

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

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<b>SIGIFREDO</b>	)	
<b>MEDELLIN MARTINEZ</b>	)	
	)	
<b>Petitioner-Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civ. No.5:25-cv1319</b>
	)	
<b>PAMELA JO BONDI,</b>	)	
<b>United States Attorney General;</b>	)	
	)	
<b>KRISTI LYNN NOEM,</b>	)	
<b>Secretary of the United States</b>	)	
<b>Department of Homeland Security;</b>	)	
	)	
<b>TODD M. LYONS,</b>	)	
<b>Acting Director of United States</b>	)	
<b>Immigration and Customs Enforcement;</b>	)	
	)	
<b>SYLVESTER M. ORTEGA,</b>	)	
<b>Field Office</b>	)	
<b>Director for Detention and Removal,</b>	)	
<b>U.S. Immigration and Customs</b>	)	
<b>Enforcement</b>	)	
	)	
<b>BOBBY THOMPSON Warden,</b>	)	
<b>South Texas Detention Center</b>	)	
	)	
<b>UNITED STATES DEPARTMENT</b>	)	
<b>OF HOMELAND SECURITY;</b>	)	
	)	
<b>Respondents-Defendants.</b>	)	

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**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

## INTRODUCTION

This petition arises under 8 U.S.C. § 1231(a) and its implementing regulations, which limit post-order detention. On September 12, 2025, Sigifredo Medellin-Martinez (“Petitioner”) was illegally detained by Immigration and Customs Enforcement (“ICE”) when he appeared for a scheduled appointment at the ICE office in San Antonio, Texas. Petitioner had been under an Order of Supervision for over six years—since mid-2019—without incident. During those six years, Petitioner complied with every condition of his supervision, attended every required check-in appointment, and committed no criminal offenses since his release. The government now claims power to keep him indefinitely while it looks for some country—any country—that will take him, though none has materialized in more than six years and an Immigration Judge (“IJ”) foreclosed removal to Mexico. Yet the agency asserts his detention is lawful. But statutes and regulations say otherwise.

Indeed, ICE cannot escape procedural obligations of detaining Petitioner. The implementing rules of Section 1231(a) are written in the imperative—“shall,” “will”—and they bind the agency to basic process before revoking supervised release: notice of reasons, a prompt informal interview, and a valid revocation by the Executive Associate Director (or a Field Office or District Director when referral is not reasonably possible). ICE followed none of it. These are mandatory regulatory requirements under 8 C.F.R. §§ 241.4(l) and 241.13 that protect against arbitrary deprivation of liberty. ICE's failure to comply with these self-imposed procedural safeguards renders Petitioner's detention unlawful and void. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

ICE also cannot evade the temporal limits the law imposes. Where removal is not reasonably foreseeable—and here it is not—the statute supplies no authority to continue custody.

*Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner was granted withholding of removal under the Convention Against Torture (“CAT”) by an IJ in July 2019, which bars his removal to Mexico. For six years, ICE has been unable to identify any third country willing to accept Petitioner.<sup>1</sup> Detention beyond the period “reasonably necessary to bring about ... removal” is unauthorized. *Zadvydas*, 533 U.S. at 699–702. The Court should do what the Administrative Procedure Act (“APA”) and habeas tradition demand: set aside this unlawful detention and restore Petitioner to the supervised status.

Petitioner does not contest his removal order or the government’s authority to execute it; he contests only ICE’s detention—effected in defiance of its own regulations and constitutional due process—and the claim that he may be held indefinitely while the government hunts for a receiving country. He seeks immediate release and restoration to his Order of Supervision.

### **CUSTODY**

1. Petitioner is in the physical custody of Respondent SYLVESTER M. ORTEGA, Field Office Director for Detention and Removal, ICE, United States Department of Homeland Security (“DHS”), and Respondent BOBBY THOMPSON, Warden of South Texas ICE Detention Complex in Pearsall, Texas. At the time of filing this petition, Petitioner is detained at the South Texas ICE Detention Complex, 566 Veteran Drive, Pearsall, Texas 78061. The Geo Group contracts with the DHS to detain Respondents such as Petitioner. Petitioner is under the direct control of Respondents and their agents.

### **JURISDICTION AND VENUE**

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<sup>1</sup> In fact, in practice, relatively few noncitizens granted such similar relief are removed to alternative countries. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021)(The Court notes respondents pointed to a source claiming that in 2017 only 1.6% of those granted withholding were removed to another country; the majority references this at pages corresponding to 594 U.S. at 537 (and the dissent cites similar)).

