Practice Advisory: Challenging Revocation of Orders of Supervision through Habeas Corpus

September 24, 2025

I. INTRODUCTION

Non-citizens with final orders of removal on an order of supervision who report to scheduled check-ins with Immigration and Customs Enforcement (ICE) increasingly face arrest and transfer to detention centers. This is the case even when they have been living in the community, complying fully with an order of supervision (OSUP), and attending immigration check-ins without incident for years.

This advisory outlines arguments to prevent arrest or seek release from detention for a non-citizen with a final order of removal whose order of supervision has been or may be revoked at an ICE check-in.[1] It mainly draws on successful litigation in *Ceesay v. Kurzdorfer,* 781 F. Supp. 3d 137 (W.D.N.Y. May 2, 2025), but also briefly discusses potential arguments based on other decisions. In *Ceesay*, the court ordered release of the petitioner after finding that ICE violated due process and its own regulations when it abruptly re-detained him without complying with mandated regulatory procedures, and in disregard of language in a release notice accompanying his OSUP that entitled him to an orderly departure.

Several courts across the country, cited in this memo, have agreed with the reasoning of *Ceesay* and ordered habeas petitioners released, though some courts, also cited in this memo, have disagreed with some of the reasoning of *Ceesay*. In September 2025, the government filed an appeal of *Ceesay* with the Second Circuit, on jurisdictional grounds, that remains pending as of this writing.[2]

This advisory is for general informational purposes only and is not intended as, and should not be taken as, legal advice in any case, or as a substitute for independent legal counsel familiar with the circumstances of any specific case and their local rules and legal precedents. Practitioners should carefully research the most up-to-date law when preparing a case.

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[1] Practitioners whose clients are reporting for ICE check-ins should consider preparing papers in advance so that if a client is detained, habeas corpus relief can be immediately sought before the client is transferred out of the district.

[2] The proposed issue on appeal, as framed by the government, is: Whether 8 U.S.C. § 1252(a)(5), (b)(9), and (g) preclude federal courts from reviewing ICE action taken to re-detain an alien previously released by ICE in order to execute the final order of deportation/removal.

This advisory:

- Briefly summarizes the relevant law and regulations governing revocation of an OSUP pursuant to 8 U.S.C. § 1231(a)(3) & (a)(6) and 8 C.F.R. § 241.4(l)(1) & (2);
- Outlines legal theories practitioners should consider using to challenge the re-detention or threatened re-detention of a client who was previously released under an OSUP;
- Discusses responses to anticipated jurisdictional challenges by the government;
- Provides a template habeas corpus petition and complaint in federal court challenging re-detention, which must be adapted to fit the facts of a given case and the procedural requirements and controlling precedent of a specific jurisdiction

II. STATUTORY AND REGULATORY BACKGROUND: POST-REMOVAL-ORDER DETENTION, RELEASE ON AN OSUP, AND RE-DETENTION

8 U.S.C. § 1231(a)(2)(A) mandates detention during the so-called "removal period," or 90 days following entry of a final order of removal. If an individual "does not leave or is not removed within the removal period," then he or she "shall be subject to supervision under regulations prescribed by the Attorney General." *Id.* § 1231(a)(3). Once the removal period has elapsed, ICE may detain someone whose removal order is based on certain grounds specified in statute or someone who is determined "to be a risk to the community or unlikely to comply with the order of removal." *Id.* § 1231(a)(6). But post-removal-order detention may not exceed a period reasonably necessary to secure removal: presumptively, six months. After this, if the detained person shows that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must come forward with evidence to rebut that showing or the person must be released, again subject to conditions of supervision. *See Zadvydas v. Davis,* 533 U.S. 678 (2001) (holding that after six months of post-removal order detention, the government generally may not continue to confine someone for whom there is no "significant likelihood of removal in the reasonably foreseeable future.").

Conditions of supervision are generally set forth in an OSUP, which typically requires the person to report regularly to an immigration officer and informs them that the government will continue its efforts to deport them. *See* 8 U.S.C. § 1231(a)(3); (a)(6) (specifying OSUP requirements). Additionally, some, but not all people released from detention under an OSUP may have been provided with a document called a release notification. Some, but not all release notifications may provide that when a travel document enabling the government to proceed with removal is obtained, the person will be given an opportunity to prepare for "an orderly departure."

Once released on an OSUP, regulations govern how it may be revoked. Specifically, 8 C.F.R. § 241.4(l)(1) & (2)(ii) provide that the government may revoke release if an individual violates the conditions of release. Section 241.4(l)(2) further provides that the appropriate senior ICE official may also revoke release upon finding that (i) "the purposes of release have been served;" (iii) "it is appropriate to enforce a removal

order . . .;" or (iv) "circumstance[s] indicate[] that release would no longer be appropriate."[3] 8 C.F.R. § 241.4 also provides procedures for review if ICE re-detains someone under these provisions, consisting of notice upon revocation for the reasons thereof and a prompt informal interview to respond, *id.* § 241.4(l)(1), followed by a custody review within 3 months of re-detention. *Id.* § 241.4(l)(3).

Notably, a leaked February 18, 2025 ICE memorandum encourages re-detention of people previously released on OSUPs based on the recent increased availability of third-country removals.[4] Consistent with 8 C.F.R. § 241.4, the memorandum reasserts the need to inform the non-citizen whose release has been revoked of the reasons for detention and to provide a relatively prompt informal interview to give opportunity to argue against detention. However, in contravention of the same regulation, the memorandum appears to bypass requirements that the decision to revoke may only be made by a senior official or, if made by another official delegated the authority, only upon specific findings. Instead, the memorandum seems to instruct low-level ICE employees to review for detention based solely on the general prospect of removal to a third country. Specifically, an excerpt of the memorandum instructs Enforcement and Removal Operations Officers (EROs) to:

> review for detention the case of any [non-citizen] reporting on the non-detained docket who was previously released due to no significant likelihood of removal in the reasonably foreseeable future (SLRFF) in light of the Administration's significant gains with regard to previously recalcitrant countries and the potential for third country removals. . . . If removal appears significantly likely in the reasonably foreseeable future, the arrest may proceed without further investigation.

