informal interview promptly after being re-detained for an opportunity to respond" to said reasons. 8 C.F.R. § 241.4(l)(1). Section 241.4(l)(1) governs revocation for violations of orders of supervision; Section 241.4(l)(2) lists procedures applicable to revocation for both violations and other reasons. Numerous courts, in this Circuit and others, have concluded that the notice and interview procedures outlined in 8 C.F.R. § 241.4(l)(1) also apply when an order of supervision is revoked pursuant to 8 C.F.R. § 241.4(l)(2). *Diallo v. Joyce*, No. 25-CV-9909 (AS), 2025 WL 3718477, at *5 (S.D.N.Y. Dec. 23, 2025); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, at *5 (W.D. Ky. Sept. 4, 2025); *Ceesay v. Kurzdorfer*, 2025 WL 1284720 (W.D.N.Y. May 2, 2025); *Orellana v. Baker*, 2025 WL 2444087 (D. Md. Aug. 25, 2025).

32. Under 8 C.F.R. § 241.4(l)(2), only the Executive Associate Commissioner or district director is authorized to validly revoke an OSUP and only on certain enumerated grounds. *See E.M.M. v. Almodovar*, 2025 WL 3077995, at *6 (S.D.N.Y., 2025) (finding that now the Executive Associate Director of ICE is the functional equivalent of the Executive Associate Commissioner identified in the regulation).

33. The officials authorized to revoke an order of supervision pursuant to that regulation are the ICE Executive Associate Director, a field office director, or an official "delegated

the function or authority . . . for a particular geographic district, region, or area." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intend to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay*, 781 F. Supp. 3d at 161 (finding a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision); *Zhang*, 2025 WL 3733542, at *8 (finding that that an assistant field officer lacked the authority to direct an OSUP revocation under 8 C.F.R. § 214.4(*l*)(2)).

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

35. The second regulation governing OSUP revocation is 8 C.F.R. § 241.13, which establishes special procedures for detained noncitizens who have provided good reason to believe that there is no significant likelihood of their removal from the United States in the reasonably foreseeable future. The special procedures are triggered when a noncitizen submits a written request explaining why ICE is unlikely to remove him in the reasonably foreseeable future. 8 C.F.R. § 241.13(d)(1). The request is then formally reviewed by the Headquarters Post-Order Detention Unit ("HQPDU"). 8 C.F.R. § 241.13(e). After review, the HQPDU issues a written decision determining whether there is a significant likelihood that the noncitizen will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(g). Under 8 C.F.R. § 241.13(i), for ICE to revoke a noncitizen's OSUP, they must provide that noncitizen with the reasons for the revocation and give him an informal interview promptly after him return to custody to respond to the stated reasons. At this interview, the noncitizen can present evidence and information to challenge ICE's determination that she is removable in the reasonably foreseeable future or that she has violated the OSUP's conditions. 8 C.F.R. § 241.13(i)(3).

CLAIMS FOR RELIEF

COUNT ONE
Violation of Applicable Regulations and the *Accardi* Doctrine

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

37. 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.").

38. *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*, 415 U.S. at 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

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

40. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Petitioner's order. Petitioner was not served with a notice of revocation nor was such a notice explained to him. *Cf. Zhang*, 2025 WL 3733542 at *14 (even assuming arguendo the notice was served on petitioner, ICE's failure to explain its meaning deprived him of an opportunity to respond).

41. Petitioner was not given any individualized reason for the revocation of his OSUP and, on information and belief, ICE has no individualized basis nor reason for revocation. Respondents have revoked Petitioner's OSUP without notice or a meaningful opportunity to be heard, they violated the applicable regulations–8 C.F.R. §§ 241.4(l) and 241.13(i)–by failing to provide him with a particularized notice of the reason(s) of the revocation of his release or an opportunity to respond to the allegations contained therein.

42. Although Petitioner does not have a copy of a revocation or termination notice, any revocation by an officer unauthorized to do so would be ultra vires and violate the regulations. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also, e.g.*, *Zhang v. Genalo*, No. 25-CV-0678, 2025 WL 3733542 (E.D.N.Y. Dec. 28, 2025); *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 unauthorized officer).

43. Respondents' revocation of the order of supervision should be set aside for violating agency procedures.

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

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

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

46. Petitioner, a resident of the U.S. for nearly five decades, was subject to sudden revocation of his order of supervision and detention without a word of explanation, nor any opportunity to respond. *Mathews* instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional

procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail. 424 U.S. at 333.

47. The first factor, the private interest at issue, favors Petitioner. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690.

48. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. As set forth above, ICE violated the regulations governing the revocation of an order of supervision, including giving notice and an opportunity to be heard. *Zhu*, 798 F.Supp.3d at 414 ("failure to follow its own regulations and provide Petitioner with notice or an interview violated Petitioner's procedural due process rights"). By summarily revoking Petitioner's OSUP without even an explanation much less adequate notice and opportunity to respond, ICE made all but certain that his detention would be erroneous and purposeless. Following two decades of reporting, and no criminal contact, it is indisputable he poses neither danger nor flight risk. Moreover, throughout that time, Respondents have been unable to effectuate his removal, a fact that remains true nearly two months into his current detention. .

