UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

FORT MYERS DIVISION

Case No.: 2:25-cv-697

MANUEL YAX ZAPETA,

Petitioner,

v.

KEVIN GUTHRIE, in his official capacity as Executive Director of the Florida Division of Emergency Management,

ZOELLE RIVERA, in his official capacity over the Enforcement and Removal Office, Miramar, Florida;

TODD LYONS, in his official capacity as Acting Director, Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security;

SIRCE OWEN, in her official capacity as Acting Director of EOIR;

GARRETT RIPA, in his official capacity as Field Office Director, Miami Field Office;

Respondents.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS 28 U.S.C. § 2241 AND EMERGENCY INJUCTIVE RELIEF

INTRODUCTION

The Petitioner, **MANUEL YAX ZAPETA** (Mr. Zapeta), alien number of [redacted] is in federal immigration custody and is believed to be currently detained at Dade-Collier Training and Transition Airport detention facility, (colloquially known as "Alligator Alcatraz") in Ochopee,

Florida. U.S. Immigration and Customs Enforcement (ICE) arrested Petitioner on July 23, 2025, while he was lawfully reporting on an unviolated order of supervision (OSUP) at ICE-ERO Center in Miramar, Florida, and subsequently transferred him to Dade-Collier Training and Transition Airport detention facility. As of August 7, 2025, Petitioner was transferred to Alexandra Staging Facility in Louisiana. Petitioner has no criminal record in the United States or anywhere else in the world, has been on OSUP for over five years without violation, and since being unlawfully detained, has not been served any documentation. His sudden and unjustified detention violates: (1) both procedural and substantive Due Process of the Fifth Amendment; and (2) immigration policy and regulation codified in 8 C.F.R. § 241.13 and 8 C.F.R. § 241.4. As such, the Petitioner seeks his immediate release him from detention and put him back on supervised release pending resolution of his pending immigration petition which is presently before USCIS. Further, Petitioner respectfully requests that this Honorable Court enjoin Respondents to transfer Petitioner back to this Court's jurisdiction.

JURISDICTION

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

2. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

4. Venue is proper because Petitioner is believed to be detained at Dade-Collier Training and Transition Airport detention facility, which is located at 54575 Tamiami Trail E, Ochopee, FL 34141. A substantial part of the events or omissions giving rise to his claims occurred in this Honorable Court's District.

PARTIES

5. The Petitioner, **Manuel Yax Zapeta**, is a native and citizen of Guatamala who entered the United States on or about January 12, 1995. He has remained in the United States and resides in Ft. Pierce, Florida.

6. Respondent, **Kevin Guthrie,** is the Executive Director of the Florida Division of Emergency Management (FEDM), which is a state agency that is overseeing operations at Dade-Collier Training and Transition Airport detention facility. FEDM has entered into an arrangement with DHS and ICE to transform the site into an immigration detention facility.

7. Respondent, **Zoelle Rivera,** is the Assistant Field Office Director of the ICE-ERO Miramar Center, the facility believed to be where Petitioner was initially detained. He is the highest supervisor directly on site at Miramar.

8. Respondent, **Todd Lyons,** is the Acting Director for U.S. Immigration and Customs Enforcement.

9. Respondent, **Kristi Noem,** is the U.S. Secretary of Homeland Security.

10. Respondent, **Sirce E. Owen** is Acting Director of the Executive Office for Immigration Review ("EOIR").

11. Respondent, **Garret Ripa,** is the Executive oversight for all ICE/ERO Enforcement, Special Operations and Operation Support in Florida, Puerto Rico, the U.S. Virgin Islands and the Migrant Operations Center (MOC) at the Naval Station, Guantanamo Bay, Cuba.

12. All respondents are named and sued in their official capacities.

PROCEDURAL HISTORY

13. This matter originates as a complex asylum case out of the Miami Immigration Court in Miami, Florida.

14. After entering the United States, Mr. Zapeta timely made a claim for asylum and submitted a Form I-589, Application for Asylum and for Withholding of Removal. See *Form I-589* attached hereto as Exhibit "A."

