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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JUAN A. VILLATORO Petitioner, - against - YOLANDA PITTMAN, in her official capacity as Warden of Elizebeth Detention Center; ALEXANDER CABEZAS, in his official capacity as Acting Assistant Field Office Director for the Newark Field Office for Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; PAMELA JO BONDI, in her official capacity as Attorney General of the United States of America, Respondents.	**PETITON FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Mr. Juan A. Villatoro ("Mr. Villatoro" or "Petitioner") is a 45-year-old citizen of El Salvador and resident of New Jersey who has been living and working in the United States for over two decades.

2. Mr. Villatoro is a Lawful Permanent Resident ("LPR") in removal proceedings with an individual merits hearing scheduled for April 5, 2028, at the Newark Immigration Court. He has a pending application for Cancellation of Removal for Lawful Permanent Residents before

Newark Immigration Court as well as a form I-130, Alien Family Petition pending before the United States Citizenship and Immigration Services ("USCIS").

3. Mr. Villatoro was unexpectedly detained by ICE officials on July 17, 2025, early in the morning hours, as he was on his way to work.

4. He was originally brought to 90-604 Frelinghuysen Avenue, Newark, Newark Jersey 07114 for processing and was told he would shortly be transferred to Elizabeth Detention Center ("EDC") in New Jersey.

5. Upon information and belief, Mr. Villatoro will be transferred to an out-of-state facility.

6. Mr. Villatoro's detention is unreasonable, unjustifiable, and unlawful. He brings this petition seeking her immediate release.

7. Furthermore, ICE's detention of Mr. Villatoro without proper notice is inconsistent with ICE's own long-standing policy, thereby violating the Administrative Procedure Act ("APA") and due process. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

PARTIES

8. Petitioner is a citizen of El Salvador who lives in Kearny, New Jersey. In the early hours of July 17, 2025, Mr. Villatoro was leaving his house and was on his way to work when he was detained by Respondents.

9. Respondent Yolanda Pittman is the Warden of EDC. She is an employee of CoreCivic, the private company that contracts with ICE to run EDC. In her capacity as Warden, she oversees the administration and management of EDC. Accordingly, Ms. Pittman is the immediate custodian of Petitioner. She is sued in her official capacity.

10. Respondent Alexander Cabezas is named in his official capacity as the Acting Assistant Field Office Director for the Newark Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Mr. Villatoro. Respondent Cabezas' address is U.S. Immigration and Customs Enforcement, 970 Broad Street, 11th Floor, Newark, New Jersey 07102. He is sued in his official capacity.

11. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security ("DHS"). In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of New Jersey; is legally responsible for pursuing any effort to remove Mr. Villatoro; and as such is a legal custodian of Mr. Villatoro. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, D.C. 20528. She is sued in her official capacity.

12. Respondent Pamela Jo Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of New Jersey and is legally responsible for administering Petitioner's removal and custody proceedings and for the standards used in those proceedings. As such, she is the custodian of Mr. Villatoro. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

JURISDICTION

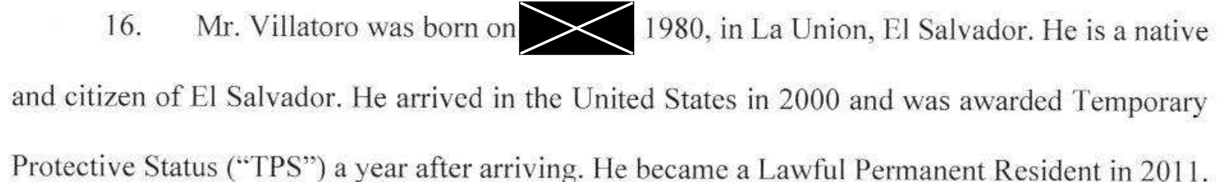
13. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Petitioner was detained by Respondents on July 17, 2025.

14. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

15. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Villatoro is detained at Elizabeth Detention Center in Elizabeth, New Jersey and several Respondents reside in the District. 28 U.S.C. § 1391(b), (e)(1); *see Argueta Anariba v. Dir. Hudson C'ty Corr. Center*, 17 F.4th 434, 444 (3d Cir. 2021) (noting that a habeas petitioner "should name his warden as respondent and file the petition in the district of confinement").

SPECIFIC FACTS ABOUT PETITIONER



16. Mr. Villatoro was born on [redacted] 1980, in La Union, El Salvador. He is a native and citizen of El Salvador. He arrived in the United States in 2000 and was awarded Temporary Protective Status ("TPS") a year after arriving. He became a Lawful Permanent Resident in 2011.