Consistent with regulations, the memo also specifies procedural protections that a re-detained person should receive upon arrest and promptly following detention.

> At the time of the arrest, the [non-citizen] should be provided written notification of the reason for his or her detention. Promptly, ideally within two days, the arresting officer or another officer, if necessary, should conduct an informal interview of the [non-citizen] and provide an opportunity for the [non-citizen] to ask questions and tell the interviewer anything that the [non-citizen] wishes in support of why he or she should be released.

III. POTENTIAL LEGAL THEORIES TO CHALLENGE REVOCATION OF AN ORDER OF SUPERVISION

[3] These regulations, purporting to create grounds for OSUP revocation beyond those in statute, are arguably ultra vires. See discussion at III.C.1, *infra.*

[4] Nick Miroff and Maria Sacchetti, *Trump Seeks to Fast-Track Deportations of Hundreds of Thousands*, The Washington Post (Feb. 28, 2025) (citing Feb. 18, 2025 memorandum, available at https://perma.cc/VKT4-ZB2G).

A. Improper Revocation Procedures

Ceesay provides a useful roadmap for potential challenges to ICE's revocation of an OSUP. In ordering the petitioner's release, the *Ceesay* court relied primarily on the government's failure to follow its own procedures in revoking his OSUP and re-detaining him. Ceesay challenged these failures as violations of the Due Process Clause, the Administrative Procedure Act, and the *Accardi* doctrine, under which courts can set aside an agency action for failure to follow its own procedures.[5] Specifically, the court found that the person who revoked Ceesay's release did not have the authority to do so and did not make the necessary findings to support the revocation. It also held that ICE did not provide Ceesay with the prompt informal interview required by 8 C.F.R. § 241.4(1)(2).

1. Authority to Revoke Release and Need for Specific Findings

The *Ceesay* court carefully analyzed the law of who has authority to revoke an order of supervision and the findings they must make to do so. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 159-62. In short, 8 C.F.R. § 241.4(l)(2) empowers the INS "Executive Associate Commissioner" to revoke release on discretion when, in his or her opinion: "(i) The purposes of release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order . . . ; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate."

A "district director" or any other official who is "delegated the function or authority . . . for a particular geographic district, region, or area" may also revoke an order of supervision, 8 C.F.R. § 1.2., but only upon findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." 8 C.F.R. § 241.4(l)(2). As the *Ceesay* court explained, when the Homeland Security Act of 2002 transferred INS functions to DHS, the authority of the Executive Associate Commissioner to revoke release was conferred on the Executive Associate Director of ICE, and the authority of the district director was transferred to the Field Office Director. *Ceesay*, 781 F. Supp. 3d at 159-61.

The court concluded, for two reasons, that the person who revoked Ceesay's release, the Assistant Field Office Director, did so without clear authority. First, the delegation order granting the Assistant Field Officer Director some authority did not specifically delegate the authority to revoke an order of supervision. *Id.* at 161-62. Second, the court found that the Assistant Field Officer Director did not make the findings required to support a release revocation: that revocation was in the public interest and circumstances did not reasonably permit referral of the case to the Executive Associate Director of ICE. *Id.* at 162. The court then concluded that "Ceesay's release was not properly revoked, and he is entitled to release on that basis alone." *Id.* (citing *Rombot v. Souza,* 296 F. Supp. 3d

[5] The *Accardi* doctrine, based on the Supreme Court decision in *Accardi v. Shaughnessy*, 347 U.S. 240 (1954), held that the government is required to follow its own regulations. Later, its holding was extended to other agency rules, short of regulation, that protect a fundamental right. Courts have referenced *Accardi* to support vacatur of agency action on both Due Process and APA grounds where an agency has deviated from established procedure. Arguably, *Accardi* provides a third cause of action beyond Due Process and the APA.

383, 386-89 (D. Mass. 2017) (expressing doubt as to whether Field Office Director had authority to revoke release and finding that failure to make required findings required release of petitioner)).

Several recent cases have adopted this reasoning, granting habeas petitions based at least in part on the fact that revocation was ordered by someone without regulatory authority to do so. *See, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025), at *8; *M.S.L. v. Bostock*, 2025 WL 2430267, at *9-*10 (D. Or. Aug. 21, 2025). *But see Umanzor-Chavez v. Noem,* 2025 WL 2467640 (D. Md. Aug. 27, 2025) (revocation order signed by deportation officer was a violation of the regulations, but did not implicate constitutional concerns warranting habeas relief); *Barrios v. Ripa*, 2025 WL 2280485 (S. D. Fla. Aug. 8, 2025) (even if official who revoked release did not have authority, violation of OSUP revocation regulations not sufficient to warrant release from detention where record arguably showed Petitioner was a flight risk). Practitioners should research the law in their jurisdiction and others for the most recent updates on this developing area of law.