15. On April 18, 1996, his asylum claim was referred to the Honorable Immigration Court in Miami, Florida. See *Asylum Referral* attached hereto as Exhibit "B."

16. On April 22, 1997, Mr. Zapeta's asylum claim before the Honorable Immigration Court was denied. Mr. Zapeta challenged his then-counsel's decision in the proceeding and handling of his case, and reluctantly accepted a voluntary departure with the denial. See *IJ order* attached hereto as Exhibit "C."

17. Subsequently, and through newly obtained counsel Mr. Zapeta appealed to the Board of Immigration Appeals (BIA), and the BIA affirmed the Immigration Court's order on July 13, 1998. See *BIA Decision* attached hereto as Exhibit "D."

18. On March 15, 2020, ICE Official Officer Lawton put Mr. Zapeta on OSUP, after Mr. Zapeta detailed his immigration history. See *Order of Supervision* attached hereto as Exhibit "E."

19. However, Mr. Zapeta was put on OSUP *after* ICE served him with a Warrant for Arrest of Alien and did not execute it. See *Form I-200* attached hereto as Exhibit "F."

20. Presently, Mr. Zapeta has complied with any and all reporting requirements under OSUP, and has been able to lawfully obtain employment authorization.

21. Additionally, Mr. Zapeta was lawfully married, and through his spouse, filed an I-130 Petition for Alien Relative on September 3, 2024, which remains pending. See *I-130 Receipt and status* attached hereto as Exhibit "G."

UNDISPUTED FACTS

22. Petitioner has lawfully abided by his OSUP issued by ICE, and has reported annually since its issuance.

23. Petitioner since entering the United States has no criminal record.

24. Prior to his detention, Petitioner was *already* in the process of obtaining lawful status in the United States through proper immigration channels when his wife filed the Form I-130.

25. On information and belief, the Petitioner was detained without cause or reason by ICE agents on July 23, 2025.

26. Petitioner is currently in the custody of the Respondents and one of the Respondents is his immediate custodian.

LEGAL ARGUMENT

A. Statutory Authority Under 8 U.S.C. § 1231(a)(6).

Petitioner respectfully asserts that his detention is unlawful because Respondents failed to follow the procedures required for revoking his release from immigration custody thereby violating the *Accardi* doctrine. In *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954), the Supreme Court held that an agency's failure to follow its own rules and procedures in adjudicating a deportation matter constituted a denial of due process.

8 U.S.C. § 1229(c) states that Voluntary Departure allows a person to leave the U.S. at their own expense, avoiding a formal removal order if they comply with the conditions and depart on time. However, if the person fails to depart within the time granted, then voluntary departure is

deemed to be a final order of removal. *See* 8 C.F.R. § 1241.1(f). At that point, the individual is considered subject to a final removal order, and the detention rules under 8 U.S.C. § 1231(a) apply.

Under 8 U.S.C. § 1231(a)(1)(A) when an alien is ordered removed, the Attorney General *shall* remove the alien from the United States within a period of 90 days (the "removal period"). The removal period *shall* be extended beyond a period of 90 days and the alien *may* remain in detention if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal. *See* 8 U.S.C. § 1231(a)(1)(C).

If the alien does not leave or is not removed within the removal period, the alien, pending removal, *shall* be subject to supervision. *See* 8 U.S.C. § 1231(a)(3). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court held that section 1231(a)(6) authorizes detention only for a period *reasonably necessary* to bring about the noncitizen's removal from the US, and six months of post-removal detention is considered "presumptively reasonable." 533 U.S. at 701.

Here, Petitioner's removal period ended over 25 years ago. He was not detained immediately after the final order in 1998, nor in the decades that followed. ICE formally acknowledged the improbability of removal when it placed Petitioner on an Order of Supervision (OSUP) in March 2020, which remained undisturbed until his re-detention in July 2025, without notice or any changed circumstances.

B. ICE Failed to Follow its Own Regulations under 8 C.F.R. § 241.4

Petitioner also respectfully postures that his final order of removal dating back to 1998, and placement on an order of supervised release pursuant to 8 C.F.R. § 241.13 was due to there being good reason to believe there was no significant likelihood of removal to another country in the reasonably foreseeable future. 8 C.F.R. § 241.4(b)(4) states that after the removal period, under

section 8 C.F.R. § 241.13, if the Service subsequently determines, because of a change of circumstances, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future to the country to which the alien was ordered removed or to a third country, the alien shall again be subject to the custody review procedures under this section.

