

UNITED STATES DISTRICT COURT

for the

FILED BY COS D.C.NELY YOHANA TORRES-HUETE
Petitioner

v.

Tony E. Gonzalez, Warden, GEO, et seq.
Respondent

(name of warden or authorized person having custody of petitioner)

Case No. _____

(Supplied by Clerk of Court)

OCT 24 2025

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S.D. OF FLA. - W.P.B.

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: NELY YOHANA TORRES-HUETE
 (b) Other names you have used: N.Y.

2. Place of confinement:
 (a) Name of institution: Broward Transitional Center
 (b) Address: 3900 N. Powerline Rd. Pompano Beach, FL 33073

3. (c) Your identification number: A- [REDACTED]
 Are you currently being held on orders by: _____
 Federal authorities State authorities Other - explain: _____

4. Are you currently:
 A pretrial detainee (waiting for trial on criminal charges)
 Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
 If you are currently serving a sentence, provide:
 (a) Name and location of court that sentenced you: _____
 (b) Docket number of criminal case: _____
 (c) Date of sentencing: _____
 Being held on an immigration charge
 Other (explain): _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:
 How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

Pretrial detention
 Immigration detention
 Detainer
 The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
 Disciplinary proceedings
 Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Department of Homeland Security (DHS)
Immigration Custom Enforcement
(b) Docket number, case number, or opinion number: A- [REDACTED]
(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):
Re-detainer imposed on August 9, 2025, following an Immigration Court order granting CAT protection
(d) Date of the decision or action: August 9, 2025

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Mr. Garrett Ripa, DISTRICT Director
Enforcement and Removal Operations.
(2) Date of filing: June 8, 2025
(3) Docket number, case number, or opinion number: A- [REDACTED]
(4) Result: N/A
(5) Date of result: N/A
(6) Issues raised: Lack of Notice, and articulation of fear of perse-
cution or Torture in Identified Countries and Demand for Stay
of Removal and Reopening if DHS intends to remove to any of
the Identified Countries.

(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: _____
(2) Case number: _____
(3) Date of filing: _____
(4) Result: _____
(5) Date of result: _____
(6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: _____
(2) Case number: _____
(3) Date of filing: _____
(4) Result: _____
(5) Date of result: _____
(6) Issues raised: _____

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence:

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

Yes No

If "Yes," provide:

(a) Date you were taken into immigration custody: August 9, 2025
(b) Date of the removal or reinstatement order: August 28, 2020
(c) Did you file an appeal with the Board of Immigration Appeals?

Yes No

If "Yes," provide:

(1) Date of filing: September 25, 2020

(2) Case number: A-XXXXXXXXXX

(3) Result: N/A - Pending

(4) Date of result: N/A

(5) Issues raised: N/A

(d) Did you appeal the decision to the United States Court of Appeals?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12.

Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Petitioner is in Detention in Violation of the Statute and Regulations as established upon Sections 8C.F.R. § 241.4, 8.C.F.R. § 241.13 and Due Process Clause of the Fifth Amendment of the U.S. Constitution.

(a) Supporting facts (Be brief. Do not cite cases or law.):

See Memorandum in Support attached, as Petition for Writ of Habeas Corpus.

(b) Did you present Ground One in all appeals that were available to you?

Yes No

GROUND TWO: Petitioner is in Detention in Violation of the Statute and Regulations, the Accords Doctrine and the Due Process Clause of the Fifth Amendment of the United States Constitution.

(a) Supporting facts (Be brief. Do not cite cases or law.):

See Memorandum in Support attached, as Petition for Writ of Habeas Corpus.

(b) Did you present Ground Two in all appeals that were available to you?

Yes No

GROUND THREE: N/A

(a) Supporting facts (Be brief. Do not cite cases or law.):

(b) Did you present Ground Three in all appeals that were available to you?

Yes No

GROUND FOUR: N/A

(a) Supporting facts (Be brief. Do not cite cases or law.):

(b) Did you present Ground Four in all appeals that were available to you?

Yes No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Issue an Order: 1) Declaring that petitioners continued detention is not authorized by the INA and/or violates the Fifth Amendment, 2) Granting the petition for Writ of Habeas Corpus and releasing petitioners under an Order of Supervision; 3) Grant any other and further relief this Court may deem appropriate

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

on this day October 21, 2025

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 10 / 21 / 2025


Signature of Petitioner

Signature of Attorney or other authorized person, if any

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: _____

NELY YOHANA TORRES-HUETE
Petitioner

v.