2. This Court has subject-matter jurisdiction over the instant petition and action under 28 U.S.C. §§ 2241(c)(1) and (c)(3), Art. I, § 9, Cl. 2 of the United States Constitution (“Suspension Clause”), and 28 U.S.C. § 1331. Jurisdiction is also proper under 5 U.S.C. § 702 as Petitioner suffered a legal wrong from an agency action. This Court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *ET. seq.*

3. A § 2241 petition properly challenges the manner of detention post-order. See *Johnson v. Guzman-Chavez*, 594 U.S. 523, 535–37 (2021) (detention after final order governed by § 1231; third-country removal contemplated under § 1231)

4. Venue properly lies within the Western District of Texas because all events or omissions giving rise to this action occurred in the district. 28 U.S.C. § 1391(b) and 2241(d). Pearsall, Texas, is in Frio County, Texas which falls within the San Antonio Division. 28 U.S.C. § 124(d)(6).

5. No petition for habeas corpus has previously been filed in any court to review Petitioner’s case.

#### **PARTIES**

6. Petitioner is a national and citizen of Mexico. He is currently detained at the South Texas ICE Detention Complex located at 566 Veteran Drive, Pearsall, Texas 78061.

7. Respondent PAMELA JO BONDI is the Attorney General of the United States and the most senior official in the United States Department of Justice (“DOJ”). She has the authority to interpret the immigration laws and adjudicate removal cases. 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review (“EOIR”), which administrates the immigration courts and the Board of Immigration Appeals (“BIA” or “Board”). Respondent is named in her official capacity. Respondent’s address is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

8. Respondent KRISTI LYNN NOEM is the Secretary of the U.S. Department of Homeland Security (“DHS”), an agency of the United States. Respondent is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of the Petitioner. Respondent is named in her official capacity. Respondent’s address is Department of Homeland Security, Washington, D.C. 20528.

9. Respondent TODD M. LYONS is the acting Director of the ICE within DHS, an agency of the United States. Respondent is responsible for the administration and enforcement of immigration laws. Respondent is named in his official capacity. Respondent’s address is 500 12th Street SW, Mail Stop 5900 Washington, D.C. 20536.

10. Respondent SYLVESTER M. ORTEGA is the Field Office Director for Detention and Removal, ICE, DHS. Respondent is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of Texas, San Antonio Division. Pursuant to Respondent’s orders, Petitioner remains detained. Respondent is named in his official capacity. Respondent’s address is 1777 NE Loop 410 Floor 15, San Antonio, Texas, 78217.

11. Respondent BOBBY THOMPSON is the warden of the South Texas ICE Detention Complex in Pearsall, Texas. He is Petitioner’s immediate custodian and resides in the judicial district of the United States Court for the Western District of Texas, San Antonio Division. Respondent is named in his official capacity. Respondent’s address is 566 Veteran Drive, Pearsall, Texas 78061.

12. DHS is a federal agency charged with administering statutes and regulations governing immigration pursuant to 6 U.S.C. §§ 111-115. Respondent’s address is Department of Homeland Security, Washington, D.C. 20528.

**STATEMENT OF FACTS**

### **Petitioner's Immigration History and Entry into the United States**

13. Petitioner is a native and citizen of Mexico, born on  1995, in Monterrey, Nuevo León, Mexico.
14. Petitioner entered the United States in July 2002 at approximately eight years of age with his parents and siblings. His family settled in the Austin/San Antonio area of Texas.
15. Petitioner attended elementary, middle, and high schools in Texas. He graduated from Rouse High School in Leander, Texas, and was accepted to Texas State University.
16. From November 2012 through 2019, Petitioner held Deferred Action for Childhood Arrivals (“DACA”) status and maintained valid employment authorization.

### **Petitioner's Mental Health Needs<sup>2</sup>**

17. Petitioner has long struggled with significant mental health challenges, including diagnosed Major Depressive Disorder, Generalized Anxiety Disorder, and a history of psychotic symptoms.
18. On June 22, 2019, while Petitioner was in ICE detention, psychologist Dr. Martha Ramos Duffer, Psy.D., conducted an independent psychological evaluation of Petitioner. *See Pet. Ex. 2.*
19. Dr. Duffer’s evaluation documented Petitioner’s past severe mental health symptoms, including depression, anxiety, suicidal ideation, paranoia, hallucinations, and disordered thought processes. *Id.*
20. Dr. Duffer concluded that Petitioner's mental health symptoms would “exacerbate” and his “functioning would deteriorate further threatening his wellbeing and his life” if he were not