Petitioner has been subject to a final order of removal since 1998 and was released under OSUP pursuant to 8 C.F.R. § 241.13, after a determination was made that there was no significant likelihood of removal in the reasonably foreseeable future. Under 8 C.F.R. §§ 241.4 and 241.13, if DHS later determines that removal has become likely, it must follow certain procedures, including providing notice, conducting a custody review, and affording the noncitizen an opportunity to be heard.

The "removal period" has long passed, and the 90 – 180 days is now irrelevant. Instead, the Respondents' own regulations regarding under what circumstances an OSUP may be revoked, control. Here, Respondents have violated the law and their own regulations by detaining Petitioner where there has been no violation.

Thereafter, a records review is done, and an interview is scheduled "within approximately three months after release is revoked." 8 C.F.R. 241.13(i) entitled "Revocation of Release" also states that an alien's release may be revoked and he may be returned to custody on account of "changed circumstances" if there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.

To date, Petitioner has received none of the obligatory documentation as to why his supervision was unilaterally and unequivocally revoked, has not been afforded or given notice of any process to contest the revocation by the Service, and was never detained by the Service at any point in the past 27 years despite their knowledge and circumstances of Petitioner.

Notwithstanding, Petitioner was *already* engaged the process of obtaining lawful status in the United States through proper immigration channels when his wife filed the Form I-130, which are presently being impeded by his unlawful detention.

C. Federal Courts Consistently Reject Detention After OSUP Without Due Process

The Honorable District Court in the Eastern District of Texas ordered release of an alien detainee because ICE failed to demonstrate that removal was significantly likely in the reasonably foreseeable future, and failed to follow procedures for revoking supervised release. *See Escalante, v. Kristi Noem, Todd M. Lyons, Nikita Baker.*, No. 9:25-CV-00182-MJT, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025). Escalante, a noncitizen with a final removal order, had been released under OSUP. Despite full compliance, he was re-detained without new criminal activity, without notice, and based only on vague claims of "changed circumstances. Analogous to *Escalante,* Mr. Zapeta was also detained following placement on OSUP, more than five years after his OSUP began and 27 years after his removal order issued. Like *Escalante*, he was abruptly detained without explanation, process, or evidence that removal is now more likely. Since being detained, ICE has been able to substantiate any future removal possibilities.

In Massachusetts, the Honorable District Court granted an alien detainee's habeas petition because ICE could not show removal was foreseeable, *even after* a diplomatic agreement between the U.S. and Vietnam. The court emphasized that longstanding compliance with OSUP created a protected liberty interest, and that detention required procedural safeguards under due process. *See Nguyen v. Hyde,* No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025). In this case, the alien had been under an OSUP for decades. Although ICE cited a 2020 memorandum of understanding with Vietnam, the court rejected it as insufficient to show actual likelihood of removal. Further, and akin to the present matter, the alien had no new convictions following be

placed OSUP, and obliged with all requirements under his release. Likewise, Mr. Zapeta was taken into custody without proof of a repatriation to his home country or any effort to obtain travel documents.

The Honorable District Court in Kansas granted an alien detainee's habeas because ICE officials did not properly revoke petitioner's release pursuant to the applicable regulations and thus that revocation has no effect, and that ICE could not demonstrate progress towards removal. *See Liu v. Carter* No. 25-3036-JWL, 2025 WL 1696526 (D. Kan. June 17, 2025). The Court emphasized the need for individualized review under 8 C.F.R. § 241.13, and how respondents failed on numerous occasions to produce documentation needed for petitioner's repatriation. *Id.* Further, ICE could not provide any details about why the documentation could not be obtained in the past, nor did they attempt to show why obtaining that particular documentation was more likely this time around. *Id.* As in the present matter, Mr. Zapeta has been subject to detention, and no custody review appears to have been conducted. Unlike the alien detainee in *Liu* however, Mr. Zapeta in this case has not violated OSUP provisions, nor been accused, arrested, or convicted of any criminal acts. ICE's failure to follow regulations, unlawfully detain Mr. Zapeta do not justify detention, and warrant immediate release.

