

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RONY EDUARDO SANTAMARIA ORELLANA)

(A# [REDACTED]))

Petitioner,)

v.)

NIKITA BAKER, in her official capacity as)
Director of Baltimore Field Office, U.S.)

Immigration and Customs Enforcement;)

TODD LYONS, in his official capacity as)
Acting Director of U.S. Immigration and)

Customs Enforcement; **KRISTI NOEM**, in her)
official capacity as Secretary of the)

U.S. Department of Homeland Security;)

U.S. DEPARTMENT OF HOMELAND)

SECURITY; and **U.S. IMMIGRATION AND)**

CUSTOMS ENFORCEMENT,)

Respondents.)

Case No. _____

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

INTRODUCTION

1. Petitioner, Rony Eduardo Santamaria Orellana, is a citizen and national of El Salvador, who was granted protection from being returned to his country of origin on April 17, 2023, by the Hyattsville Immigration Court. However, on June 4, 2025, during a routine check-in, Respondents, at the Baltimore Field Office of the Enforcement and Removal Operations (“ERO”), which is a component of the U.S. Immigration and Customs Enforcement (“ICE”), which is a bureau within the Department of Homeland Security (“DHS”), Petitioner was detained by Respondents.
2. Petitioner is in the custody of Respondents in a holding room at their headquarters at 31 Hopkins Plaza, Baltimore, MD 21201.

3. While Petitioner was previously in the custody of Respondents, on or about January 6, 2020, he was released on bond during the pendency of his immigration court proceedings. On April 17, 2023, Petitioner was granted withholding of removal under the Convention Against Torture (“CAT Withholding”). Afterwards, Respondents placed Petitioner on an Order of Supervision (“OSUP”).
4. Since then, Petitioner has fully complied with the conditions of his OSUP. He has been gainfully employed and working hard to support himself and his family, including his three U.S. citizen children. He has had no contact with law enforcement (other than with ICE, when complying with all required check-ins).
5. Despite this, on June 4, 2025, during a routine check-in, ICE abruptly revoked Petitioner’s OSUP and re-detained him.
6. This was unlawful for multiple reasons. Not only did ICE fail to give Petitioner any notice whatsoever of its intent to revoke his OSUP or re-detain him, but even if it had, it simply could not justify the sudden reversal of its prior decision to release him. Indeed, Petitioner’s detention bears no reasonable relationship to any government purpose: he has fully complied with the conditions of his release, there is no new indication that he presents a risk of flight or a danger to the community, and there is no indication that his removal can be effectuated. On the contrary, given Petitioner’s five-year compliance with the conditions of his bond and OSUP, the reasons supporting his release have only grown stronger.
7. ICE’s arbitrary and unfounded actions violate its own regulations, the Immigration and Nationality Act, the Administrative Procedure Act, the Rehabilitation Act, and the Fifth Amendment of the U.S. Constitution.

8. Petitioner seeks injunctive, habeas, and declaratory relief and asks the Court to order his immediate release from ICE custody and, in any interim, enjoin his transfer from this district pending the adjudication of this petition/complaint to avoid irreparable harm.

PARTIES

9. Petitioner is currently in the custody, and under the direct control, of Respondents and their agents, at 31 Hopkins Plaza, Baltimore, MD 21201, within this judicial district, in fact, it is directly across the street from this Court.
10. Respondent Nikita Baker is sued in her official capacity as the Field Office Director for the ICE Baltimore Field Office. In this capacity, she has jurisdiction over the detention holding room at ICE headquarters in which Petitioner is being held. As such, she is a legal custodian of Petitioner and is authorized to release him.
11. Respondent Todd Lyons is sued in his official capacity as the Acting Director of ICE. In this capacity, he is responsible for the enforcement of U.S. immigration laws, including detention decisions, and oversees Respondent Baker. As such, he is a legal custodian of Petitioner and has the authority to release him.
12. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. of the DHS. In this capacity, she is responsible for the enforcement of U.S. immigration laws and oversees ICE, the component agency responsible for Petitioner's detention, including Respondents Lyons and Baker. As such, Respondent Noem is a legal custodian of Petitioner and is authorized to release him.
13. Respondent DHS is a federal agency charged with the enforcement of U.S. immigration laws. It is the parent agency of ICE, which is responsible for the revocation of Petitioner's OSUP and his subsequent re-detention.