The leaked February 18, 2025 ICE memorandum, which instructs EROs to consider revoking detention based entirely on the anticipated ease in accomplishing removals to third countries, increases the likelihood that ICE will fail to conform with the release revocation regulations. Practitioners should be alert to and challenge any deviation—no matter how minor—from the regulations governing who may revoke an OSUP and under what conditions. Such challenges should be brought under the Due Process clause of the Fifth Amendment as a deprivation of liberty without adequate process, *see Zadvydas v. Davis,* 533 U.S. 678, 690 ("Freedom from imprisonment . . . lies at the heart of the liberty [the Due Process] Clause protects"), a violation of the Administrative Procedure Act as arbitrary and capricious and contrary to law, and a violation of the *Accardi* doctrine for failure of the agency to follow its own procedures affecting a fundamental right.

2. Informal Interview Requirement

The *Cessay* court also found that ICE failed to provide Ceesay with the informal post-detention interview required by § 241.4(1), citing numerous cases holding that such an interview is required regardless of the reason for the revocation. *Ceesay*, 781 F. Supp. 3d 163-64 (citing *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025) (Sotomayor, J. statement respecting the Court's disposition of the application); *M.Q. v. United States*, 776 F. Supp. 3d 180, 190 n.1 (S.D.N.Y. 2025); *Doe v. Smith*, 2018 WL 4696748 (D. Mass. Oct. 1, 2018)). It went on to hold that the failure to provide Ceesay with the required informal interview violated his right to due process, both because agencies are required to follow their own procedures and because even without the regulatory requirement, due process independently requires that the petitioner be given an opportunity to be heard because his liberty was at stake. *Ceesay*, 781 F. Supp. 3d at 164-66.

The court concluded that "because ICE did not follow its own regulations in deciding to re-detain Ceesay, his due process rights were violated, and he is entitled to release. And even if that were not so, he would still be released because he was not afforded even the minimal due process that protects everyone—citizens and noncitizens—in the

United States." *Id.* at 166. *See also Grigorian v. Bondi,* 2025 WL 2604573, at *9 (S. D. Fla. Sep. 9, 2025) ("The opportunity to contest detention through an informal interview is not some ticky tacky procedural requirement; it strikes at the heart of what due process demands."); *Diaz v. Wofford*, 2025 WL 2581575 (E. D. Cal. Sep. 5, 2025) (petitioner denied notice and opportunity to be heard likely to succeed on the merits of due process claim); *K.E.O. v. Woosley,* 2025 WL 2553394, at *6 (W. D. Ky. Sep. 4, 2025) (notice of revocation 90 days after the fact does not cure due process violation of lack of notice upon revocation and failure to give interview promptly after); *Orellana v. Baker*, 2025 WL 2444087 (D. Md. Aug. 25, 2025) (lack of any written notice or opportunity to be heard constitute stark violation of due process); *Zhu,* 2025 WL 2452352, at *9 (failure to provide notice or an interview violated due process); *M.S.L.*, 2025 WL 2430267, at *10-*12 (failure to give interview until 27 days after revocation of release violated due process). *But see Barrios v. Ripa*, 2025 WL 2280485 (questioning whether regulation providing for notice and opportunity to be heard applies only to revocation for violation of OSUP, and not for revocation to accomplish removal, but finding that petitioner had received notice and an informal interview anyway).

Again, advocates should use arguments under the Due Process Clause, the Administrative Procedure Act, and the *Accardi* doctrine to challenge revocation and re-detention where the government fails to provide a prompt informal post-detention interview as required by § 241.4(1).

B. Right to an Orderly Departure

The third ground for relief in *Ceesay* was that the petitioner was improperly denied the orderly departure promised to him in his release notification, providing a basis to argue that individuals released under an OSUP have a right to prior notice before they can be re-detained for purposes of removal. This argument is strongest for those with orderly departure language in their release notifications, but some decisions provide a good faith basis to assert a right, grounded in due process, to notice prior to re-detention for individuals who have been living in the community for an extended period, even if they do not have orderly departure language in their release notifications.

As the *Ceesay* court observed, "[t]he caselaw addressing a noncitizen's right to an orderly departure is sparse." *Ceesay*, 781 F. Supp. 3d at 167. While no court has yet to define the precise contours of that right, several courts have recognized that such a right does exist. Two of those courts have tied their holdings to the express promise for an orderly departure contained in a noncitizen's release notification. *See Rombot v. Souza*, 296 F. Supp. 3d 383; *Ceesay*, 781 F. Supp. 3d at 168-69. But at least one other court has declined to find a right to an orderly departure, noting the absence of such an assurance in that case. *See Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec 4, 2018).

In *Rombot*, the petitioner had been released from ICE custody for more than two years pursuant to an OSUP and had been issued a release notification containing orderly departure language. He was then taken into ICE custody without prior notice when he

reported for a routine ICE check in. After finding that the revocation of his release failed to comport with the § 241.4(l) procedures for a prompt informal interview followed by a custody review, the court went on to hold that ICE had violated the petitioner's due process rights when it deprived him of an opportunity to prepare for an orderly departure, observing that "[w]hen ICE ignored that condition and placed [petitioner] in shackles, it did so without advance notice, a hearing or an interview." *Rombot*, 296 F. Supp. 3d at 388. The court ordered his release from custody without elaborating further on what an orderly departure would entail. *Id.* at 389.