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<sup>2</sup> Petitioner currently sees his physician every one to three months for his mental health.

allowed to remain in the United States with access to mental health care, family support, and familiar mental health providers. *Id.*

21. Dr. Duffer specifically found that if Petitioner were removed from the United States, he would “suffer severe deterioration in functioning, which would threaten his life and future,” and that this “deterioration would likely result in inpatient psychiatric treatment which would lead to further deterioration due to loss of familiar environment, family support, environmental stimuli, hopes for the future, and poor quality of care that some reports describe as inhumane and tortuous.” *Id.*

**Grant of CAT Protection by Immigration Judge (July 22, 2019)**

22. On July 22, 2019, an IJ granted Petitioner's application for withholding of removal to Mexico under CAT due to Petitioner's mental illnesses.<sup>3</sup>

23. The decision granting CAT protection became administratively final in 2019. The government did not appeal the decision.

24. The CAT protection remains in full force and effect. It has never been terminated, revoked, or modified through any subsequent immigration court proceedings.

**Release Under Order of Supervision (March 23, 2017 - September 12, 2025)**

25. Following the Immigration Judge's grant of CAT protection and order for release, ICE released Petitioner from detention on July 22, 2019, under an Order of Supervision pursuant to 8 U.S.C. § 1231(a)(3) and 8 C.F.R. § 241.5.

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<sup>3</sup> Notably, Dr. Jeremy Slack from the University of Texas at El Paso recently testified in an immigration matter that “police officers are sometimes paid to pick up people struggling with mental illness or addiction and to drop them off at ‘predatory’, rehabilitation centers.” *See Encarnacion v. Bondi* No. 22-1601, slip op. at 30 (9th Cir. Sept. 30, 2025).

26. Implicit in ICE's decision to release Petitioner under an Order of Supervision was a determination that: (i) Petitioner was not a danger to the community; (ii) Petitioner was not a flight risk; (iii) Petitioner was likely to comply with the conditions of supervision; and (iv) Petitioner's release was appropriate and in the public interest. *See* 8 C.F.R. § 241.4(d)(1), (e).

27. For over six years—from July 22, 2019, through September 12, 2025—Petitioner lived in the San Antonio, Texas area under his Order of Supervision. Throughout this six-year period, Petitioner complied with every condition of his Order of Supervision: He attended check-in appointments at the ICE office in San Antonio, Texas as required; He committed no criminal offenses; and He always remained available to ICE. ICE has never alleged—and cannot allege—any violation of the conditions of Petitioner's Order of Supervision during the six-year period from 2019 to 2025.

28. At no time during the six years of supervised release did ICE request that Petitioner take any action to obtain travel documents from any third country.

**Ankle Monitor Imposed Under Threat of Detention (August 2025)**

29. In August 2025, Petitioner appeared for his regularly scheduled annual check-in appointment at the ICE office in San Antonio. During this appointment, ICE officers informed Petitioner that he would be required to wear an electronic ankle monitor without explanation

30. ICE officers stated that if Petitioner refused to wear the ankle monitor, he would be immediately detained. Under this threat of detention, Petitioner agreed to wear the ankle monitor, which was placed on him that day.

31. ICE did not provide Petitioner with any written explanation for the ankle monitor requirement. ICE did not provide Petitioner with any written notice of revocation of his Order of Supervision.

32. ICE did not conduct any interview—formal or informal—regarding the ankle monitor or any purported basis for revoking or modifying his Order of Supervision.

33. Following placement of the ankle monitor on , ICE informed Petitioner that the agency would contact him. Petitioner never heard from ICE so he took the initiative to contact them and schedule an appointment. After doing so, he received a verified text message to appear for appointment at the field office in San Antonio, Texas on September 12, 2025, at the ICE office located at 3523 Crosspoint, San Antonio, Texas 78217.

**Detention Without Due Process (September 12, 2025)**

34. On September 12, 2025, Petitioner appeared for his scheduled appointment at the ICE office in San Antonio. At that appointment, an ICE officer informed him that he would be detained.

35. Post detention, an ICE officer asked Petitioner if he wanted to return to Mexico. Petitioner stated that he did not and explained to the office that an IJ had granted him protection under CAT.

36. At no time during the September 12, 2025 encounter did ICE: (i) Provide Petitioner with any written notice of revocation of his Order of Supervision; (ii) Provide Petitioner with any written statement of reasons for his detention; (iii) Conduct any informal interview to afford Petitioner an opportunity to respond to allegations or to dispute any purported basis for revocation of his supervised release; (iv.) Identify any official with delegated authority who authorized the revocation of Petitioner's Order of Supervision; (v.) Allege any violation of the conditions of Petitioner's Order of Supervision; or (vi.) Provide any explanation for the detention.