JUAN F. GONZALEZ Assistant, Field Office Director
Warden, GEO, Broward Transitional Center
GARRETT RIPA, District Director Department of Homeland Security
KRISTI NOEM, Secretary of the Department of Homeland Security

Respondents

**PETITION FOR WRIT OF HABEAS CORPUS UNDER
28 U.S.C. § 2241, AND COURT ORDER TO SHOW CAUSE**

Petitioner, Nely Yohana Torres-Huete, appearing *pro se*, hereby petitions this Court for a writ of habeas corpus and seeks declaratory and injunctive relief to review the lawfulness of her detention by the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE), since that her detention violates: 1) the regulations set forth in 8 C.F.R. § 241.4(l) and § 241.13(i); (2) Judge Ruiz's order in *Grigorian v. Bondi*, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025); and (3) The Supreme Court decision in *Zadvydas v. Davis*, 533 U.S. 678, 682, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). And in support of this Petition and Complaint, petitioner alleges as follows:

CUSTODY

1. Petitioner is in the physical custody of respondents and detained at the Broward Transitional Center jail in Pompano Beach, Florida pursuant to a contractual agreement with the Department of Homeland Security.

JURISDICTION

2. This action arises under the United States Constitution, the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 et seq. (the Act), and the Administrative Procedure Act, 5 U.S.C. 701 et seq. (the APA).

3. Jurisdiction exists in this Court pursuant to 28 U.S.C. 2241 et seq., 28 U.S.C. 1331, the APA, 5 U.S.C. 701 et seq., the Declaratory Judgment Act, 28 U.S.C. 2201 et seq., and the All Writs Act, 28 U.S.C. 1361."Officials must comply with the requirements of applicable regulations...Because they failed to do here, Petitioner demonstrate entitlement to a writ of habeas corpus...§ 2241 confers jurisdiction upon the federal courts to hear challenges to the lawfulness of immigration detention" Grigorian v. Bondi, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025). Accordingly this court has jurisdiction to hear "Petitioner's claim that her detention ins unlawful under 28 U.S.C. 2241" Minh Nhat Phan v. Noem, 2025 U.S. Dist. LEXIS 201411 (S.D. Cal. 2025).

4. Petitioner has exhausted any and all administrative remedies to the extent required by law, "because the "alien in streamlined removal proceedings cannot seek review of her final administrative removal order (FARO) before the immigration judge or the BIA, the period to seek review expires as soon as the FARO is issued – meaning that the order becomes final immediately upon issuance... (Petitioner's) FARO constituted "the final order of removal" Riley v. Bondi, 145 S.Ct. 2190 22 L.Ed. 2d 497 (2025).

VENUE

5. Pursuant to *Braden v. 30th* Judicial Circuit Court of Kentucky, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Southern District of Florida, the judicial district in which petitioner is currently detained.

PARTIES

6. Petitioner is a native and citizen of Honduras. Petitioner was first taken into the respondent's custody on March 30, 2017. The respondent's application for protection under the CAT pursuant to 8 C.F.R. §§ 1209.16 and 1208.18; was granted on August 28 2020 by the Immigration Judge G. Videla at the Immigration court in Miami, Florida. As such, The Department of Homeland Security (DHS) cannot deport Petitioner to Honduras.

7. Respondent-defendant Mr. Juan F. Gonzalez, Assistant, Field Office Director, Warden, GEO, Broward Transitional Center is sued in his official capacity as the Officer-in-Charge at the Pompano Beach Processing Center. In this capacity he maintains responsibility over the day-to-day operations at Pompano Beach Processing Center, where petitioner is presently detained by ICE.

8. Respondent-defendant Mr. Garrett Ripa, District Director is sued in his official capacity as the Assistant Secretary of ICE. In this capacity he is responsible for the administration and enforcement of all the functions, powers, and duties of ICE. He is also a legal custodian of petitioner.

9. Respondent-defendant Ms. Kristi Noem is sued in her official capacity as Secretary of the Department

of Homeland Security. In this capacity he is responsible for the administration of the immigration laws pursuant to 8 U.S.C. 1103(a) and has ultimate custodial authority over petitioner.