Most recently, the court in *Ceesay* predicated its holding that the petitioner was entitled to an orderly departure on the statement in the release notification—which the court characterized as a promise—that he would have that opportunity. *Ceesay*, 781 F. Supp. 3d at 168. Although the court acknowledged that the concept of an orderly departure was amorphous, and largely for ICE itself to define, it cited with approval the notion expressed in *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019), of the "freedom to say goodbye." *Ceesay* 781 F. Supp. 3d at 167-69. It found further, in light of serious medical issues faced by the petitioner, that an orderly departure would, "include—at a minimum—the chance to make some preparations for serious healthcare concerns and perhaps the chance to pack certain belongings." *Id.* at 169. The court concluded that ICE, having made the promise for an orderly departure, "cannot now renege on the promise such that its words meant nothing." *Id.* at 170. It held that "[t]he Government therefore must give [the petitioner] that opportunity, and its definition of an 'orderly departure' must be reasonable." *Id.*

Other decisions support a broader right to advance notice and an opportunity to prepare for removal. In *Ragbir v. Sessions*, 2018 WL 623557, Judge Katherine Forrest held that the right to orderly departure entitled the petitioner at a minimum to "the freedom to say goodbye." Although the petitioner in *Ragbir* had orderly departure language in his release notification—a fact Judge Forrest noted in a footnote—her decision does not expressly turn on that specific promise to the petitioner. Instead, it is written broadly enough to support a right to orderly departure for anyone who has lived in, and developed ties to the community, consistent with the conditions of their supervised release. She begins her opinion with a broad pronouncement that:

> There is, and ought to be in this great country, the freedom to say goodbye. That is, the freedom to hug one's spouse and children, the freedom to organize the myriad of human affairs that collect over time. It ought not to be—and it has never before been—that those who have lived without incident in this country for years are subjected to treatment we associate with regimes we revile as unjust, regimes where those who have long lived in a country may be taken without notice from streets, home, and work. And sent away. We are not that country.

Id at *1.

Later in the opinion, before ordering the petitioner's release, she concludes that "[t]he process that is due here is the allowance that [the petitioner] know and understand that the time [for his deportation] has come, that he must organize his affairs, and that he do so by a date certain. That is what is due. That is the process required after a life lived among us." *Id.* at *2.

Chhoeun v. Marin, 442 F. Supp. 3d 1233 (S.D. Cal. 2020), a 2020 decision from the Southern District of California, does not use the term "orderly departure," but can fairly be read to support that right. The petitioners in that case were a class of Cambodian refugees who had been ordered removed years and even decades earlier, but who had been released into the community on OSUPs when Cambodia refused their repatriation.[6] When ICE began a wave of arrests for the purpose of deporting members of the petitioner class in 2017, the court entered a preliminary injunction, followed by a permanent injunction requiring written notice to the class of at least fourteen days before class members could be re-detained. The court's primary concern was to permit plaintiffs an opportunity to challenge their decades-old removal orders, based on intervening changes in the law and new facts. But it also recognized the plaintiffs' need to say goodbye to families and wrap up their affairs:

> To expect Petitioners to—every day for decades—say goodbye to their families as they leave the house for work with the idea in mind that today could be the day they never return home, is unthinkable. To expect Petitioners to—every day for decades—tell their bosses that that day may be their last day working, is absurd. To expect Petitioners to—every day for decades—arrange alternate arrangements for their children to be picked up from school, for their cars and other personal effects to be picked up from wherever they are detained, and for their bills to be paid going forward, in case they are detained for removal that day, is heartless.

Id. at 1246.

Advocates arguing for an orderly departure should carefully develop and present any facts that support the client's individual circumstances demonstrating the need for preparations before they are removed, such as health care needs, family or business

[6] *Chhoeun* was successfully brought as a class action but predates the Supreme Court decision in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022) which held that 8 U.S.C. § 1252(f)(1) bars classwide injunctive relief challenging the operation of 8 U.S.C. §§ 1221-1232 (including inspection, apprehension, detention, and removal of non-citizens). *Aleman Gonzalez* forecloses the option of a class action seeking to enjoin re-detention without procedural safeguards, though APA vactur of a policy to re-detain without procedural safeguards remains a possibility.

circumstances, or property ownership. *Ceesay* itself stopped short of finding that the right to an orderly departure even requires release from detention in all cases, noting the government's observation that "it is not entirely clear that the allowance for an 'orderly departure' necessarily means a certain preparation period out of custody." *Ceesay*, 781 F. Supp. 3d at 168; *see also Doe v. Smith*, 2018 WL 4696748, at *10 (noting in *dicta* that failure to provide an orderly departure might only support damages and not release).

Nevertheless, the precedents discussed above, and the plain meaning of the term "orderly departure," provide substantial support for the argument that an orderly departure does entail a period of release from detention in order to put one's affairs in order. At least in some instances, ICE has afforded people weeks to prepare for departure once the agency had obtained travel documents for them. *See, e.g.*, *Drammeh v. Clark*, No. C20-0045-RAJ-MAT, 2020 WL 5122445, at *2 (W.D. Wash. 2020) (on November 20, 2019 ICE informed non-citizen on supervised release that a travel document had been issued, instructed him to make plans to depart by January 21, 2020 and provide evidence that he had purchased a plane ticked by December 18, 2019, and placed non-citizen on an ankle monitor). Advocates could use such precedent to argue that ICE's own history and practice demonstrate that an orderly departure contemplates a period of weeks if not months to wrap up affairs prior to deportation.

C. Additional arguments challenging revocation of an order of supervision not made in *Ceesay*

Though not discussed in *Ceesay*, other authority supports additional arguments to challenge re-detention after OSUP revocation. These arguments include: (1) that regulations permitting re-detention without a finding of dangerousness or flight risk are ultra vires of the statute; (2) that immediately following OSUP revocation, the government bears the burden to prove that removal is reasonably foreseeable, and (3) that OSUP revocation requires a hearing before a neutral adjudicator.