17. Mr. Villatoro is father to three U.S. Citizen teenagers, who reside in New Jersey. Moreover, Mr. Villatoro's father is a U.S. Citizen and resides in New Jersey. Mr. Villatoro has six

sisters, who fled El Salvador and currently reside in the United States as Lawful Permanent Residents or through TPS.

18. On April 22, 2019, Mr. Villatoro pled guilty to one count of second degree of Endangering the Welfare of Children in violation of N.J. STAT. ANN. § 2C:24-4(a)(1) and was sentenced to five years of incarceration by Hudson County Superior Court.

19. Removal proceedings were initiated against Mr. Villatoro before the Elizabeth Immigration Court on April 23, 2021, with the filing of a Notice to Appear ("NTA"), while Mr. Villatoro was serving his sentence in state custody.

20. On October 7, 2021, Mr. Villatoro applied for Cancellation of Removal under the Immigration and Nationality Act ("INA") § 240A(a). He then applied for Asylum, Withholding, and Deferral under the Convention Against Torture ("CAT") on November 3, 2021, in the alternative.

21. Mr. Villatoro was released from New Jersey state custody on or around April 5, 2022, at which point Immigration and Customs Enforcement detained him and transferred him to the Moshannon Valley Processing Center ("Moshannon") in Philipsburg, Pennsylvania.

22. At the individual hearing held on July 28, 2022, the immigration judge pretermitted Mr. Villatoro's applications for relief. Mr. Villatoro appealed that decision through the undersigned *pro bono* counsel.

23. The Department of Homeland Security subsequently filed an appeal brief and motion to remand, arguing that the immigration judge erred in pretermitting Mr. Villatoro's application for relief.

24. On June 21, 2023, the Board of Immigration Appeals ("BIA") remanded the matter to Newark Immigration Court, where Mr. Villatoro's application for Cancellation of Removal is currently pending.

25. Mr. Villatoro was released from ICE custody on or around May 3, 2023, approximately a month prior to the issuance of the BIA decision.

26. While in ICE custody, Mr. Villatoro, [redacted] experienced severe health issues, [redacted]

27. While in ICE custody, Mr. Villatoro was not provided appropriate medical care for [redacted]. Whenever Mr. Villatoro asked to see a medical professional, he was only seen by a nurse, who gave him Tylenol or Advil.

28. ICE ultimately released him on or around May 3, 2023, mainly on account of the deterioration of his medical condition(s). [redacted]

29. Mr. Villatoro has been fully compliant with all terms of his release. He attended his monthly meetings with his Parole Officer; he checked in with ICE both in person and by sending monthly emails to ICE; he has not had any contact with the criminal justice system, and he has not missed an immigration court hearing.

30. Mr. Villatoro attended his scheduled Master Calendar Hearing on June 3, 2025, and the Immigration Judge scheduled him for an individual hearing in April 2028.

31. Furthermore, Mr. Villatoro has a pending I-130 application, Alien Family Petition, filed by his 21-year-old U.S. citizen son with USCIS.

32. ICE had absolutely no reason to detain Mr. Villatoro while he was on his way to work and while he has been fully compliant with all terms of his release.

33. The undesigned contacted ICE on July 17, 2025, upon being informed of her client's detention. Officer Alexander Cabezas informed undersigned counsel that Mr. Villatoro would soon be brought over to the Elizabeth Contract Detention Facility, and that he would be moved to an undisclosed location out-of-state shortly thereafter.

34. Officer Cabezas further stated that Mr. Villatoro was an ICE enforcement priority on account of his conviction – again, a fact known to ICE when ICE released him in 2023.

LEGAL FRAMEWORK

Framework for Lawful Permanent Resident Cancellation of Removal

35. Cancellation of Removal for certain lawful permanent residents ("LPR Cancellation") is a form of relief available under the Immigration and Nationality Act ("INA") § 240A(a), 8 U.S.C. § 1229b(a). It is designed to permit certain long-term permanent residents to remain in the United States despite having been placed in removal proceedings.

36. To qualify, an individual must demonstrate: (1) at least seven years of continuous residence in the United States after any lawful admission; (2) at least five years of lawful permanent residence; and (3) no conviction for an aggravated felony. 8 U.S.C. § 1229b(a)(1)-(3).

37. Eligibility for LPR Cancellation is adjudicated in removal proceedings before the Executive Office for Immigration Review. While the application is pending, the noncitizen retains the opportunity to remain in the United States and seek relief under the statutory framework.