FACTS

10. Petitioner, Nely Yohana Torres-Huete is a native and citizen of Honduras.
11. Petitioner was granted CAT protection under the United Nations Convention Against Torture (CAT) on August 28, 2020 by the Immigration Judge G. Videla at the Immigration court in Miami, Florida.
12. The petitioner was released on Bond on November 1, 2017, since that her case remains in appeal. On August 9, 2025 her Bond was revoked and has remained in (DHS) custody continuously since that date.
13. Petitioners appeal is being reviewed by the Board of Immigration Appeals since September 25, 2020, and without a decision by the Board after three years on appeal; thereby the removal order is non-final as of the date of the DHS's decision to revoke the petitioner's Bond.
14. Petitioner was taken into custody by ICE on August 9, 2025, and has been in the custody of ICE for more than two months since her revocation of bond take place, without ICE provide Notice of the intent to deport to a designated country, without be notify by the ICE Office of the Principal Legal Advisor so that it can move to reopen removal proceedings to designate a new country of removal and allow Petitioner to present her fear-based claim to an immigration judge; and stay Petitioner's removal until her fear-based claim is adjudicated by an immigration judge.
15. Petitioner has cooperated fully with all efforts by ICE to remove petitioner from the United States. Specifically, petitioner: has provided identity documents a letter Directed to Respondent-defendant Mr. Garrett Ripa, District Director, has provided necessary biographical information, complied with all demands of ICE.
16. To date, however, ICE has been unable to remove petitioner to Honduras or any other country.
17. Petitioner submitted a written request for release to the HQPDU asserting the basis for the alien's belief that there is no significant likelihood that he will be removed in the reasonably foreseeable future. 8 C.F.R. 241.13(d)(1), on June 8, 2025, since that Petitioner can request a more prompt review upon a showing of a material change in circumstances since the last review. 8 C.F.R. 241.4(k)(2)(iii). Petitioners 180 day Custody Review by the Department of Homeland Security Headquarters Post-Order Detention

Unit (HQPDU) in Pompano Beach, Florida was not conducted, at which time petitioners release from custody was denied, but petitioner has not received a decision.

18. When release is denied pending the removal, the district director may retain responsibility for custody determinations for up to three months, or refer the alien to the Headquarters Post Order Detention Unit ("HQPDU") for further custody review. 8 C.F.R. 241.4(k)(1)(ii). To date, however, ICE has been unable to execute a custody determinations or refer the alien to the Headquarters Post Order Detention Unit ("HQPDU"). Petitioner's appeal during three years, the "case remains pending indefinitely in a period where matters are being delayed... prolonged detention become[s] unreasonable, unjustified, or arbitrary in light of the purpose of Section 1226(c)" *Portuondo v. Field Office Director Miami Field Office, et al.*, 2020 U.S. Dist. LEXIS 266586 (S.D. Fla. 2020).

19. If released, petitioner will reside at 16 B Pine Hill Ln. Palm Coast Florida, 32164.

20. Petitioner prevailed in her petition for protection against the torture (CAT) and in her petition for release on Bond and was released on an Order of Supervision. Petitioner complied with the conditions of her order of Supervision for the next three years. On August 9, 2025, ICE re-detained Petitioner to once again try to remove her to Honduras. The Petitioner under this sworn declaration states that: I has not received an informal interview or had an opportunity to respond to the reasons for the revocation of her release. The petitioner has not been informed if ICE is trying remove her to a third country.

21. In the light of the decision rendered in *Grigorian v. Bondi*, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025); her detention is unlawful because her detention violates the regulations set forth in 8 C.F.R. § 241.4(l) and § 241.13(i). Which the petitioner is in custody "in violation of the Constitution and laws or treaties of the United States" *Id.* § 22419(C)(3).

22. Petitioner challenge her detention as unlawful based on ICE's decision to revoke her release without providing the required opportunity to be heard. Petitioner's claims therefore implicate the Due Process of Law. U.S. Const. Amend V. The Due Process rights extent to noncitizens present in the United States. Due process challenges to prolonged detention are to be analyzed under the "three-factor balancing test" set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), see also *Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent.").

The regulations, which governs release and revocation of release of noncitizens subject to a final order of removal, are 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13. Both § 241.4 and § 241.13 were intended "to provide due process protections to [noncitizens] following period as they are considered for continued detention,, release, and then possible revocation release" *Orellana v. Baker*, 2025 U.S. Dist. LEXIS 164986 (D.C. Ma. 2025). However ICE failed to comply with the required procedures, thereby violating the Petitioner's due process rights.

COUNT ONE

Petitioner is in Detention in Violation of the Statute and Regulations as established upon sections: 8 C.F.R. § 241.4; 8 C.F.R. § 241.13 and the Due Process Clause of the Fifth Amendment to the United States Constitution.

