UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLOMBUS DIVISION

GABRIEL LASANDA JOHNSON Petitioner, v. STREEVAL, ET AL. Respondents.	)	Civil Action No. 4:26-cv-1037-CDL-AGH **PETITION FOR WRIT OF HABEAS CORPUS**

PETITIONER'S SUPPLEMENTAL BRIEF PURSUANT TO COURT ORDER

I. Introduction

Petitioner, Gabriel Lasanda Johnson ("Petitioner" or "G.L.J"), filed a habeas corpus petition pursuant to 28 U.S.C. § 2241 on July 23, 2026. (ECF.1). Petitioner simultaneously uploaded a Motion for TRO and Memorandum of Law however, due to a technical glitch the Motion for TRO and Memorandum of Law were not filed on July 23, 2026. On July 24, 2026, counsel for Petitioner realized the error and filed the Motion for TRO and memorandum of law as soon as he learned of the error. (ECF.4). Petitioner challenges his re-detention as unlawful due to egregious violations of his procedural and substantive due process rights. First when Respondents failed to provide meaningful notice of third country removal and failed to provide a reasonable fear interview and second when Respondents failed to provide notice prior to the revocation of his Order of Supervision. This Honorable Court requested supplemental briefing addressing jurisdictional questions on July 25, 2026, and this brief in support follows.

II. Factual Background

G.L.J. is a citizen and national of Liberia who entered the United States on or about December 30, 1987. On July 30, 2004, the Immigration Court granted his motion to reopen, and on December 15, 2004, the Atlanta Immigration Court granted his application for withholding of removal. Neither G.L.J. nor the Department of Homeland Security ("DHS") appealed that decision. Since 2004, G.L.J. has lived in the United States under an Order of Supervision ("OSUP") and has complied with his reporting obligations, including telephonic reporting to ICE as directed. His grant of withholding also provides lawful work authorization, which he has continuously maintained since 2004.

G.L.J. has long been integrated into his community and family life in the United States. He studied theology and has served as a pastor for the past five years. He is also the primary caretaker for his U.S.-citizen son. Over nearly three decades of physical presence, he has established his life here with his U.S. citizen wife and four U.S. citizen children.

On July 15, 2026, G.L.J. was re-detained by two unidentified men in an unmarked vehicle. During questioning, he lost consciousness and was transported to the emergency room, where medical staff confirmed neurological issues. He was then returned to ICE custody and verbally informed that he would be removed to Sierra Leone. To date, ICE has not provided any written notice or other information regarding its plan to remove him to Sierra Leone. Nor has ICE scheduled him for any fear screening, despite being aware that he fears deportation to Sierra Leon. G.L.J. remains detained at the Stewart Detention Center.

G.L.J. fears removal to a third country without notice and a meaningful opportunity to seek protection, especially to a country where he would be denied access to necessary medical

treatment, persecuted because of his health conditions, or imprisoned because of his political beliefs.

III. ARGUMENT

a. This Court has Jurisdiction Over Petitioner's Challenge to Thir Country Removal and Unlawful Detention

This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2. Nothing in 8 U.S.C. § 1252 strips this Court of jurisdiction over Petitioner's claims.

1. Sections 1252(a)(5) and 1252(b)(9) Do Not Apply

Specifically, § 1252(a)(5) and (b)(9) do not apply here. G.L.J challenges systemic due process violations and Administrative Procedure Act violations and does not seek "judicial review of an order of removal entered or issued." 8 U.S.C. § 1252(a)(5). G.L.J 's final removal order was issued in 2004 and designates a country different than the one to which Respondents now seek to remove him. The challenged action and planned removal here arise after removal proceedings were complete. Therefore, § 1252(a)(5) is inapplicable as G.L.J is not seeking judicial review of his removal order issued in 2004 but his imminent removal to a third country not designated in his original removal order or original removal proceedings.