1. Regulations permitting OSUP revocation absent findings of flight risk or danger to the community are ultra vires

There is a basis in caselaw for arguing that 8 U.S.C. § 1231(a) bars re-detention absent a finding that a person on an OSUP is a risk to the community or unlikely to comply with an order of removal. *You v. Nielsen*, 321 F. Supp. 3d. 451 (S.D.N.Y. 2018), holds that the provisions of 8 C.F.R. §241.4(l) purporting to authorize revocation of release impermissibly exceed the scope of detention authorized under 8 U.S.C. § 1231(a). The *You* court held that not only was an individual with a final order of removal who was re-detained pending removal entitled to notice and an informal interview under 8 C.F.R. § 241.4(l), but also that 8 U.S.C. § 1231(a) barred re-detention absent findings of flight risk or danger. *You*, 321 F. Supp. 3d. at 463.[7]

[7] The court's primary holding was that the petitioner in that case, who had been released from detention prior to a final order of removal, and thus before the removal period with which § 1231(a) is concerned, was not subject to re-detention under §241.4(l) because those provisions, by their terms, apply only to people released

The *You* court found that 8 U.S.C. § 1231 permits detention after the 90-day removal period only in two circumstances: First, if the person ordered removed is inadmissible or removable on the basis of certain immigration violations, crimes, or public security reasons. *Id.* at 462 n.6. Second, only after ICE makes a finding that the person ordered removed is a danger to the community or unlikely to comply with the removal order. *Id.* at 462. The first circumstance did not apply to the petitioner in *You*. The court thus held that "[d]etention to facilitate removal—even imminent removal—is not permitted beyond the removal period for an alien like Petitioner except upon . . . findings" of dangerousness or flight risk. *Id.* at 463. The court's observation that "[r]egulations cannot circumvent the plain text of the statute," *id.*, would support an argument that 8 C.F.R. § 241.4(l) cannot properly be read to permit re-detention based solely on the prospect of imminent removal for people whose orders of removal are not based on those listed in 8 U.S.C. § 1231(a)(6). *See also Zadvydas v. Davis*, 533 U.S. 678, 700 ("And if removal is reasonably foreseeable, the habeas court should consider the risk of the [noncitizen] committing further crimes as a factor potentially justifying confinement within that reasonable removal period.").

This statutory argument would permit advocates to argue that revocation of an OSUP grounded in reasons listed in 8 C.F.R. § 241.4(l), but absent findings of dangerousness or flight risk, is ultra vires agency action. An individual who is free from detention, has complied with their conditions of release, and is not inadmissible or removable on grounds specified in § 1231 could argue that he or she cannot be re-detained absent findings of flight risk or danger to the community, even where imminent removal is possible. *But see Tazu v. Attorney General*, 975 F.3d 292, 298 (3d Cir. 2020) (stating that "brief door-to-plane detention is integral" to the act of executing a removal order, though practitioners may argue for a narrow definition of "door-to-plane," such as the brief period after a plane is scheduled). Advocates might support this argument by alleging, based on the leaked February 18, 2025 ICE memorandum, that ICE has adopted a policy of detaining people on an OSUP based not on dangerousness or flight risk, but on the general prospect of removal to a third country and the ultra vires regulations purporting to authorize detention where "the purposes of release have been served;" "it is appropriate to enforce a removal order . . .;" or "circumstance[s] indicate[] that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2).

2. Immediately following OSUP revocation, the government bears the burden to prove that removal is reasonably foreseeable

Under *Zadvydas v. Davis*, 533 U.S. 678, 701, courts typically presume that six months of post-removal order detention is reasonable, after which a non-citizen can bring a habeas petition to seek release, showing "good reason to believe" there is no significant likelihood of removal. But some recent cases, including *Escalante v. Noem*, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025), have held that when a non-citizen released pursuant to

from detention pursuant to § 1231(a). The court's holding barring re-detention absent a finding of dangerousness or flight risk is an alternative holding.

an OSUP is re-detained for the purposes of removal, the government immediately bears the burden to show a substantial likelihood of removal in the now foreseeable future. *See also Roble v. Bondi,* No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (applying the "default rule" that the burden falls on the party who generally seeks to change the present state of affairs and that is ICE that seeks to change the present state of affairs by revocation of an OSUP); *Tadros v. Noem*, 2025 WL 1678501 (D.N.J. June 13, 2025) (finding individual had "the better argument" that the burden shifts to the government upon re-detention, although individual also presented unrebutted evidence that removal was not likely in the foreseeable future); *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable where alien is re-detained after having been on supervised release).

In *Escalante*, the court characterized an OSUP revocation as "not your typical first round detainment of an alien awaiting removal. Petitioner was previously detained, then released on supervised release for several years, and his 90-day removal period expired." *Escalante v. Noem*, 2025 WL 2206113, at *3. The court then examined post-removal period regulations that "clearly indicate, upon revocation of supervised release, it is the [government's] burden to show a significant likelihood that the alien may be removed." *Id.* The Court explained that the plain language of the regulations shows the government bears the burden, emphasizing that 8 C.F.R. § 241.13(i)(2) refers to if "*the Service determines* that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future" and § 241.4(b)(4) likewise states "*if the Service subsequently determines . . . .*" *Escalante v. Noem*, 2025 WL 2206113, at *3 (emphasis in original). Ultimately, the *Escalante* court reasoned that "[i]mposing the burden of proof on the alien each time he is re-detained would lead to an unjust result and serious due process implications." *Escalante v. Noem*, 2025 WL 2206113, at *3.

Advocates can use this line of cases to argue for immediate release from detention after revocation of an OSUP if the government cannot present evidence that removal is reasonably foreseeable, even assuming the revocation otherwise complied with law.

3. An OSUP revocation requires a hearing before a neutral adjudicator

Several cases, mostly from the Northern and Eastern District of California, have held that individuals who have been released from ICE custody on bond while removal or withholding-only proceedings are ongoing have a sufficiently strong liberty interest in remaining free to require prior notice and opportunity to be heard before a neutral arbiter before or immediately after being re-detained. *See Guillermo M. R. v. Kaiser*, --- F.Supp.3d ---, 2025 WL 1983677, at *7 n.4 (N.D. Cal. July 17, 2025) (collecting cases); *see also Bermeo Sicha v. Bernal*, 2025 WL 2494530 (D. Me. Aug. 20, 2025) (due process requires hearing before an IJ before revocation of conditional parole).