38. Denial or premature removal of an individual with a pending LPR Cancellation application contravenes the procedural safeguards established by the INA and undermines the discretionary authority vested in the immigration judge to evaluate the merits of the application.

Framework for Family-Based Immigrant Petitions (I-130)

39. The INA also permits a U.S. citizen to petition for certain qualifying relatives to obtain lawful permanent resident status through family-sponsored immigration. *See* 8 U.S.C. § 1154(a)(1).

40. In the case of an unmarried U.S. citizen over the age of 21, they may file Form I-130 (Petition for Alien Relative) on behalf of a biological father, provided the familial relationship can be demonstrated.

41. A pending I-130 petition, especially one based on a direct parent-child relationship with a U.S. citizen, establishes a potential pathway to (re)adjustment of status. USCIS's consideration of the I-130 petition is material to the individual's long-term immigration relief, including eligibility for (re)adjustment under INA § 245, 8 U.S.C. § 1255.

42. A foundational objective of the Immigration and Nationality Act is the preservation and promotion of family unity. Congress has consistently recognized that immigration policy should prioritize the reunification of close family members. *See Fiallo v. Bell*, 430 U.S. 787, 795 n.6 (1977) ("[T]he Congressional concern with the problem of keeping families of United States citizens and immigrants united was a dominant theme in the development of immigration policy."); *INS v. Errico*, 385 U.S. 214, 220 (1966) (noting that family unity was "a principal reason" behind statutory preferences for relatives). This principle is further embodied in the statutory structure of the INA, including provisions allowing U.S. citizens to petition for immediate relatives without numerical limitation. *See* 8 U.S.C. § 1151(b)(2)(A)(i).

43. Premature detention or removal of an individual who has a pending I-130 petition filed by their U.S. citizen son undermines this central legislative purpose. Such action may effectively foreclose lawful family reunification and impose an irreparable harm to the integrity of

the family unit. The agency's decision to delay or preclude adjudication, or to remove the beneficiary before USCIS action, is contrary to the INA's commitment to preserving close familial relationships whenever possible.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND IMPLEMENTING REGULATIONS

44. Petitioner realleges and incorporates by reference each and every allegation contained above.

45. Petitioner is statutorily eligible to pursue relief under the Immigration and Nationality Act ("INA"), including Cancellation of Removal pursuant to 8 U.S.C. § 1229b(a) and family-based immigration through a pending Form I-130 filed by his U.S. citizen son under 8 U.S.C. § 1154(a)(1). These forms of relief reflect the INA's underlying goals of due process, individualized adjudication, and family unity.

46. The abrupt and unnecessary detention of Petitioner by Immigration and Customs Enforcement, despite the pendency of lawful immigration relief, violates the INA's structure and purpose, including but not limited to the protections afforded under 8 U.S.C. § 1229b, 8 U.S.C. § 1151(b)(2)(A)(i), and the constitutional and statutory right to seek immigration relief without undue government interference. Respondents' conduct undermines the INA's commitment to individualized adjudication, judicial discretion, and the preservation of family unity.

47. Furthermore, the INA does not mandate detention of individuals with pending Cancellation applications or family-based petitions who do not pose a danger or flight risk. Petitioner was previously released and has complied with all supervision requirements for over two years. His sudden re-detention, in the absence of any material change in circumstances or legal

necessity, is arbitrary and capricious, contrary to law, and violative of implementing regulations and agency practice.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

48. Petitioner realleges and incorporates by reference each and every allegation contained above.

49. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Const. Amend. V. To comply with the Due Process Clause, civil detention must "bear[] a reasonable relation to the purpose for which the individual was committed," which for immigration detention is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Furthermore, notice is one of the fundamental elements of due process. *See e.g., Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("The fundamental requisite of due process of law is the opportunity to be heard . . . This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.").

50. Petitioner is a Lawful Permanent Resident with pending applications for Cancellation of Removal and a family petition. Respondents have not offered a permissible statutory purpose for Petitioner's detention, and his detention is not rationally related to any immigration purpose.

51. Moreover, Petitioner was not afforded sufficient process or notice prior to his detention by ICE. In fact, Mr. Villatoro's detention violates his right to substantive due process, insofar as it serves no purpose, which compels his release or at minimum a hearing at which

Respondents bear the burden of justifying Mr. Villatoro's return to confinement – not the other way around.

52. For the foregoing reasons, Respondents' abrupt detention of Petitioner violated her substantive and procedural due process rights.