Similarly, § 1252(b)(9) addresses the consolidation of law and fact and specifically limits jurisdiction to "review of a final order." 8 U.S.C. § § 1252(b)(9). Additionally, § 1252(b)(9) consolidates" a "noncitizen's various challenges arising from the removal proceeding" into "a petition for review [before] the courts of appeals." *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (quoting INS v. St. Cyr, 533 U.S. 289, 313 n. 37 (2001)). However, again, G.L.J challenges only Respondents' actions to seek removal to a new, third country after the completion of his removal proceedings and not his final removal order to Liberia. Such an action cannot be challenged via a

petition for review, because there is no final removal order designating the third country for removal that a court of appeals could review. *See Ibarra-Perez*, 2025 WL 2461663, at *9–10.

2. Section 1252(g) Does not Bar Relief

Subsection 1252(g), which bars claims that challenge DHS's decision to "execute [a] removal order[]," also does not prevent relief. This "narrow" subsection does not "sweep in any claim that can technically be said to 'arise from' the three listed actions" in § 1252(g). *DHS v. Regents of the Univ. of Calif.*, 591 U.S. 1, 19 (2020); *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). Rather than encompass "all deportation related cases," § 1252(g) was "designed to give some measure of protection to 'no deferred action' decisions and similar discretionary determinations." *Reno v. Am.-Arab Anti-Discrimination Comm.* (AADC), 525 U.S. 471, 478 (1999)(describing "many other decisions or actions that may be part of the deportation process," which would fall within the court's jurisdiction, "such as the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order"). Here, G.L.J does not challenge any exercise of discretion by Respondents—instead, G.L.J requests relief from his unlawful detention and seeks an order requiring Respondents to comply with their mandatory duties to afford protection procedures pursuant to 8 U.S.C. § 1231(b)(3) and the Convention Against Torture. *See Ibarra-Perez*, 2025 WL 2461663, at *6–8.

3. **FARRA Does not Bar Review**

Finally, nothing in FARRA bars this case. Section 2242(d) of FARRA limits review of "regulations adopted to implement [CAT]." Here, however, G.L.J does not challenge the CAT regulations. Instead, he seeks only an order that requires Respondents to provide him with a process to access withholding and CAT, as federal law requires.

4. This Court May Grant Relief

This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court's inherent equitable powers.

b. DHS Cannot Remove Petitioner to a Third Country Without Notice and a Meaningful Opportunity to Seek Protection.

1. Federal Law Prohibits Removal to a Country Where Petitioner Faces Persecution or Torture

U.S. immigration law affords noncitizens in the United States three forms of protection from persecution and/or torture: asylum, withholding of removal, and protection under the Convention Against Torture (CAT). Asylum typically provides full protection against deportation to any country. *See* 8 U.S.C. § 1158(c). This means the person cannot be deported. Individuals who are not eligible for asylum, e.g., because they did not apply within one year of entering the country, *see id.* § 1158(a)(2)(B), may qualify for withholding of removal, *id.* § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a "mandatory" protection that prohibits removal to a designated country where a noncitizen establishes that they are more likely than not to face persecution. *INS. v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999). Withholding of removal also contains exceptions for, inter alia, individuals who have committed certain serious crimes. *See* 8 U.S.C. § 1231(b)(3)(B). Finally, pursuant to FARRA, Congress instructed that the U.S. government may not "expel, extradite, or otherwise effect the involuntary return of *any person* to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture." Pub. L. 105-277 Div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1999) (codified as statutory note to § 1231). This mandate applies to all persons and contains no exceptions. DHS has implemented withholding and CAT protections via

regulation. *See generally* 8 C.F.R. §§ 208.16–208.18, 1208.16–1208.18. No matter where DHS seeks to remove a person, the INA's protections against removal to a country where a person may face persecution and FARRA's protections against removal to a country where a person may face torture apply. *See* 8 U.S.C. § 1231(b); FARRA § 2242(b); 8 C.F.R. §§ 208.16(c) 208.18, 1208.16(c)–1208.18; *see also, e.g.*, *Jama v. ICE*, 543 U.S. 335, 341, 348 (2005). The statute specifies that, in assessing a noncitizen's claim of withholding of removal, "the trier of fact shall determine whether the [noncitizen] has sustained the [noncitizen's] burden of proof, and shall make credibility determinations." 8 U.S.C. § 1231(b)(3)(C).