In *Guillermo M.R.*, the court granted a preliminary injunction enjoining the government from re-detaining the Petitioner without notice and a pre-deprivation hearing before an Immigration Judge to evaluate whether re-detention was warranted based on

flight risk or a danger to the community. The Petitioner in *Guillermo M.R.* had a final removal order, but was still litigating a case for withholding of removal at the time he filed his habeas petition. Two years earlier, an immigration judge had ordered the Petitioner released on bond, but ICE informed him that it planned to detain him at a mandatory check-in five days in the future. At habeas, the Petitioner alleged that his detention without a hearing before a neutral decisionmaker would violate constitutional due process.

In granting the petition, the court held that the Petitioner raised serious questions as to whether revocation of the OSUP without a hearing before a neutral adjudicator would violate procedural due process. *Guillermo M. R.*, 2025 WL 1983677, at *3. The court used the balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), to examine: (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.

The court's analysis of the factors rebuts common arguments that ICE might use against due process claims generally for people on an OSUP, including that people with final orders of removal have diminished expectations of liberty, that a post-detention interview is sufficient process, and that the fiscal and administrative burdens on the government caused by a pre-deprivation hearing are too great. On the liberty interest, the court dismissed several arguments that Petitioner's liberty interest was diminished.The court reasoned that a person detained past the removal period "could be subject to prolonged detention, and . . . may still seek to challenge or delay their removal, which augments their liberty interest." *Id*. at *5. Nor did release on conditions, as provided for by statute, diminish the liberty interest, because "deprivation [of liberty] is a "grievous loss" that can be taken away only upon review at a hearing before a neutral arbiter, regardless of whether government agents otherwise have statutory authority to re-detain." *Id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 482, 489 (1972); *Young v. Harper*, 520 U.S. 143, 148 (1997). The court distinguished cases that denied constitutional concerns with lack of periodic review of detention because "a released individual's interest in avoiding re-detention is different from a detainee's interest in having ongoing periodic reviews of prolonged detention." *Guillermo M. R.*, 2025 WL 1983677, at *5. And the court disagreed that non-citizen status itself diminishes the liberty interest, noting that if the petitioner in *Zadvydas*, who had also been ordered removed, had a strong liberty interest in freedom from detention, the Petitioner before the court's interest was just as strong. "Unlike Zadvydas, Petitioner was ordered released by an IJ, subject to conditions, and has been freely and openly living, working, and caring for his mother for more than two years while he awaits a final hearing on his withholding of removal application." Ultimately, the court concludd that "Respondents provide no principled reason for why Petitioner's liberty interest should be less than that of a U.S. citizen parolee or probationer." *Id.* at *6.

On the question of whether a post-arrest interview is sufficient process, the court held that "absent evidence of urgent concerns, a *pre*-deprivation hearing is required to satisfy due process, particularly where an individual has been released on bond by an IJ." *Id.* at *9 (emphasis in original). And on government burdens, the court found that the

government had submitted "no evidence that requiring a pre-deprivation hearing would result in a significant delay," *id.*, and that "a pre-deprivation hearing could reduce administrative costs by potentially avoiding an erroneous deprivation of liberty, which would save the costs of unnecessary detention." *Id.* at 10.

Litigants might be able to use *Guillermo M.R* and the cases it cites to support the right to a pre-revocation hearing, bearing in mind that the Petitioner in *Guillermo M.R* had been previously ordered released by an IJ, not by an ICE placement on an OSUP.

IV. OVERCOMING JURISDICTIONAL DEFENSES

When challenging revocation of an order of supervision, the government is likely to argue that the court lacks jurisdiction by virtue of the jurisdictional bars contained in 18 U.S.C. §§ 1252(b)(9), 1252(g), and 1252(a)(2)(B)(ii). *Ceesay* examines each of these provisions and concludes that none of them bar a lawsuit challenging the process by which the government re-detains an individual through revocation of an OSUP. Its useful discussion of these jurisdictional bars and their nonapplication in this context, is summarized below.

- **§ 1252(b)(9)** provides that "[j]udicial review of all questions of law and fact . . . arising from any action taken or proceedings brought to remove a [non-citizen] from the United States under this subchapter shall be available only in judicial review of a final order."
- **§ 1252(g)** provides that "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any [non-citizen] arising from the decision or action by [ICE] to commence proceedings, adjudicate cases, or execute removal orders against any [non-citizen] under this chapter."

Ceesay noted that these provisions effectively strip district courts of jurisdiction to review either a direct or indirect challenge to a removal order, but still accepted jurisdiction over the petition. *Ceesay,* 781 F. Supp. 3d at 151 (citing, *e.g., Delgado v. Quarantillo*, 643 F. 3d 52, 55 (2d Cir. 2011). The court first found that Ceesay was not seeking a stay of removal, which would be barred by section 1252(g). It went on to reject the government's argument that because the stated purpose of his detention was to effectuate his removal, the case "stems from" his removal and was thus jurisdictionally barred, finding that it "proves far too much." *Ceesay,* 781 F. Supp. 3d at 151. The court observed that detention related to a final order of removal "always is related to the execution of an immigration order, but courts routinely hear habeas petitions filed by individuals challenging detention during the removal process." *Id*. at 152 (citing *Jennings v. Rodriguez,* 583 U.S. 281, 292-95 (2018); *Zadvydas,* 533 U.S. 678, 688. It noted that district courts in the Second Circuit "have distinguished between challenges to ICE's discretion to execute a removal order, which are barred, and challenges to the manner in which ICE executes the removal order, which are not. *Ceesay,* 781 F. Supp. 3d at 152 (citing *Torres-Jurado v. Biden*, 2023 WL 7130898 (S.D.N.Y. Oct. 29, 2023) at *2 (collecting cases); *Ahmed v. Freden,* 744 F. Supp. 3d 259, 264 (W.D.N.Y. 2024). And the court concluded that because Ceesay was not challenging the legality of his removal order, but instead was arguing that "his detention