23. Petitioner repeats and re-alleges the allegations contained in paragraphs 1 through 22 above as though set forth fully herein.

24. The regulation at 8 C.F.R. 241.4(b)(3) states that an alien granted withholding of removal under section 241(b)(3) of the Act who is otherwise subject to detention is subject to the provisions of this part 241. An alien released pursuant to 8 C.F.R. 241.4 shall be released pursuant to an order of supervision. 8 C.F.R. 241.5(a). However ICE failed to comply with the required procedures, thereby violating the Petitioner's due process rights, as follows:

Violation of Procedural Due Process Right to Notice:

The section 8 CFR 241.4(l), establish:

"Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification" 8 CFR 241.4(l)(1)

Petitioner argues that her re-detention is procedurally deficient because she has not received any interview, much less a prompt one, to respond to the reasons for her revocation of her release. Petitioner was taken into ICE custody on August 9, 2025, which means ICE has had over three months to provide to Petitioner the required interview and opportunity to respond. Because ICE failed to comply with 8 CFR 241.4(l), Petitioner's detention is unlawful. See, M.S.L. v. Bostock, 2025 U.S. LEXIS 162519 (D. Or. Aug, 21, 2025) (Finding an informal interview given 27 days after petitioner was taken into ICE custody "cannot reasonably be construed as ... prompt" and granting habeas petition). Ouoc Chi Hoac v. Becerra, 2025 U.S. LEXIS136002 (E.D. Cal.2025) (Finding petitioner likely to succeed on his claim that her detention was unlawful "because there is no indication that an informal interview was provided). Wing Neun Liu v. Carter, 2025 U.S. LEXIS115275 (D. Kan. 2025) (Finding "that officials did not properly revoke petitioner's release" because "most obviously... petitioner was not granted the required interview upon the revocation of his release").

The section 8 CFR 241.13 provides: "This section establishes special review procedures for those aliens who are subject to a final order of removal and are detained... where the alien has provided good reason

to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future.

The section 8 CFR 241.13(i)(2), establish the same requirements as 8 CFR 241.4 in that:

"Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification"

ICE's failure to provide an interview and opportunity to respond is reason enough to find Petitioner's detention unlawful under 8 CFR 241.13(i)(2), there is an additional problem: Respondent cannot show that "on account of changed circumstances, the Service determined that there is a significant likelihood that the noncitizen may be removed in the foreseeable future" 8 CFR 241.13(i)(2).

The DHS form I-213 documenting Petitioner's arrest does not indicate that ICE made such a determination. The Warrant for Arrest of Alien, issued on a DHS Form I-200, likewise does not describe such a determination having been made. Thus, nothing on the record shows "a significant likelihood" that Petitioner "may be removed in the reasonably foreseeable future" on account of "change of circumstances" See 8 CFR 241.13(i)(2).

Violation of Procedural Due Process Right to Hearing:

The section 8 CFR 241.4(b)(3) *Individuals granted withholding or deferral of removal, establish:*

"Aliens granted withholding of removal under section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture who are otherwise subject to detention are subject to the provisions of this part 241. Individuals subject to a termination of deferral hearing under 8 CFR 208.17(d) remain subject to the provisions of this part 241 throughout the termination process".

The section 8 CFR 208.17(d), establish:

(d) *Termination of deferral of removal.*

- (1) At any time while deferral of removal is in effect, the INS District Counsel for the District with jurisdiction over an alien whose removal has been deferred under paragraph (a) of this section may file a motion with the Immigration Court having administrative control pursuant to 3.11 of this chapter to schedule a hearing to consider whether deferral of removal should be terminated. The Service motion shall be granted if it is accompanied by evidence that is relevant to the possibility

that the alien would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing. The Service motion shall not be subject to the requirements for reopening in 3.2 and 3.23 of this chapter.

(2) The Immigration Court shall provide notice to the alien and the Service of the time, place, and date of the termination hearing. Such notice shall inform the alien that the alien may supplement the information in his or her initial application for withholding of removal under the Convention Against Torture and shall provide that the alien must submit any such supplemental information within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail). At the expiration of this 10 or 13 day period, the Immigration Court shall forward a copy of the original application, and any supplemental information the alien or the Service has submitted, to the Department of State, together with notice to the Department of State of the time, place and date of the termination hearing. At its option, the Department of State may provide comments on the case, according to the provisions of 208.11 of this part.