As relevant here, the INA "provides four consecutive removal commands" about where to remove a noncitizen. *Jama*, 543 U.S. at 341. First, in most cases, the noncitizen must be provided the opportunity to "designate one country to which the [noncitizen] wants to be removed." 8 U.S.C. § 1231(b)(2)(A)(i). Second, if the noncitizen declines to designate a country—which often occurs where the noncitizen fears return to their country of origin—DHS then designates the "country of which the [noncitizen] is a subject, national, or citizen" for removal, as required by statute. *Id.* § 1231(b)(2)(D). The statute requires DHS to attempt removal to these countries before seeking alternatives. *See id.* § 1231(b)(1), (b)(2)(A), (D) (repeatedly instructing where DHS "shall" remove someone by order of priority). Third, if DHS is unable to remove the individual to either the country of their designation or the country of which they are a subject, national, or citizen, then the government is required to remove them to any of the following options: (1) "[t]he country from which the [noncitizen] was admitted to the United States;" (2) "[t]he country in which is located the foreign port from which the [noncitizen] left for the United States or for a foreign territory contiguous to the United States;" (3) "[a] country in which the [noncitizen] resided before [they] entered the country from which [they] entered the United States;" (4) "[t]he country in which the

[noncitizen] was born;" (5) "[t]he country that had sovereignty over the [noncitizen's] birthplace when the [noncitizen] was born;" or (6) "the country in which the [noncitizen's] birthplace is located when the [noncitizen] is ordered removed." *Id.* § 1231(b)(2)(E). Finally, only where it is "impracticable, inadvisable, or impossible to remove the [noncitizen] to each country described" above may DHS seek removal to some other alternative country. *See id.* § 1231(b)(2)(E)(vii).

c. DHS current Third-Country Removal Policy Fails to Provide the Process Required by Law.

1. DHS's March 30 and July 9 Guidance Impermissibly Curtails Fear-Based Process

Pursuant to new Guidance issued under then DHS Secretary Noem regarding Third Country Removal issued on March 30, 2025, DHS adopted a new policy of failing to provide noncitizens with certain final orders of removal with meaningful notice and opportunity to raise a fear-based claim before DHS could deport them to any country not designated on their removal order (third country). On March 30, 2025, DHS issued a memo entitled "Guidance Regarding Third Country Removals." *Guidance Regarding Third Country Removals*, (Mar. 30, 2025), https://immigrationlitigation.org/wpcontent/uploads/2025/04/43-1-Exh-A-Guidance.pdf (, "March 30 Memo"). *See* Exh. 1, March 30 Memo. Pursuant to the March 30 Memo, DHS does not need to provide any notice or process whatsoever to a noncitizen prior to their removal if the United States has received "diplomatic assurances [from the country of removal] that [noncitizens] removed from the United States will not be persecuted or tortured." *Id.* at 1. If the United States has not received such assurances, a deportation officer must "inform the [noncitizen] of removal to [the third] country." *Id.* at 2. "Immigration officers will not affirmatively ask whether the [noncitizen] is afraid of being removed to that country." *Id.*

If a noncitizen states a fear, then U.S. Citizenship and Immigration Services (USCIS) must

screen the noncitizen "within 24 hours of referral from the immigration officer." *Id.* At the screening, the noncitizen must prove that it is "*more likely than not*" they will be persecuted or tortured upon removal. This process differs dramatically from the typical standard of review applied in reopened removal proceedings in which an immigration judge can assess an individual's fear-based claim in the first instance. The process also differs from the reasonable fear process, where USCIS assesses only if there is a "*reasonable possibility*" the noncitizen could establish they are likely to face persecution or torture if provided the opportunity to present their full case to an immigration judge. *See* 8 C.F.R. § 208.31(c) (outlining reasonable fear interview procedure for persons with reinstatement orders or administrative removal orders under 8 U.S.C. §§ 1231(a)(5), 1228(b), respectively). A "*reasonable possibility*" is a lower standard of proof than the "*more likely than not*" standard required to win a grant of withholding of removal or CAT protection.