37. After transfer to the South Texas ICE Detention Complex (Pearsall), Petitioner received a document titled “Notice of Revocation,” signed by S. Rodriguez, Deportation Officer. *See Pet. Ex. 1*. The paper listed the Reason for revocation as removal because of the outstanding order of removal, and stated “Your case is under current review by ERO.” *Id.* The signature block and

content confirm that the notice issued from a line officer, not from one of the named decisionmakers in 8 C.F.R. § 241.4(l)(2), and it reflects no individualized determination “in the opinion of the revoking official,” as the regulation requires, nor any contemporaneous informal interview. See § 241.4(l)(1)–(2). *Id.*

38. Petitioner has remained in continuous ICE custody at the South Texas ICE Detention Complex in Pearsall, Texas, since September 12, 2025. To date, ICE has never officially informed Petitioner or his counsel of any specific third country to which it intends to remove him. ICE has not requested Petitioner's assistance in obtaining travel documents for removal to any third country. ICE has provided no evidence that any third country has agreed to accept Petitioner or that travel documents are being processed.

39. During his detention, Petitioner has reached out several times to speak to an ICE officer without response.

#### **Petitioner's Fears Regarding Removal to a Third Country**

40. Petitioner harbors well-founded and concrete fears of removal to whatever country DHS may designate, including an inability to access needed mental health care and psychiatric medications—the very basis for his grant of CAT protection and a reasoned fear that removal under those conditions would amount to either “persecution” or “torture” as contemplated by the under the Immigration Nationality Act and accompanying regulations.

#### **No Reasonable Likelihood of Removal in the Foreseeable Future**

41. Petitioner's removal order dates to April 6, 2019—over six years and five months ago. His judicially granted CAT protection, which remains in full force and effect, bars his removal to Mexico. For over 77 months, the government has been unable to identify any third country for removal.

42. Even if the government were to identify a third country, removal could not occur without: (i) A reasonable fear screening under 8 C.F.R. § 208.31; (ii) Potential additional immigration court proceedings if Petitioner establishes a reasonable fear of persecution or torture in the proposed third country; and (iii) Obtaining cooperation and travel documents from the receiving country.

43. There is no significant likelihood that Petitioner will be removed from the United States in the reasonably foreseeable future.

### **LEGAL FRAMEWORK**

#### **The Accardi Doctrine: Agencies Must Follow Their Own Regulations**

44. The law is the regulation. When an agency uses “shall” and “will,” it binds itself as Congress binds the Executive by statute. 8 C.F.R. §§ 241.4(l), 241.13.

45. In *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), the Supreme Court held that when a federal agency adopts regulations prescribing procedures for its own decision-making, those regulations are binding on the agency and have the force and effect of law.

46. The Supreme Court explained: “Regulations with the force and effect of law supplement the bare bones of a statute and, in so doing, they establish rights. . . . [W]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required.” *Morton v. Ruiz*, 415 U.S. 19232 (1974).

47. The Accardi doctrine applies with particular force when individual liberty is at stake: “It is equally well established that it is a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative processes before it.” *Gov't of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970) (per curiam).

48. An agency cannot defend its failure to follow regulations by claiming the regulations are merely internal guidance or discretionary. When regulations prescribe mandatory procedures using words like “will” or “shall,” they are binding legal obligations. *See Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959).

49. The Accardi doctrine applies regardless of whether the underlying agency decision was substantively correct. Even if an agency reaches the right outcome, its failure to follow required procedures renders the action unlawful. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991).

#### **Revocation of Orders of Supervision: Mandatory Procedural Requirements**

50. When a noncitizen subject to a final order of removal cannot be removed, ICE may release the person under an Order of Supervision pursuant to 8 U.S.C. § 1231(a)(3) and 8 C.F.R. § 241.5.

51. An Order of Supervision is a binding legal status that may be revoked only in compliance with strict procedural requirements codified in federal regulations.

52. Under 8 C.F.R. § 241.4(l)(2), only two officials have the authority to revoke an Order of Supervision: The Executive Associate Director of ICE; or A Field Office or District Director of ICE, if detention is in the public interest and the “circumstances do not reasonably permit referral of the case to the Executive Associate [Director].”

53. Under 8 C.F.R. § 241.4(l), release may be revoked only when, “in the opinion of the revoking official”: (i) “The purposes of release have been served”; (ii) “The [noncitizen] violates any condition of release”; (iii) “It is appropriate to enforce a removal order or to commence removal proceedings against a [noncitizen]”; or (iv.) “The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate.”