In the state of California, the Honorable Eastern District Court granted emergency relief because revocation of OSUP without hearing violated *Morrissey v. Brewer*, 408 U.S. 471 (1972), and due process under *Zinermon v. Burch*, 494 U.S. 113 (1990). *See Galindo Arzate v. Andrews,* No. 2:25-cv-07899, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025). The alien detainee in *Arzate* had a final order of removal and had been on OSUP. He was re-detained based on a dismissed misdemeanor arrest. The Court held that ICE must provide due process before revoking supervised release, and granted a temporary restraining order. Based on this analysis, Mr. Zapeta, who had no

criminal conduct at all, and was detained without notice, hearing, or explanation has unequivocally not been afforded proper process. If due process attaches even where a new arrest exists such as in *Arzate*, then it undoubtedly applies in a case as this, where no triggering event occurred.

The Honorable District Court in New Jersey granted an alien detainee's habeas petition after concluding that ICE's re-detention of a supervised noncitizen must be justified by individualized findings, especially where removal was not imminent. *Tadros v. Noem, et al.*, No. 2:25-cv-04108-EP (D.N.J. June 17, 2025). The order further stated that if the alien detainee was to ever be re-detained, ICE would first need to comply with 8 C.F.R. § 241.4, and could not unilaterally revoke OSUP with compliance of said regulation. The factual and legal parallels are compelling. Like the alien detainee in *Tadros*, Mr. Zapeta's detention comes long after ICE abandoned active removal efforts. In both cases, ICE failed to identify a foreseeable removal path, and due process protections for those under OSUP were ignored despite perfect compliance with the conditions.

D. Due Process Demands Fair Warning Before Liberty Is Taken

Under *Morrissey v. Brewer*, 408 U.S. 471 (1972), individuals on conditional liberty (such as OSUP) are entitled to at a minimum:

> (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.
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> *Id.* at 489.

The Supreme Court further noted that such requirements are basic and should not be burdensome for any judicial system to produce. *See Id.*

Mr. Zapeta received none of these protections, and was afforded no such basic requirements. His OSUP was revoked without any procedural safeguards, opportunity to contest his arrest and detention, or given any such written statement.

E. Jurisdiction vesting in this Honorable Court halts removal without judicial approval.

To preserve the Court's jurisdiction pending a ruling in this matter, an alien detainee shall not be removed from the United States unless and until the Court orders otherwise. *See, e.g., Loc. 1814, Int'l Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) (observing that, under the All Writs Act, 28 U.S.C. § 1651, a district court "may order that a petitioner's deportation be stayed . . . when a stay is necessary to preserve the Court's jurisdiction of the case"); *Khalil v. Joyce, No. 25 Civ. 1935*, ECF No. 9 (S.D.N.Y. Mar. 10, 2025) (barring the government from removing petitioner from the United States until the Court could address his claim); cf. *Michael v. I.N.S.*, 48 F.3d 657, 661-62 (2d Cir. 1995) (holding that the All Writs Act provides a federal court of appeals reviewing a final removal order with a basis to stay removal).

F. Where the Government Slept, Petitioner Built a Life: Equity and Delay Preclude Detention.

Perhaps the most unique aspect of Mr. Zapeta's case is the relief available to him through proper immigrations channels, which had already begun prior to his unlawful detention. In September 2024, after marrying his wife Ada Watler, had an I-130 Petition for Alien Relative filed. Once approved, he would be able to file an I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal with USCIS. When the I-212 is approved, He would be able file form I-601A with USCIS requesting a waiver of Unlawful Presence (INA § 212(a)(9)(B); 8 U.S.C. 1182 (a)(9)(b)). This would ultimately lead to him arriving at the status of a lawful permanent resident with the only genuine impediment being processing

time. His release would greatly assist in effectuating his journey through this lawful process, and justice and equity warrant substantiate this request. Although this present matter before this honorable Court is not a motion to reopen, the same fundamental legal and equitable principles outlined in *Matter of Peña-Diaz* apply. The Board of Immigration Appeals (BIA) held that:

> [W]hen an alien's eligibility for a new form of relief from deportation arises due to the Service's deliberate failure to enforce a final deportation order, it is *equally* appropriate to consider this factor in deciding whether or not the proceedings should be reopened in the exercise of discretion. In a case such as the respondent's, where the Service has affirmatively permitted the alien to remain, the equities in the alien's favor become particularly strong.
>
> (emphasis added).
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> Int. Dec. 3225, 846 (BIA Aug. 4, 1994).

The equities the BIA specifically acknowledged in *Matter of Peña-Diaz* was allowed to remain included: (1) Respondent has spent almost half of his life in this country, (2) has been steadily employed, (3) owned real property, and (4) the members of respondent's immediate family are well established here as members of our society. *See Id.* Additionally, the BIA recognized that courts may properly "consider the actions of the Service with respect to its enforcement or intentional lack of enforcement of a final order of deportation." *See Id.*

For 27 years, Mr. Zapeta has built a life grounded in hard work and selfless service, that is rooted in his deep faith and unwavering contributions to his community. Professionally, he is known as a loyal, diligent, and deeply trusted worker. He was employed for many years by the late Wayne Huizenga where he earned a reputation as an ideal employee. That legacy of trust has endured: even after Mr. Huizenga's passing, Mr. Zapeta continues to work for the Huizenga family's second generation. His continued employment is not an accident of circumstance, but a reflection of his integrity, reliability, and the high regard in which he is held by one of South

Florida's most prominent families. His work is not just steady—it is testimonial to the kind of person he has proven himself to be over decades.

Mr. Zapeta is also a devout parishioner of San Juan Diego Catholic Church, he has led musical worship, taught children to sing and play instruments, and volunteered countless hours repairing, cleaning, and uplifting the physical and spiritual life of the parish. He is known not by titles or possessions, but by how readily he answers the needs of others—offering his skills in carpentry, plumbing, and electrical work freely to anyone who asks. His evenings and weekends are devoted not to rest, but to service. He does all this without pay, without praise, and without legal status—because he believes it is right.

The Service's own long-standing inaction—affirmatively permitting him to remain under an Order of Supervision for years—has not only allowed, but effectively endorsed the development of these deep and meaningful ties. Here, the balance is even more substantial, as Mr. Zapeta has been allowed to remain nearly double the 14 years of Mr. Peña-Diaz.

Mr. Zapeta poses no risk to the community. He has no criminal history, a long, but plausible pathway to legal status, and no reason to be detained—except that the Service changed its mind after nearly three decades. The law does not reward delay for delay's sake. But it does, as *Peña-Diaz* confirms, recognize that equity and fairness require acknowledgment of the life built under the government's watchful eye—and, indeed, its implicit permission.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

27. Petitioner respectfully alleges that Respondents have violated his Fifth Amendment right to due process by unlawfully revoking his release from immigration custody without following the procedures required by law and regulation.

28. Respondents failed to comply with these regulatory procedures. Petitioner received no notice or explanation for the revocation of his supervised release, nor was he given any opportunity to contest the decision. This failure to adhere to binding regulations violates constitute a due process violation.

29. Petitioner's detention is therefore unlawful. Respondents have acted in excess of their statutory and constitutional authority and deprived Petitioner of liberty without due process of law.

30. As such, Petitioner should be released so that he may continue to await further instructions on his pending immigration case, including adjudication of an I-130 petition filed by his U.S. citizen spouse, and so that he may subsequently pursue adjustment of status under 8 U.S.C. § 1255.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order, Petitioner shall be returned to Florida until further notice from this Honorable Court;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Order, an emergency hearing requiring that Respondents produce the body (Petitioner) (28 U.S.C. § 2243);

e. Declare that the Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

f. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

g. Award Petitioner reasonable costs and attorney's fees in this action as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and

h. Grant any further relief this Court deems just and proper.

Respectfully submitted on this day 7th of August, 2025.

Manuel Yax Zapeta

By his attorney,

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