14. Respondent ICE is the component agency of DHS responsible for the revocation of Petitioner's OSUP and his subsequent re-detention.

JURISDICTION

15. This action arises under the U.S. Constitution; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*; the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.*; and the Rehabilitation Act, 29 U.S.C. § 794.
16. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). The Court may grant relief pursuant to the U.S. Constitution, art. I, § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act); 28 U.S.C. § 2241 (habeas corpus); and 5 U.S.C. §§ 702, 706 (judicial review of agency actions).

VENUE

17. Venue is proper because Petitioner was detained within the jurisdiction of this District at the ICE Baltimore Field Office at 31 Hopkins Plaza, Baltimore, MD 21201. Venue is also proper because Respondents are officers, employees, or agencies of the United States and Respondent Baker resides and conducts operations in this District, a substantial part of the events giving rise to Petitioner's claims occurred in this District, and Petitioner resides in this district and no real property is involved in this action. 28 U.S.C. § 1391(e).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. As an initial matter, Petitioner has no administrative remedies to exhaust as, upon information and belief, he has been provided no process to challenge the revocation of his OSUP or his re-detention. In any event, exhaustion of administrative remedies is not required in this context. Exhaustion is only required where Congress specifically mandates

it. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). The statute under which Petitioner is detained, 8 U.S.C. § 1231(a), includes no express exhaustion requirement.

STATEMENT OF FACTS

19. Petitioner is a 41-year-old citizen of El Salvador and a father to five children, including three U.S. citizen children.
20. Petitioner has an order of removal from June 9, 2006.
21. In September 2008, Petitioner fled El Salvador, escaping the MS-13 and 18th Street gangs, who threatened him and his family with death on multiple occasions, as well as the Salvadoran police and military, which also harassed and threatened him with harm. Later that same month, in September of 2008, Petitioner entered the United States without admission or inspection. Eventually, Petitioner settled in Maryland, where he has been living ever since in a committed relationship with his partner, Marta Solis Portillo.
22. On November 25, 2019, Petitioner was arrested by ICE agents, denied bond, and placed in withholding-only proceedings after he was found to have a reasonable fear of persecution or torture. On December 30, 2019, an immigration judge granted Petitioner a bond of \$12,500, which Petitioner's family paid and he was released on bond on January 6, 2020. On April 17, 2023, Petitioner was granted CAT Withholding by an immigration judge in the Hyattsville, Maryland Immigration Court, who concluded that Petitioner would more likely than not be subject to torture with the acquiescence of a public official if removed to El Salvador and therefore granted his application for CAT Withholding.
23. Afterwards, Respondents placed Petitioner on OSUP.

24. Since then, Petitioner has complied with all conditions of his release. But yesterday, on June 4, 2025, during a routine OSUP check-in, with no prior notice or opportunity to respond, ICE decided to revoke Petitioner's OSUP and re-detain him.
25. Petitioner remains in a holding room under the custody of Respondents at 31 Hopkins Plaza, Baltimore, MD 21201.

CLAIMS FOR RELIEF

COUNT ONE

Respondents' Failure to Comply with Their Own OSUP Revocation and Re-detention Procedures Violates the Administrative Procedure Act

26. The allegations in the above paragraphs are realleged and incorporated herein.
27. The fundamental aim of the APA is to ensure that federal agencies engage in "reasoned decisionmaking" bounded by the law. *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 104 (1983). Under the APA, "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. In turn, reviewing courts must "hold unlawful and set aside agency action" that is, *inter alia*, "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).
28. At minimum, the APA requires that agencies comply with the procedures that they themselves establish for decisionmaking, including their own internal policies. 5 U.S.C. § 706(2)(D); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (remanding where agency failed to follow its own regulations and internal manual, stressing that "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures....").
29. In this case, the relevant statutory and regulatory scheme operates as follows. Under 8 U.S.C. § 1231(a)(1)(A), ICE must detain noncitizens with removal orders during an initial 90-day "removal period." After that removal period, ICE may only continue to detain

individuals who are (i) inadmissible, (ii) removable due to certain enumerated violations, or (iii) “ha[ve] been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal.” 8 U.S.C. § 1231(a)(6).