was unlawful because the government improperly revoked the order of supervision under which he had been released for more than a decade," neither § 1252(b)(9) nor § 1252(g) precluded the court from exercising jurisdiction over his petition. *Ceesay,* 781 F. Supp. 3d at 153-54.

- **§ 1252(a)(2)(B)(ii)** deprives the district courts of jurisdiction to review "any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security"

The *Ceesay* court similarly rejected the government's argument that § 1252(a)(2)(B)(ii) barred Ceesay's challenge to the decision to revoke his release, which is committed to the discretion of the Secretary of Homeland Security. *Ceesay,* 781 F. Supp. 3d at 154-55. The court made clear that it was not being asked to second guess the exercise of that discretion, but rather to assess the process by which that discretion was exercised. *Id.* Quoting from the Second Circuit decision in *Mantena v. Johnson*, 809 F.3d 721 (2d Cir. 2015), the court noted that "even when a statute strips jurisdiction over a substantive discretionary decision, it does not strip jurisdiction over procedural challenges." *Ceesay,* 781 F. Supp. 3d at 154 (citation modified). Because Ceesay was not challenging ICE's substantive decision, but instead was asserting that its revocation of his release was done without adequate process and in violation of ICE's own regulations, the court concluded that section 1252(a)(2)(B)(ii) did not deprive the court of jurisdiction over his claim.

V. SUPPORTING MATERIALS

Accompanying this practice advisory is a template habeas corpus petition and complaint in federal court challenging re-detention based on some of the arguments discussed in this practice advisory. This template cannot be filed as written and must be edited and adapted to fit the facts of a given case and the procedural requirements and controlling precedent of a specific jurisdiction. Sections needing adaptations are highlighted. The template brief is also available in Microsoft Word as a downloadable resource, along with a copy of this practice advisory, on the RFK Human Rights website.

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This template brief is not legal advice and cannot be filed as written. It must be edited and adapted to fit the facts of a given case and the procedural requirements and controlling precedent of a specific jurisdiction. Sections needing adapting are highlighted.

UNITED STATES DISTRICT COURT
FOR [INSERT JURISDICTION]

[NAME], *Petitioner-Plaintiff,* **v.** [NAME], in his/her official capacity as [ACTING/ASSISTANT] Field Office Director, [LOCATION] Field Office, U.S. Immigration and Customs Enforcement; [NAME], in his/her official capacity as Warden, [DETENTION CENTER]; [NAME]; U.S. Department of Homeland Security; and U.S. Immigration and Customs Enforcement, *Respondents-Defendants*.	Case No. _____ **Verified Petition for Writ of Habeas Corpus and Complaint for Injunctive Relief**[1] ***Oral Argument Requested***

INTRODUCTION

1. This case challenges the unlawful detention of [NAME] ("Petitioner" or "[Mr./Ms. [NAME]"), who is currently in the custody of Immigration and Customs Enforcement ("ICE") at [DETENTION FACILITY.] Petitioner is neither a flight risk nor a danger to the community. But on or about [DATE], ICE detained him/her without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules [IF APPLICABLE: that provide for an opportunity for an orderly departure when the time came for Petitioner's removal from this country].

[1] Note that some jurisdictions do not permit combining a complaint with a habeas petition. Research jurisdiction-specific case law to determine the proper vehicle for filing.

2. ICE found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention on [DATE] under an order of supervision. Since then, Petitioner has fully abided by the order's terms, including attending regularly scheduled check-ins with ICE.

3. [IF APPLICABLE:] Along with the order of supervision, ICE issued Petitioner a release notification which stated that once the agency obtained a travel document for Petitioner, s/he would "be given the opportunity to prepare for an orderly departure."

4. But at a regularly scheduled check-in with ICE on [DATE], Respondents-Defendants suddenly revoked Petitioner's order of supervision and arrested him/her. Petitioner has been detained at [DETENTION FACILITY] since then.

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

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

PARTIES

7. Petitioner, Mr./Ms. [NAME] has lived in the United States for [LENGTH OF TIME]. Prior to Petitioner's detention on or about [DATE], s/he was residing in [LOCATION]. Petitioner is currently detained at [DETENTION FACILITY].

8. Respondent-Defendant [NAME] is sued in his/her official capacity as the ICE [IF APPLICABLE, SPECIFY WHETHER ACTING, ASSISTANT, OR OTHER TITLE] Field Office

Director for [PLACE], which includes [DETENTION FACILITY]. Upon information and belief, s/he decided to revoke Petitioner's order of supervision.

9. Respondent-Defendant [NAME] is sued in his/her official capacity as Warden of [DETENTION FACILITY], where Petitioner is currently detained.

10. Respondent-Defendant U.S. Department of Homeland Security ("DHS") is a federal agency headquartered in Washington, D.C. and the parent agency of ICE.

11. Respondent-Defendant ICE is a component agency of DHS.

JURISDICTION AND VENUE

12. 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*.