54. Under 8 C.F.R. § 241.4(l)(1), when an Order of Supervision is revoked: (i) The noncitizen will be notified of the reasons for revocation of his or her release; and (ii) The noncitizen will be

afforded an initial informal interview promptly after his or her return to [ICE] custody to afford the [noncitizen] “an opportunity to respond to the reasons for revocation stated in the notification.”

55. These procedural requirements are mandatory, not discretionary. They serve as essential due process protections to ensure that noncitizens' liberty interests are not arbitrarily deprived. *See Rodriguez-Cartagena v. Garland*, 390 F. Supp. 3d 1152, 1162-63 (W.D. Wash. 2019).

56. Federal agencies are bound by their own regulations, which have the force and effect of law. *Gulf States Mfrs., Inc. v. Nat'l Labor Relations Bd.*, 579 F.2d 1298 (5th Cir. 1978).

57. It is a denial of due process for any government agency to fail to follow its own regulations providing procedural safeguards. *Gov't of Canal Zone v. Brooks*, 427 F.2d 347.

#### **Prolonged Detention and Constitutional Constraints Under *Zadvydas***

58. In *Zadvydas v. Davis*, 533 U.S. 678, the Supreme Court held that 8 U.S.C. § 1231(a)—which authorizes post-removal-period detention—does not permit indefinite detention and must be construed to contain an implicit temporal limitation to avoid serious constitutional concerns under the Due Process Clause.

59. A presumptively reasonable period for post-removal-order detention is six months. *Id.* at 699-701. After six months, once the noncitizen “provides good reason to believe 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 release. *Id.*

60. The six-month presumption runs from the start of the statutory “removal period,” which begins on the latest of: (i) the date the removal order becomes administratively final; (ii) if judicial review is sought and a stay entered, the date the reviewing court’s order becomes final; or (iii) the date the noncitizen is released from non-immigration detention. *See* 8 U.S.C. § 1231(a)(1)(B)*Id.* ;

*Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3-4 (11th Cir. 2002)(clock keyed to start of the removal period; stay can toll under § 1231(a)(1)(C)).

61. Because detention is a means to effect removal, if removal is not reasonably foreseeable, continued custody is “unreasonable and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699–701; *Clark v. Martinez*, 543 U.S. 371, 378, 386–87 (2005). The Fifth Circuit applies *Zadvydas* and *Clark* as governing law under § 1231(a)(6), rejecting carve-outs halting potentially indefinite detention. *Tran v. Mukasey*, 515 F.3d 478, 484–86 (5th Cir. 2008)(Fifth Circuit applies *Zadvydas/Clark* to § 1231(a)(6); no “dangerousness” carve-out)

62. The six-month presumption is not a hard floor: detention can be unconstitutional sooner where removal is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 699-701. District courts in the Fifth Circuit have ordered release before six months where the record showed no realistic prospect of removal. *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020)(COVID-19 flight bans made removal not reasonably foreseeable; release ordered).

#### **CAT Protection and Limited Termination for Mexico Removal**

63. Protection under CAT withholding is governed by 8 C.F.R. § 1208.16(c); when granted, the United States may not remove the noncitizen to the country where torture is more likely than not. *See* 8 C.F.R. § 1208.16(f).

64. CAT protection may be granted by an IJ following a hearing and adjudication on the merits. 8 C.F.R. § 1208.16(c).

65. Because Petitioner was granted CAT withholding, termination may occur only in a reopened proceeding before the IJ or BIA, and DHS bears the burden to prove by a preponderance of the evidence a regulatory ground for termination—such as fraud, a material change negating the

“more likely than not” risk of torture, or applicability of a withholding bar. 8 C.F.R. § 1208.24(f); *see Id.* § 1208.24(a)–(b); § 1208.16(c)(2), (d)(2)

66. ICE lacks statutory or regulatory authority to administratively revoke or terminate CAT withholding granted by an IJ. See 8 C.F.R. § 1208.24(f).

67. Any termination must occur through formal IJ proceedings with notice and an opportunity to be heard; unless and until that occurs, the Government may not remove Petitioner to Mexico. See 8 C.F.R. §§ 1208.24(f), 1208.16(f).

#### **Reasonable Fear Screening for Any Potential Third Country Removal**

68. A reasonable-fear process under 8 C.F.R. § 1208.31 applies when a noncitizen is (i) ordered removed under INA § 238(b) or (ii) subject to reinstatement under § 241(a)(5) and, during that process, expresses a fear of return; in such cases, DHS must refer the person to an asylum officer for a reasonable-fear determination, with IJ review if negative. 8 C.F.R. §§ 1208.31, 1241.8(e).