30. Alternatively, ICE may release these individuals, “subject to terms of supervision” set out in 8 U.S.C. § 1231(a)(3). *Id.* The implementing regulations provide for release under two circumstances. First, under 8 C.F.R. § 241.4, if the release “will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight,” or, second, under 8 C.F.R. § 241.13, if there is “no significant likelihood” that the individual can be removed “in the reasonably foreseeable future.” Individuals released under either provision may be subject to OSUPs. 8 C.F.R. § 241.5; 8 C.F.R. § 241.13(j)(1).
31. Regardless of whether an individual was released under 8 C.F.R. § 241.4 or § 241.13, ICE may only subsequently revoke their OSUP and re-detain them if they have violated a condition of their release or relevant circumstances have changed. 8 C.F.R. § 241.4(l)(2); 8 C.F.R. § 241.13(h)(4)(i); *see also* DETENTION AND DEPORTATION OFFICER’S FIELD MANUAL, Chp. 17.12(b), (c).¹
32. In addition, these individuals must be “notified of the reasons for revocation” and afforded “an initial informal interview promptly after [re-detention] to have an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1); 8 C.F.R. § 241.13(h)(4)(i)(3).
33. Respondents failed to comply with these procedures. First, Petitioner has not violated any terms of his OSUP and circumstances have not changed in a way suggesting that he would now present a flight risk or danger to the community, or that his removal order could be

¹ Available at https://www.ice.gov/doclib/foia/dro_policy_memos/09684drofieldpolicymanual.pdf.

effectuated. Conversely, his two-year compliance with all the conditions of his release on OSUP and the immigration judge's decision to grant him CAT Withholding make the factors favoring his release even stronger.

34. Second, Petitioner was never given any notice whatsoever that his OSUP would be revoked or that he would be re-detained.
35. Respondents' revocation of Petitioner's OSUP and decision to re-detain him are thus directly contrary to their own procedures and, in turn, the APA.

COUNT TWO
Respondents' Unexplained Departure from Their Prior Decision to Release Petitioner
Is Arbitrary and Capricious in Violation of the
Administrative Procedures Act

36. The allegations in the above paragraphs are realleged and incorporated herein.
37. Under the APA, reviewing courts must also "hold unlawful and set aside agency action" that is "arbitrary, capricious, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).
38. Agency action is arbitrary and capricious if the agency has not "reasonably considered the relevant issues and reasonably explained its decision," *Fed. Commc'ns Comm'n v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021), or has "entirely failed to consider an important aspect of the problem," *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983). Moreover, an agency's "'unexplained departure from prior agency determinations is inherently arbitrary and capricious....'" *Rochester-Genesee Reg'l Transp. Auth. v. Hynes-Cherin*, 531 F. Supp. 2d 494, 506 (W.D.N.Y. 2008) (quoting *National Treasury Employees Union v. Federal Labor Relations Auth.*, 404 F.3d 454, 457 (D.C. Cir. 2005)); see also *National Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) ("Unexplained inconsistency is ... a

reason for holding an interpretation to be an arbitrary and capricious change from agency practice under the [APA].”); *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973) (noting an “agency’s duty to explain its departure from prior norms”).

39. Respondents’ unexplained—and inexplicable—decision to revoke Petitioner’s OSUP and re-detain him is wholly inconsistent with its prior decision to release him. Nothing has changed that could warrant a departure from that decision. For the past two years, Petitioner has complied with all the conditions of his OSUP, has engaged in no conduct indicating that he is a flight risk or danger to the community, and is even less likely to be able to be removed now than before, given the immigration judge’s grant of CAT Withholding. Respondents’ decision to revoke Petitioner’s OSUP and re-detain him is thus unreasoned and inexplicably inconsistent with their prior decision. For both reasons, it is arbitrary and capricious in violation of the APA.

COUNT TWO

Respondents’ Failure to Follow Their Own Procedures Violates Petitioner’s Fifth Amendment Right to Procedural Due Process

40. The allegations in the above paragraphs are realleged and incorporated herein.
41. As the Supreme Court has made clear, the Fifth Amendment’s Due Process Clause “applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. This includes noncitizens with final orders of removal. *Id.* at 693-94. Procedural due process constrains government decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