13. Venue is proper in this district because Respondent-Defendant Warden [NAME] is Petitioner's immediate custodian and under 28 U.S.C. § 1391(e)(1) because Respondents-Defendants 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

14. Petitioner is [AGE] years old and came to the United States from [COUNTRY OF ORIGIN] about [LENGTH OF TIME] years ago. Petitioner has resided in the United States continuously since then.

15. [IN NUMBERED PARAGRAPHS PROVIDE INFORMATION ON PETITIONER'S INDIVIDUAL CIRCUMSTANCES, EMPHASIZING INFORMATION THAT WOULD WEIGH IN FAVOR OF TIME TO HAVE ORDERLY DEPARTURE, INCLUDING

LENGTH OF TIME IN THE US; FAMILY CIRCUMSTANCES; TIES TO THE COMMUNITY; MEDICAL CONDITIONS; OTHER SYMPATHETIC FACTS. ALSO INCLUDE BASIC DETAILS ABOUT IMMIGRATION STATUS LIKE PRIOR IMMIGRATION PROCEEDINGS RESULTING IN FINAL ORDER OF REMOVAL; PRIOR IMMIGRATION DETENTION AND RELEASE ON ORDER OF SUPERVISION; IF APPLICABLE, PROVISION TO PETITIONER OF RELEASE NOTIFICATION STATING ICE WILL GIVE AN OPPORTUNITY TO PREPARE FOR ORDERLY DEPARTURE].

16. Since ICE released Petitioner on an order of supervision on or about [DATE], Petitioner has complied with all conditions of the order, including periodic check-ins with ICE. No circumstances have changed that make Petitioner a flight risk or danger to the community.

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

18. But at a regularly ICE scheduled check-in on [DATE], ICE suddenly revoked Petitioner's order of supervision and arrested him/her.

19. [PROVIDE RELEVANT DETAILS ABOUT ARREST: IDENTITIES/TITLES OF ICE EMPLOYEES INVOLVED IN THE ARREST, WHETHER THEY GAVE REASONS FOR ARREST AND WHAT THOSE WERE.]

20. [IF APPLICABLE, BECAUSE ARRESTING OFFICER/FIELD OFFICER DIRECTOR WAS NOT THE EXECUTIVE ASSOCIATE DIRECTOR:] Upon information and belief, the official responsible for revoking Petitioner's order of supervision did not first refer the case to the ICE Executive Associate Director, did not make findings that revocation was in the

public interest and that circumstances did not reasonably permit referral to the Executive Associate Director, and had not been delegated authority to revoke an order of supervision.

21. Upon arrest, ICE transferred petition to the [DETENTION FACILITY], where s/he is currently detained. [INCLUDE INDIVIDUALIZED FACTS, LIKE MEDICAL NEEDS, THAT DESCRIBE HARDSHIPS OR SUPPORT A FINDING THAT DETENTION IS PUNITIVE.]

22. [IF APPLICABLE: 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/her an opportunity to respond to those reasons.]

23. [IF APPLICABLE: 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

Due Process Governs Decisions to Revoke an Order of Supervision

24. "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).

25. 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).

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

Statute and Regulation Govern Procedures for Revoking an Order of Supervision

27. 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").

28. 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).

29. 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.

30. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other

circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release"). Because "[r]egulations cannot circumvent the plain text of the statute[,]" courts question whether these regulations are ultra vires of statutory authority. *See, e.g.*, *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

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

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

The APA Sets Minimum Standards for Final Agency Action

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

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

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

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

37. 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

38. 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.").

39. *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).

40. Where a release notification issued alongside an order of supervision instructs that a non-citizen with a final order of removal will be given an opportunity to prepare for an "orderly departure," ICE's failure to follow that instruction is an *Accardi* violation. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

CLAIMS FOR RELIEF

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

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

42. When ICE issued Petitioner an order of supervision, it found that s/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 [IF APPLICABLE: and ICE had not secured 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 Process

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

47. *Mathews v. Eldridge*, 424 U.S. 319, 333, 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.

48. 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.

49. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that an order of supervision can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. 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 an 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 Right

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

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. [IF APPLICABLE: Nor had the officer been delegated authority to revoke an order of supervision.]

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 s/he had not. Nor could Respondents make findings that the purposes of release had been served or that it was appropriate to enforce a removal order, because it had yet to make final arrangments for Petitioner's removal.

60. Nor did the 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 the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
Arbitrary and Capricious

62. Petitioner realleges 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. Respondents' revocation of Petitioner's 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. Respondents' decision to revoke Petitioner's order of supervision ran counter to the evidence before the agency that Petitioner would comply with a demand to appear for removal without detention. Petitioner has never violated a condition of his/her order of supervision and no new facts or changed circumstances suggest s/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 [IF APPLICABLE: 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 simply continuing release under the order of supervision and scheduling a future time and date to appear for removal. This alternative would vindicate the government's interests in effectuating a removal order and save it the expense of detention not needed to guarantee Petitioner's appearance.

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

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

73. Petitioner realleges 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 whose removal order is on certain grounds specified in the statute. Even then, if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

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

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

Count Six
Ultra Vires Action

79. Plaintiffs reallege 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 Respondents' ultra vires actions.

Count Seven
Violation of the *Accardi* Doctrine

82. Petitioner realleges 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 that basis alone." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also, e.g.*, *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

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

86. Under *Accardi*, Respondents' revocation of the order of supervision and decision to ignore instructions in the release notification should be set aside for violating agency procedures, rules, or instructions.

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 attorneys' fees; and

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

Respectfully submitted,

DATED: [DATE]
[LOCATION]

[SIGNATURE BLOCK]

Attorney for Petitioner-Plaintiff

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

DATED: [DATE]
[LOCATION]

[SIGNATURE BLOCK]

Attorney for Petitioner-Plaintiff