69. When DHS designates a different country of removal under 8 U.S.C. § 1231(b)(2), the noncitizen may seek withholding/CAT protection as to that country in withholding-only proceedings—even if it differs from the country in the underlying order. *Matter of A-S-M-*, 28 I. & N. Dec. 282, 283–85 (BIA 2021); *see also* 8 C.F.R. § 1208.31 (reasonable-fear referrals during reinstatement) and § 1241.8(e).

70. Accordingly, failure to afford the correct process tied to the designated country—reasonable-fear referral in the § 238(b)/§ 241(a)(5) contexts, or access to seek withholding/CAT as to a newly designated country under § 1231(b)(2)—violates the governing regulations and basic due-process principles. *See* 8 C.F.R. §§ 1208.31, 1241.8(e); *Matter of A-S-M-*, 28 I. & N. Dec. at 283–85

71. Failure to afford the reasonable-fear procedure before attempting third-country removal violates 8 C.F.R. § 1208.31 and basic due process principles recognized in the case law. DHS's election to remove Petitioner in this case triggered the 8 C.F.R. §§ 208.31, 1208.31 safeguards.

72. Importantly, DHS must give notice of the intended third country sufficiently in advance to permit invocation of the country-specific reasonable-fear process. *See* 8 C.F.R. §§ 1208.31(a), (e); 1241.8(e). And once DHS identifies a destination under 8 U.S.C. § 1231(b)(2), the noncitizen may seek withholding/CAT as to that country. *Matter of A-S-M-* at 283–85.<sup>4</sup>

73. Failure to provide reasonable fear screening before attempting third-country removal violates both regulatory requirements and procedural due process.

#### EXHAUSTION OF ADMINISTRATIVE REMEDIES

74. Habeas under 28 U.S.C. § 2241 carries no statutory exhaustion requirement; any exhaustion doctrine here is prudential and yields when the usual exceptions apply—futility, lack of agency power to grant the relief sought, or risk of irreparable harm. *McCarthy v. Madigan*, 503 U.S. 140, 144–49 (1992).

75. Those exceptions apply. Futility: EOIR lacks jurisdiction to review DHS's designation of an "other country" of removal. 8 C.F.R. § 1241.15. Lack of power: IJs/BIA have no post-order custody or supervision-revocation authority (IJ bond review is tied to part 1236, not § 1231 detention), and CAT-withholding termination requires a reopened proceeding with DHS bearing the burden. 8 C.F.R. §§ 1003.19(a), 241.4, 241.13, 1208.24(f). Irreparable harm: absent judicial relief, DHS may effect removal (or continue detention) without the country-specific process sought. Courts in this Circuit routinely entertain § 2241 detention challenges without rigid

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<sup>4</sup> Justice Sotomayor's dissent in *DHS v. D.V.D.* underscores the due-process need for "written notice of the third country" and a "meaningful opportunity ... to submit an application" before removal. No. 24A1153, slip op. at 5 (U.S. June 23, 2025) (Sotomayor, J., dissenting).

exhaustion in these circumstances. *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707–09 (S.D. Tex. 2020).

### **CAUSES OF ACTION**

#### **COUNT ONE:**

#### **VIOLATION OF THE ACCARDI DOCTRINE - FAILURE TO FOLLOW MANDATORY REGULATIONS GOVERNING REVOCATION OF SUPERVISION**

76. Petitioner re-alleges and incorporates by reference all preceding paragraphs.
77. The Accardi doctrine requires agencies to follow their own lawfully promulgated regulations. *Accardi v. Shaughnessy*, 347 U.S. 260.
78. When an agency adopts procedures governing its decisions, those rules have the force of law and bind the agency. *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Service v. Dulles*, 354 U.S. 363, 388 (1957).
79. Federal regulations set mandatory procedures for revoking supervision and re-detaining a noncitizen. *See* 8 C.F.R. § 241.4(l) (revocation authority; notice and prompt informal interview); § 241.13 (post-order custody determinations when removal is not reasonably foreseeable). ICE did not follow these rules in revoking Petitioner's supervision.