On July 9, 2025, ICE issued guidance regarding how to implement the March 30 Memo. ICE, *Third Country Removals Following the Supreme Court's Order in Department of Homeland Security v. D.V.D., No. 24A1153 (U.S. June 23, 2025)* (July 9, 2025), https://immigrationlitigation.org/wp-content/uploads/2025/07/190-1-July-9-Guidance.pdf ("July 9 Guidance"). *See* Exh. 2. The July 9 Guidance is identical to the March 30 Memo except that, in cases where diplomatic assurances do not exist, it provides that an officer will serve a "Notice of Removal" with interpretation. Exh. 2 at 1. It further provides that DHS may effectuate removal 24 hours after serving notice; however, "[i]n exigent circumstances," with approval from chief counsel of DHS or ICE, DHS may execute removal to the third country with a mere six hours' notice if ICE provides the noncitizen "means and opportunity to speak with an attorney." *Id.*

Upon issuance of a Final Administrative Removal Order under § 238.1 or § 241.8(b) a [non-citizen] shall be referred to an asylum officer for a reasonable fear determination. In the absence of exceptional circumstances, this determination will be conducted within 10 days of the referral. 8 C.F.R § 208.31(b). The asylum officer shall conduct the interview in a non-adversarial manner, separate and apart from the general public. 8 C.F.R § 208.31(c). The asylum officer's negative decision regarding reasonable fear shall be subject to review by an immigration judge upon the [non-citizen's] request. § 241.8(g). If the [non-citizen] requests such review, the asylum officer shall serve him or her with a Notice of Referral to Immigration Judge. *Id.* The immigration judge's review shall proceed under the procedures set forth in 8 CFR 1208.31(g).

Per the most recent March 30 and July 9 Memo, the standard practice for reasonable fear interviews is not being followed. Per the guidance, "DHS must determine whether that country has provided such assurances that [noncitizens] removed from the United States will not be persecuted or tortured. If the U.S. has received such assurances, and if the Department of State believes those assurances to be credible, the [noncitizen] *may be removed without the need for further procedures*." *See* Exh 1 at 2. Subsequently if a noncitizen states fear, then USCIS must screen the non-citizen "within 24 hours of referral from the immigration officer." *Id.* at the screening the [non-citizen] must prove that he "more likely than not" will be persecuted or tortured upon removal. This is a significant change in the standard of proof from the Reasonable Fear Interview process which assesses only if there is a "reasonable possibility" that the [non-citizen could establish they are likely to face persecution or torture if provided the opportunity to present their full case to an immigration judge. 8 C.F.R. 208.31 (c). In efforts to clarify their position, Respondents issued the July 9 memo which is identical except in that it states, in cases where diplomatic assurances do not exist, an officer will serve a "Notice of Removal." *See* Exh 2. Specific

to the Petitioner, he has expressed fear to the presumed country of removal, Sierra Leon, however, the Petitioner nor counsel have been provided any documentation to suggest a reasonable fear interview has been scheduled or will be scheduled. Furthermore, despite counsel's efforts to obtain any and all documents served on the Petitioner, no documents have been provided specifically there has not been a "Notice of Removal" issued or served.

In accordance with the regulations, once reasonable fear has been established the applicant is referred to the immigration judge and placed in withholding only proceedings. However, in practice due to the new policy, Respondents' are bypassing all notice requirements and reasonable fear referrals even when affirmatively stated by petitioners similar to the Petitioner at present.

DHS's policy or practice of failing to afford meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country violates the INA, FARRA, the Due Process Clause, and the United States' treaty obligations. Indeed, the Office of the Solicitor General recognized these legal obligations when it informed the Supreme Court that DHS will not deport noncitizens with final orders who have already been granted protection by an IJ to a third country until after the individual receives meaningful notice and the opportunity to assert a fear-based claim against removal to that third country. *See* Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

Critically, both 8 U.S.C. § 1231(b)(1) and (b)(2), which provide Respondents with authority to remove noncitizens to alternate or third countries, expressly prohibit removal of persons to countries where they face persecution or torture. Specifically, § 1231(b)(3)(A), entitled "Restriction on removal to a country where [noncitizen's] life or freedom would be threatened,"

mandates that "[n]otwithstanding paragraphs (1) and (2)," DHS may not remove noncitizens to any country if their "life or freedom would be threatened in that country . . . ."[1]