42. Immigration agencies must follow regulations designed to protect individuals' liberty and property interests, and when they fail to do so, this constitutes a per se violation of procedural due process. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68 (1954) (reversing dismissal of habeas petition in which the petitioner alleged that BIA had failed to follow its own regulations); *Leslie v. Att'y Gen.*, 611 F.3d 171, 178 (3d Cir. 2010) (finding that immigration judge's regulatory violation violated petitioner's due process rights, as "rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency"); *Nelson v. I.N.S.*, 232 F.3d 258, 262 (1st Cir. 2000) ("An agency has the duty to follow its own federal regulations.... Failure to follow applicable regulations can lead to reversal of an agency order [on due process grounds]...."); *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993) (where a "regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, and [the agency] fails to adhere to it, the challenged [action] is invalid...."); *see also Sameena Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted).
43. The regulations governing the revocation of OSUPs and re-detention of individuals subject to 8 U.S.C. § 1231(a) are designed to protect the liberty and property interests that OSUPs help to secure. *See Zadvydas*, 533 U.S. at 690; *Board of Regents of State Colleges*, 408 U.S. 564, 577 (1972). Accordingly, when ICE fails to follow these regulations, courts have repeatedly found that this amounts to a due process violation. *See Ceesay v. Kurzdorfer*, No. 25-cv-267-LJV, 2025 WL 1284720 at *13-14, 21 (W.D.N.Y. May 2, 2025) (ordering

release of petitioner whose OSUP ICE revoked in violation of the procedures at 8 C.F.R. § 241.4); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388-89 (D. Mass. November 8, 2017) (same); *see also Bonitto v. Bureau of Imm. & Cust. Enf.*, 547 F. Supp. 2d 747, 756 (S.D. Tex. 2008) (concluding that ICE could not “constitutionally continue to detain [petitioner] without complying with the procedures laid out in the regulations”); *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403-04 (S.D.N.Y. 2004) (granting habeas petition in light of due process violation where petitioner was deported fewer than seventy-two hours after her arrest and regulation mandated a seventy-two-hour rule).

44. In this case, Respondents clearly failed to follow the procedures set out in 8 C.F.R. § 241.4 or § 241.13 when revoking Petitioner’s OSUP and re-detaining him without any notice and without any justification, given his compliance with the conditions of his release and the lack of any relevant changed circumstances. This failure violates Petitioner’s Fifth Amendment right to procedural due process.

COUNT THREE
Respondents’ Failure to Provide Any Pre-Deprivation Notice or Opportunity to Be Heard
Violates Petitioner’s Fifth Amendment Right to
Procedural Due Process

45. The allegations in the above paragraphs are realleged and incorporated herein.
46. Separate and apart from Respondents’ violation of their own procedures, their revocation of Petitioner’s OSUP without any notice or pre-deprivation opportunity to be heard independently violates his procedural due process rights.
47. As OSUP revocation and re-detention implicate fundamental liberty interests, they must be accompanied by adequate procedures—including, at the very least, notice of the reasons for revocation and a pre-deprivation opportunity to be heard. *See Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022) (“[A]n individual whose release is sought to be revoked [by ICE] is

entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing”); *see also Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1145 (9th Cir. 2018) (upholding preliminary injunction requiring hearings for class of minors re-detained by ICE after initial release from immigration detention); *Torres-Jurado v. Biden*, 2023 U.S. Dist. LEXIS 193725 at *12 (S.D.N.Y. Oct. 29, 2023) (stating that “due process, at a minimum” requires the government to afford meaningful notice and an opportunity to be heard); *Ortega v. Bonnar*, 415 F. Supp.3d 963, 970 (N.D. Cal. 2019) (enjoining ICE from re-detaining the petitioner without adequate notice and a hearing); *Rombot*, 296 F. Supp. 3d at 389 (emphasizing that ICE does not have “a carte blanche to reincarcerate someone [with a removal order] without basic due process protection”).

48. Here, Respondents provided Petitioner no notice whatsoever that his OSUP would be revoked and he would be re-detained, much less a meaningful pre-deprivation opportunity to respond. This violates his Fifth Amendment Right to procedural due process.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Petitioner’s transfer outside the District of Maryland and his removal from the United States pending the Court’s adjudication of this Petition;
- (3) Retain jurisdiction over this matter even if Petitioner is transferred out of the District of Maryland;
- (4) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

- (5) Declare that Respondents' revocation of Petitioner's OSUP and his re-detention violate the Due Process Clause of the Fifth Amendment, the Administrative Procedures Act, 8 U.S.C. § 1231(a), and 8 C.F.R. § 241.4 or § 241.13;
- (6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- (7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/Timothy W. Davis

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 5th day of JUNE, 2025.

/s/Timothy W. Davis

Timothy W. Davis