#### **Lack of Proper Delegated Authority — 8 C.F.R. § 241.4(l)(2).**

80. Only the Executive Associate Director may revoke release, and a District Director may do so only when circumstances do not reasonably permit referral to the Executive Associate Director. 8 C.F.R. § 241.4(l)(1). ICE has produced no revocation by either official, nor any basis showing referral was not reasonably possible.
81. The regulation forecloses downward delegation. Section 241.4(l)(2) names who may revoke supervised release: the senior ICE official designated by the regulation (now the Executive Associate Director for Enforcement and Removal Operations) and—only if “circumstances do not

reasonably permit referral”—the Field Office Director. Naming decisionmakers excludes others; a revocation by a deportation officer is *ultra vires*. A general internal “delegation” cannot rewrite a specific regulation that assigns the decision to named officers. Here, the Government’s own paper shows S. Rodriguez (Deportation Officer) as signer, with no indication that the Executive Associate Director or Field Office Director made the revocation decision or that referral was impracticable.

82. This failure to comply with § 241.4(l)(2) violates *Accardi*, the revocation is void and renders the detention unlawful. *See Service*, 354 U.S. at 388.

**No Required Notice and Interview — 8 C.F.R. § 241.4(l)(1).**

83. Upon revocation, the noncitizen shall be notified of the reasons and afforded a prompt informal interview. 8 C.F.R. § 241.4(l)(1). ICE provided neither; there is no notice stating reasons and no prompt informal interview. Agency action taken without observing its own required procedures is invalid. *Morton*, 415 U.S. at 235; *Service*, 354 U.S. at 388.

**No Individualized Determination — 8 C.F.R. § 241.4(l)(1).**

84. Revocation must rest “in the opinion of the revoking official” on the regulation’s enumerated grounds (e.g., violation of conditions, public-interest considerations tied to the individual). 8 C.F.R. § 241.4(l)(1). ICE alleged no condition violations and offered no individualized rationale—only a generalized policy shift—which does not satisfy § 241.4(l)(1).

85. Because ICE failed to follow its own binding regulations, the revocation is unlawful under *Accardi*. *See Gulf States Mfrs., Inc. v. NLRB*, 579 F.2d 1298, 1308 (5th Cir. 1978); *Gov’t of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970) (*per curiam*).

**COUNT TWO:  
VIOLATION OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS - ARBITRARY  
DETENTION WITHOUT LAWFUL BASIS**

86. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

87. The Fifth Amendment to the United States Constitution provides that no person shall “be deprived of life, liberty, or property, without due process of law.”

88. “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 protects.” *Zadvydas v. Davis* 533 U.S. 690.

89. Individuals conditionally released hold a protected interest in “continued liberty.” *Young v. Harper*, 520 U.S. 143, 147 (1997); *see also Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

#### **Protected Liberty Interest**

90. 121. Petitioner has a constitutionally protected liberty interest in continued release under his Order of Supervision.

91. For over six years he lived in the community under supervision, worked, resided with family, obtained mental-health care, and complied with every condition—creating substantial reliance interests that cannot be terminated arbitrarily.

#### **Procedural Due Process Violation**

92. Where an agency has adopted regulations providing procedural safeguards, due process requires adherence to those procedures. *See Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959).

93. As alleged in Count One, ICE violated mandatory procedures for revoking supervised release; those violations themselves deny due process.

94. At minimum, due process requires notice and an opportunity to respond. *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970). Petitioner received neither before being seized.

#### **Substantive Due Process Violation**

95. Substantive due process protects against arbitrary and unjustified deprivations of liberty. *r.*, 533 U.S. at 690. In the immigration context, every detention must rest on a valid statutory foundation and bear a reasonable relationship to the statute’s purpose. *Id.*; *Demore v. Kim*, 538 U.S. 510, 527 (2003).

96. Here, detention is arbitrary: (i) ICE offered only a generic policy shift and not an individualized determination; (ii) ICE alleged no violation of supervision conditions despite six years of compliance; (iii) no material change in circumstance (d) ICE made no individualized finding of danger or flight risk, contrary to its 2019 determination maintained for six years.

97. Petitioner’s detention violates both procedural and substantive due process under the Fifth Amendment.

**COUNT THREE:  
UNLAWFUL DETENTION UNDER *ZADVYDAS* - NO SIGNIFICANT LIKELIHOOD  
OF REMOVAL IN REASONABLY FORESEEABLE FUTURE**

98. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

99. Detention after a removal order permits detention only for a period reasonably necessary to effectuate removal and after six months upon a showing of no “significant likelihood of removal in the reasonably foreseeable future,” the Government must rebut with evidence. *Zadvydas v. Davis*, 533 U.S. 699–702.

100. The same construction applies to inadmissible and criminal categories; the statutory text cannot mean different things for different noncitizens and . *Clark v. Martinez*, 543 U.S. 378–86.