COUNT THREE

ICE'S CONTINUED DETENTION OF MR. VILLATORO VIOLATES THE ADMINISTRATIVE PROCEDURE ACT (APA) AND DUE PROCESS

53. Petitioner realleges and incorporates by reference the paragraphs above.

54. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *See* Accardi, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *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.").

55. The requirement that an agency follow its own policies is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Even an unpublished policy binds the agency if "an examination of the provision's language, its context, and any available extrinsic evidence" supports the conclusion that it is "mandatory rather than merely precatory." *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *see also Morton*, 415 U.S. at 235–36 (applying Accardi to violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) ("Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labeled a 'Regulation' . . .").

56. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, *see Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("It is clear, moreover, that [Accardi] claims may arise under the APA"), or as a due process violation, *see 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).

57. Prejudice is generally presumed when an agency violates its own policy. *See Montilla*, 926 F.2d at 167 ("We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them."); *Heffner*, 420 F.2d at 813 ("The Accardi doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.").

58. To remedy an Accardi violation, a court may direct the agency to properly apply its policy, *see Damus*, 313 F. Supp. 3d at 343 ("[T]his Court is simply ordering that Defendants do what they already admit is required."), or a court may apply the policy itself and order relief consistent with the policy. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").

59. ICE routinely exercises custody discretion for individuals with pending immigration relief, including those in proceedings before EOIR, and especially where viable family-based petitions are underway. In this case, Petitioner has:

a. An active cancellation of removal application before the immigration court.
b. A pending Form I-130 filed by his U.S. citizen son with USCIS.
c. No history of release violations, danger to the community, or flight risk.
d. No contact with the criminal justice system except for a single conviction, which ICE has been aware of, and despite of which, ICE released him in 2023.
e. Reported consistently to ICE as instructed for months since his release.

60. These circumstances placed Petitioner within the category of noncitizens whom ICE historically and consistently permits to remain in the community rather than detention, in alignment with ICE's national and field-level discretion policies, including those based on prosecutorial discretion memoranda and longstanding local supervision practices.

61. Petitioner's abrupt re-detention, without written notice, especially considering the fact he has been represented by counsel since 2021, without any violation of his release terms, or any change in factual circumstances, represents a stark deviation from ICE's own practices.

62. Such deviation from standard practice violates the Accardi doctrine. Agencies may not act arbitrarily by abandoning settled procedures where individuals have relied upon them to their detriment. *See Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (failure to follow internal rules "may result in a violation of an individual's constitutional right to due process.").

63. Prejudice to Petitioner is presumed, as the liberty interest at stake—freedom from detention—is fundamental. *See Montilla*, 926 F.2d at 167; *Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (violation of a regulation serving the noncitizen's benefit presumes prejudice).

64. ICE's conduct in detaining Petitioner in disregard of its own practices is arbitrary, capricious, and contrary to law in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2), and constitutes a due process violation.

65. Mr. Villatoro has been prejudiced by ICE's failure to comply with its own policies and practices. According to the Accardi doctrine, ICE's departure from its own policy is arbitrary, capricious, and contrary to law under the APA and violates Mr. Villatoro's due process rights.

66. As a remedy, this Court should order Mr. Villatoro's immediate release. *See* Jimenez, 317 F. Supp. at 657 ("In these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioners' constitutional rights to due process by promptly deciding itself whether each should be released.").

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

3. Enjoin Petitioner's transfer out of New Jersey;

4. Order Petitioner's immediate release from custody;

5. Grant such further relief as this Court deems just and proper.

On this 18th day of July, 2025, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I make this verification in lieu of Mr. Villatoro because he is currently detained and because of the urgent nature of the relief requested. I am authorized to make this verification as a member of the legal team representing Mr. Juan A. Villatoro.

Dated: Newark, New Jersey

July 18, 2025

SETON HALL LAW CENTER FOR SOCIAL JUSTICE
IMMIGRANTS' RIGHTS/INTERNATIONAL HUMAN RIGHTS CLINIC

By: /s/ Glykeria Teji
Dr. Glykeria Teji, Esq.

And

/s/ Anne M. Kassalow
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Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on July 17, 2025, Mr. Villatoro filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. My co-counsel or I will furthermore send a courtesy copy via email to the office of the United States Attorney for the District of New Jersey and send true copies by USPS Certified Mail to all Respondents and the U.S. Attorney's office.

Dated: July 17, 2025

Respectfully submitted,

/s/ Dr. Glykeria Teji, Esq.
Dr. Glykeria Teji, Esq.

And

/s/ Anne M. Kassalow
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