49. The third factor, the government's interest, also favors Petitioner. The public interest is served by compliance with the law. Moreover, when the government ignores laws and regulations intended to ensure a person whose order of supervision is revoked has notice and an opportunity to be heard, it is more likely to waste limited financial and administrative resources on the unnecessary and prolonged detention of people who are neither flight risks nor dangerous.

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

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

52. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (2001) (discussing constitutional limitations on civil detention).

53. In *Zadvydas*, the Supreme Court established that a statute permitting indefinite detention of a noncitizen would raise serious constitutional concerns. 533 U.S. at 690. To that end, the Court read an implicit limitation in 8 U.S.C. § 1231(a)(6) and found a six-month presumptively reasonable period of detention for continued removal efforts. *Id.* at 701 (applying constitutional avoidance). And any detention beyond the six-month removal period is presumptively unreasonable. *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009) (finding the "presumptively reasonable" six-month period of detention runs from the issuance of a final order, not the noncitizen's detention, since the government can begin pursuing removal as soon as the order is final); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025) (same).

54. After this six-month period, if a noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," ICE must either "respond with evidence sufficient to rebut that showing" or release the noncitizen from detention under supervision. *Zadvydas* 533 U.S. at. 701. "If the detainee meets his initial burden to establish no significant likelihood of removal in the reasonably foreseeable future, the burden shifts back to the Government to rebut that showing." *Mahmood v. Nielsen*, 312 F.Supp.3d 417, 424 (SDNY May 9, 2018). Courts have routinely found that ICE violates a noncitizen's constitutional rights and the Supreme Court's holding in *Zadvydas* when they detain someone cooperating on OSUP when their removal is not reasonably foreseeable. *See, e.g.*, *Munoz-Saucedo v. Pittman*, 789 F. Supp. 387 (DNJ June 24, 2025); *Tadros v. Noem*, 2025 WL 1678501, at *3 (DNJ June 13, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144 (D. Mass. 2025); *Zavvar v. Scott*, 2025 WL 2592543, at *8 (D. MD Sept. 8, 2025).

55. *Zadvydas* "articulates the outer bounds of the Government's ability to detain aliens… without jeopardizing their due process rights." *Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003). In evaluating whether detention is authorized by statute, "the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. Reasonableness should be measured "primarily in terms of the statute's basic purpose, namely, assuring the [noncitizen]'s presence at the moment of removal." *Id.* "[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699-700.

56. The Supreme Court in *Zadvydas* held that detention pending removal is only "only for a period reasonably necessary to secure the alien's removal." *Zadvydas*, 533 U.S. at 682.

57. Petitioner's removal order became final on March 28, 2008, when the Board of Immigration Appeals dismissed his appeal. The presumptively reasonable period of detention therefore ran in September 2008, over 17 years ago. Since then, Petitioner has made numerous efforts to obtain a travel document and continuously updated and documented to ICE the unavailability of a travel document from Benin, the only other country where he has resided or believes his parent was a citizen. (To his knowledge, his mother was born in the territory of the United States.) There is no reason to believe that ICE has secured the necessary travel documents for removal, as Benin's consulate and embassy have declined to issue him travel documents for the last 18 years. No change in circumstances warranted the order's revocation. Moreover, on or about January 30, 2026, an ICE officer *told* Petitioner that Benin had once again declined to issue him a travel document.

58. 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.

59. 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 FOUR
Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A)—(C)

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

61. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess

of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

62. Respondents' revocation of Petitioner's order of supervision and re-detention of Petitioner pursuant to 8 U.S.C. § 1231(a)(6) is arbitrary and capricious, not in accordance with the law, and contrary to the Petitioners constitutional right to due process as his removal is not reasonably foreseeable and there is no other justification for his detention. Respondents failed to articulate a reasoned explanation for their decision to revoke Petitioner's OSUP and to detain him in light of all available evidence and failed to consider all the aspects of the problem as well as obvious, less restrictive alternatives to custody. *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). Respondents' decision to revoke Petitioner's order of supervision ran counter to the evidence before the agency that Petitioner would comply with any demand to appear for removal without detention, should a travel document be obtained. Petitioner has never violated a condition of his order of supervision and no new facts or changed circumstances suggest he would.

63. Among the factors that Respondents failed to consider were, first, the serious constitutional concerns raised by revoking Petitioner's order of supervision without notice and opportunity to respond. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner and detaining him, where such detention is unnecessary. Respondents failed to consider reasonable alternatives to revoking Petitioner's order of supervision that would vindicate the government's interests in effectuating a removal order and save it the expense of detention not needed to guarantee Petitioner's appearance

64. 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.

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 on the same conditions as existed prior to his detention on December 16, 2025;

e. Order that Respondents return Petitioner's property in full;

f. Award Petitioner costs and reasonable attorneys' fees; and

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

Respectfully submitted,

DATED: February 10, 2026
Brooklyn, New York

/s/ Paige Austin
Paige Austin
Marlene Berroa Rodriguez
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am the petitioner in the instant action and I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Ambroise Gankpa

DATED : February 6, 2026
Brooklyn, NY

CERTIFICATE OF SERVICE

I certify that on February 10, 2026, I electronically filed the attached the foregoing Petition for Writ of Habeas Corpus and accompanying Exhibit with the Clerk of the Court for the United States District Court for the Eastern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

/s/ Paige Austin
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