101. Even within six months, constitutionality turns on foreseeability of removal; the six-month mark is a presumption, not a safe harbor. *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 707.

102. Petitioner’s removal order dates to April 6, 2019—over six years ago. His CAT withholding prohibits removal to Mexico, the country designated in the order. DHS cannot

lawfully remove him to Mexico absent termination of withholding in a reopened proceeding where DHS bears the burden by a preponderance. 8 C.F.R. § 1208.24(f). No such proceedings have been initiated. ICE's six years of supervised release underscore that removal has not been reasonably foreseeable.

103. ICE has not identified a third country of removal. Even if it had, it must provide reasonable-fear processing and, if negative, IJ de novo review on request. 8 C.F.R. §§ 1208.31, 1241.8(e). If DHS (b) newly designates a different country under § 1231(b)(2), Petitioner may seek withholding/CAT as to that country in withholding-only proceedings. *Matter of A-S-M-*, 28 I. & N. Dec. at 283–85.

104. Petitioner's detention violates the constitutional constraints established in *Zadvydas*.

**COUNT FOUR:  
VIOLATION OF THE  
ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706**

105. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

106. Courts must set aside agency action that is “arbitrary, capricious, ... or otherwise not in accordance with law,” and action taken “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D).

107. ICE's revocation of supervision and ensuing detention are final agency action reviewable under the APA. 5 U.S.C. § 704.

**Not in accordance with law (§ 706(2)(A)).**

108. ICE's actions contravene: (i) the Accardi doctrine (agency must follow its rules); (ii) ICE's regulations, 8 C.F.R. §§ 241.4(l), 241.13, 208.31, 1208.24(f); (iii) constitutional limits recognized in *Zadvydas v. Davis*, 533 U.S. 678; and (iv) the Fifth Amendment.

**Without required procedure (§ 706(2)(D)).**

109. ICE ignored mandatory procedures in 8 C.F.R. §§ 241.4(l)(1)–(2), 241.13, 208.31, 1208.24(f). An agency’s failure to follow its own rules is per se without observance of procedure required by law. *Vitarelli*, 359 U.S. at 539–40, 545–46. The action was also taken by a non-authorized officer; § 241.4(l)(2) vests revocation authority in the Executive Associate Director (or the Field Office Director only if timely referral is not reasonably possible), not a deportation officer; action by a non-authorized subdelegate is per se “without observance of procedure required by law.”

**Arbitrary and capricious (§ 706(2)(A)).**

110. ICE offered only a generalized policy shift, ignored relevant factors (including six years of perfect compliance), made no individualized finding, and reversed course without reasoned explanation—classic arbitrariness. *Judulang v. Holder*, 565 U.S. 42, 53, 55–57 (2011); *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. 29, 43 (1983); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016); *DHS v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913–15 (2020).

111. The Court should set aside ICE’s decision and order Petitioner’s release. 5 U.S.C. § 706(2)(A), (D).

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Issue the writ of habeas corpus and order immediate release from ICE custody pursuant to 28 U.S.C. § 2241 and 8 U.S.C. § 1231(a)(3), with reinstatement of Petitioner’s prior Order of Supervision (or conditions no more restrictive than those previously imposed);

2. Declare that Respondents' revocation of supervision and continued detention violated binding regulations—8 C.F.R. §§ 241.4(l), 241.13, and 1208.31—and the Due Process Clause.
3. Declare that any revocation of supervised release not made in accordance with 8 C.F.R. § 241.4(l)(2)—i.e., by the Executive Associate Director, or by the Field Office Director only when referral is not reasonably possible—is void, and order Petitioner's immediate release
4. Declare that DHS may not execute removal to any third country absent country-specific notice and the reasonable-fear process prescribed by 8 C.F.R. § 1208.31 (including *de novo* IJ review under § 1208.31(g) upon request);
5. Waiver service requirements and require government to answer within seven (7) days and not transfer Petitioner out of the current detention facility.
6. Grant any other relief which this Court deems just and proper.

Respectfully submitted, this 17 October 2025.

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**ATTORNEY FOR PETITIONER**

By: s/Francisco Alvillar  
Francisco Alvillar  
State Bar No. 24057742

**VERIFICATION OF COUNSEL**

I, Francisco Alvillar, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

Dated: October 17, 2025

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**CERTIFICATE OF SERVICE**

I certify, in accordance with the rules of this Court, I filed the foregoing via the Court's CM/ECF system, which will send notice to all registered counsel of record.

Dated: October 17, 2025

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