The INS District Counsel for the District did not file a motion with the Immigration Court having administrative control of the record and did not schedule a hearing to consider whether deferral of removal should be terminated. Moreover, Petitioner was not notified of the reasons for revocation of her release, or the execution of a new FARO on August 9, 2025, and was not afforded an initial informal interview promptly after her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification in violation of section 8 CFR 241.4(k)(4)(ii)(I), which constituted "the final order of removal" now under review. Respondents violated petitioner's procedural Due Process right, due to her continued detention which is subject to the due process standards set for in *Zadvydas v. Davis*, 533 U.S. 678, 682, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

25. No special circumstances exist to justify petitioners continued detention. However, it should be noted that 1231 authorizes aliens to be released and subject to supervision if the alien has not been removed in the 90-day period. See 1231(a)(3) ("the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General."). Those regulations are codified in the Code of Federal Regulations at 8 C.F.R. 241.4-5 and specifically apply to detainees that have been granted a deferral of removal. 8 C.F.R. 241.4(b)(3) ("Aliens granted . . . deferral of removal under the Convention Against Torture who are otherwise subject to detention are subject to the provisions of this part 241."). Thus, at the expiration of the 90 days period, Respondent (or others designated with authority in 241.4) must evaluate Petitioner's circumstances and determine whether she is a candidate for supervision if ICE attempts to effectuate her removal beyond the 90-day period. Respondents violated petitioner's procedural Due Process right, due to her continued detention which is subject to the due process standards set for in *Zadvydas v. Davis*, 533 U.S. 678, 682, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

"8 C.F.R. 241.8(f) states that execution of the reinstated order of removal and detention of the alien shall be administered in accordance with Part 241 of the Code of Federal Regulations, which contains the regulations implementing 8 U.S.C.S. 1231. 8 C.F.R. 241.8(f). The relevant provisions of Part 241, however, apply to aliens who are subject to reinstated removal orders but have either not expressed a fear of removal, or have already been granted withholding, but are still subject to detention. See *id.* 241.3, 241.4(b)(3), 241.8(f)....was entitled to a bond hearing under 8 U.S.C.S. 1231(a)" *Guerrero-Sanchez v. Warden York County Prison*, 905 F.3d 208 (3rd Cir. 2018).

- a. Petitioner is not an alien with a highly contagious disease posing a danger to the public. See 8 C.F.R. 241.14(b).
- b. Petitioners release would not cause serious adverse foreign policy consequences. See 8 C.F.R. 241.14(c)(1)(ii). There is no indication that Petitioners release would have serious adverse foreign policy consequences.
- c. Petitioner was never and is not now detained on account of security or terrorism concerns. See 8 C.F.R. 241.14(d)(1)
- d. Petitioner has not committed a violent crime as defined in 18 U.S.C. 16 as would classify him as specially dangerous. See 8 C.F.R. 241.14(f)(1). Her release therefore would not pose a special danger to the public. See 8 C.F.R. 241.14(f).

26. Because there is no significant likelihood of removal in the reasonably foreseeable future, and because none of the special circumstances exist here to justify petitioners continued detention, petitioner must be released under ICE supervision, since that "Individuals subject to a termination of deferral hearing under 8 CFR 208.17(d) remain subject to the provisions of this part 241 throughout the termination process" 8 CFR 241.4(b)(3).

COUNT TWO

Petitioner is in Detention in Violation of the Statute and Regulations, the Accardi Doctrine and the Due Process Clause of the Fifth Amendment to the United States Constitution.

27. Petitioner repeats and re-alleges the allegations set forth in paragraphs 1 through 26 as though set forth fully herein.

28. As a person in the United States, petitioner is protected by the Due Process Clause of the Fifth Amendment. ICE has detained petitioner for more than two months since the issuance of her final order of removal. There is no significant likelihood that petitioner's removal will occur in the reasonably foreseeable future, since that the appeal proceeding continue being delayed by three years, and without decision by the Board of Immigration Appeal. Petitioner does not pose a danger to the community or a risk for flight, and no special circumstances exist to justify her continued detention. As Petitioner is not dangerous, not a flight risk, and cannot be removed, his indefinite detention is not justified and violates substantive due process. See *Zadvydas*, 533 U.S. at 690-91.