Similarly, FARRA, codified as Note to 8 U.S.C. § 1231, mandates that Respondents cannot remove the Petitioner to a country where he is likely to be tortured. *See also* 8 C.F.R. § 1208.16(c); 8 C.F.R. § 1208.17(a); 28 C.F.R. § 200.1. Like statutory withholding, CAT withholding and deferral of removal are mandatory. *See* 8 C.F.R. §§ 1208.16(c) (withholding under CAT), 1208.17(a) (deferral of removal under CAT). The regulations provide that DHS can deport persons granted CAT deferral to a third country "at any time" provided it is a "country where he or she is not likely to be tortured." 8 C.F.R. § 1208.17(b)(2) (emphasis added)

Notably, CAT protection may be terminated based on evidence that the person will no longer face torture, but only if DHS moves for a new hearing with evidence "relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing." 8 C.F.R. § 1208.17(d)(1). If a new hearing is granted, the IJ must provide notice "of the time, place, and date of the termination hearing," and must inform the noncitizen of the right to "supplement the information in his or her initial [CAT] application . . . within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail)." 8 C.F.R. § 1208.17(d)(2). Thus, the noncitizen receives both notice and an opportunity to document their protection claim. Contrary to the statute and the regulations, Respondents fail to afford any protections with respect to those granted either withholding under 8 U.S.C. § 1231(b) or CAT subject to third country removal. This is true even

[1] In *Jama v. ICE*, the Supreme Court addressed the designation procedure under 8 U.S.C. § 1231(b)(2). 543 U.S. 335, 338-41 (2005). Critically, the Court stated that noncitizens who "face persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); relief under an international agreement prohibiting torture, see 8 C.F.R. §§ 208.16(c)(4), 208.17(a) . . . ." *Id.* at 348

though, pursuant to § 1231(b)(3)(A), courts have held repeatedly that individuals cannot be removed to a country that was not properly designated by an IJ if they have a fear of persecution or torture. *See Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); Kossov v. INS, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938-39 (9th Cir. 2004); Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States' obligations under international law. *See INS v. Stevic*, 467 U.S. 407, 421 (1984), and FARRA. These protections are also fundamental under the Fifth Amendment. *See Andriasian,* 180 F.3d at 1041; *Protsenko*, 149 F. App'x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019). Similarly, a "last minute" IJ designation during removal proceedings that affords no meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process." *Andriasian*, 180 F.3d at 1041.

Concerningly, DHS knows how to provide notice and an opportunity to present a fear based claim but fails to do so. Not only did it do so in the CAT regulations discussed above, but DHS and its predecessor agency have gone so far as to draft forms providing these protections and then elected not to publish them. But Respondents have failed to implement a mechanism to ensure that removal proceedings are reopened to allow DHS to designate a new country of removal and allow an IJ to adjudicate any fear-based claim.[2]

As a matter of policy or practice, DHS violates this statutory, regulatory, and due process framework by depriving the Petitioner of any notice or opportunity to present a fear-based claim

[2] DHS and Justice Department regulations promulgated to implement § 1231(b) do not afford these protections; they assume noncitizens "will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [§ 1231(b)(1) or (b)(2)]" and state only that where DHS seeks to deport a person to a non-designated country, DHS would join motions to reopen "[i]n appropriate circumstances," which DHS does not define. (quoting 70 Fed. Reg. 661, 671 (Jan. 5, 2005)).

prior to deportation to a third country. DHS has no written policy to provide or guarantee provision of either of these protections. This is true despite DHS's nondiscretionary duty to provide these protections.[3]

2. Diplomatic Assurances and Expedited Screening Do Not Cure the Due Process Violation

The Respondents position is that federal regulations establish and warrant such egregious violations of due process and administrative procedure. *See* Exh. 1. *See also* Securing the Border, 89 Fed. Reg. 81156, 81235 (Oct. 7, 2024). The Respondents reason that any affirmative inquiry relating to the fear to a country would produce or result frivolous claims. *Id.* However, Respondents' cannot bypass basic principles of due process and administrative procedure when screening already exists to prevent such frivolous findings. Per the March 30 and July 9 Memos the Department of Homeland Security need only be provided "diplomatic assurances" that a [non-citizen] removed from the U.S. will not be persecuted or tortured. *Id.* Diplomatic assurances provide little safe guard when the petitioner fears persecution from non state actors further such diplomatic assurances do not protect against chain refoulment even when petitioners have been granted orders stating they cannot be returned to a certain country. Per the memos, only when there is a lack of a diplomatic assurance is a notice provided to the petitioners. However, the notice mentioned is not required to state the date and time of removal nor any protections a person may have from removal. If notice is issued and a [non-citizen] does express fear than "USCIS will generally screen the [non-citizen] within 24 hours of referral." *Id.* The petitioners now have to meet a higher standard of proof—*more likely than not*, and establish such persecution in a limited

[3] DHS has, in a small number of cases over the years, moved to reopen removal proceedings to designate a new country of removal and allow a noncitizen to pursue a fear-based claim, further demonstrating that Respondents are aware of what should be done to provide a meaningful opportunity to seek protection prior to removal to a third country.

time frame, 24 hours. Certainly 24 hours is insufficient time to be able to contact counsel, retain counsel, and file applications and evidence in support of the applicants claim. This is made even more difficult for a person detained without counsel who is limited in resources and would be unable to obtain any meaningful evidence in support of his claim.

d. ICE's Revocation of Petitioner's Order of Supervision Violates Due Process

"The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690 (2001). Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention). "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). A non-citizen with a final order of removal "who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (titled "Supervision after 90-day period"). A non-citizen may only be detained past the 90-day removal period following a removal order if found to be "a risk to the

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

Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non citizen may be re detained past the removal period: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release").

It is clear, 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." 8 C.F.R. §§ 1.2, 241.4(l)(2). 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). Upon revocation of an order of supervision, ICE must give a non citizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

Here, Petitioner has never been provided a written reason for revocation. He was simply taken into custody and told he would be processed for third-country removal. He was given no

meaningful notice, no opportunity to respond, and no explanation of the factual or legal basis for re-detention. Petitioner complied with every condition of supervision. Petitioner had been living under an Order of Supervision for years and complying with its terms. He reported to ICE as directed and remained in contact with his assigned officer. When changes in ICE reporting expectations arose, Petitioner informed ICE of his medical condition and his difficulty traveling because of unpredictable neurological symptoms.

Any prior criminal history predated both the 2004 grant of withholding and the original decision to release him on supervision. That history was therefore already known to the government and cannot, without more, justify sudden re-detention decades later.

Because Petitioner complied with supervision and because Respondents have identified no legitimate basis for revocation, his re-detention bears no reasonable relation to the permissible purposes of immigration detention. It is therefore arbitrary, punitive, and unconstitutional.

e. The Revocation of Supervision is Reviewable Final Agency Action and Violates the APA.

The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704. Final agency actions are those (1) that "mark the consummation of the agency's 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). ICE's revocation of parole and subsequent re-detention is a final agency action subject to this Court's review. The revocation here marked the consummation of ICE's decision-making process regarding Petitioner's custody. 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 re-detain Petitioner in violation of his rights under the Constitution, statute, and regulation.

That action is unlawful because it was taken without the required process, without a stated basis, and contrary to the statutory and regulatory framework governing supervised release and re-detention.

f. The Accardi Doctrine Requires Agencies to Follow Internal Rules

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

Under the Accardi doctrine, agencies must follow their own rules and procedures when individual rights are at stake. That principle applies not only to published regulations, but also to internal procedures and delegated authority. Here, Respondents failed to follow the rules governing revocation of supervision and failed to provide the procedures required before third-country removal. Those violations independently warrant relief.

III. Conclusion

WHEREFORE, Petitioner respectfully requests that this Court declare that Respondents may not remove him to Sierra Leone or any other third country without meaningful notice and a meaningful opportunity to seek withholding of removal and CAT protection; Enjoin Respondents from removing him to any third country unless and until they comply with the INA, FARRA, the regulations, and the Due Process Clause; Order Respondents to provide all notices, records, and fear-based procedures required by law; Declare unlawful the revocation of Petitioner's Order of Supervision; Order Petitioner's release from custody under appropriate supervision conditions; and Grant such other and further relief as the Court deems just and proper.

DATED this 28th of July 2026.

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