The *Accardi* doctrine-derived from *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S. Ct. 499, 98 L. Ed. 681 (1954)"stands for the unremarkable proposition that an agency must abide by its own regulations...). It is well settled that the regulations which the Service promulgates have the force and effect of law and are binding on the Service and the Immigration Court. This change in policy with regard to the respondent:

- a) Was arbitrary and capricious; "under the APA because the Acting Secretary offered no reason for terminating the forbearance policy" *Department of Homeland Security v. Regents of Univ. of Cal.*, 591 U.S. 140 S. Ct. 1891(2019). This change in the current policy to proceed in the respondent's case, was arbitrary and capricious. "Patently inconsistent application of agency standards to similar situations lacks rationality and is arbitrary." *Contractors Transport Corp. v. United States*, 537 F.2d 1160, 1162 (4th Cir. 1976); *NLRB v. Washington Star Co.*, 235 U.S. App. D.C. 372, 732 F.2d 974, 977 (D.C. Cir. 1984) ("The present sometimes-yes, sometimes-no, sometimes-maybe policy . . . cannot, however, be squared with our obligation to preclude arbitrary and capricious management of the Board's mandate."); *Doyle v. Brock*, 821 F.2d at 786 & n.7; *Professional Airways Systems Specialists v. Federal Labor Relations Auth.*, 258 U.S. App. D.C. 14, 809 F.2d 855, 859 (D.C. Cir. 1987)" *Vargas, v. INS*, 938 F.2d 358 (2nd Cir. 1991).
- b) Was contrary to law and agency rules; because ICE is detaining petitioners in violation of a Department of Homeland Security "DHS" regulation, section sections 8 C.F.R. 241.4(b)(3) and 8 C.F.R. 241.4(k)(4)(ii)(I).

- c) Unreasonably delayed or unlawfully withheld adjudication of respondent imprisonment, See also, *Bridges v. Wixon*, 326 U.S. 135 (1945) (deportation order vacated because of noncompliance with evidentiary requirements). "Whether the Services violation of a regulation is a *per se* due process violation" cf. *Vitarelli v. Seaton*, 359 U.S. 535 (1959); *Service v. Dulles*, 354 U.S. 363 (1957). A "Violation of a regulatory requirement by a Service officer can result in evidence being excluded or proceedings invalidated where the regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation." *Matter of Garcia-Flores*, 17 I&N Dec. 325 (BIA 1980). Here, the violation of the *Accardi* doctrine constitute "a violation of the Fifth Amendment's Due Process Clause" *Gayle v. Meade*, 2020 U.S. Dist. LEXIS 76040 (S.D. Fla., April 30, 2020).
- d) (DHS executed a sua sponte modification of NTA, upon the execution of a new FARO order on August 9, 2025; ICE failed to follow its own regulations as established in sections 8 C.F.R. 287.3. The section 8 C.F.R. 287.3 provides that aliens arrested without a warrant should be advised, *inter alia*, of the reasons for their arrest and that statements made could be used against them in subsequent proceedings. Here, the DHS/Agent's affidavit used as evidence was obtained in violation of section 8 C.F.R. 287.3, Plaintiff's custody was not privileged hinged upon the conclusion that Defendant failed to comply with due process and its own regulations in its continued detention of plaintiff, which is the result of an unreasonably restrictive reading of the regulations, and an unjustifiable departure from applicable law, due to ICE failed to follow its own regulations as established in sections 8 C.F.R. 287.3, since that the petitioner was not advised, *inter alia*, of the reasons for her re-arrest and that statements made in the affidavit could be used against her in subsequent proceedings. The DHS executed a sua sponte modification of NTA, upon the execution of a new FARO order on August 9, 2025. Moreover, Respondent reasonably relied on the agency regulations promulgated for her guidance by the filing of letter directed to Respondent-defendant Mr. Garrett Ripa, District Director. The District Counsel for the District did not file a motion with the Immigration Court having administrative control of the record and did not schedule a hearing to consider whether deferral of removal should be terminated.

The *Accardi* doctrine and the Due Process Clause of the Fifth Amendment to the United States Constitution were violated, as here, "Where ICE Fails to follows its own regulations in revoking release, the detention is unlawful and the petitioner release must be ordered" *Rokhfirooz v. Laroze*, 2025 U.S. Lexis 180605 (S.D. Cal. 2025). *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (ordering the petitioner release where "based on ICE's violations of its own regulations, the court concludes the petitioner detention was unlawful"). *K.E.O v. Woosley*, 2025 U.S. Dist. LEXIS 172361 (W. D. Ky. 2025) (noting "court across the country have ordered the release of individuals" in ICE custody where ICE "violated their regulations"). *Grigorian v. Bondi*, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025) ("The

failure to provide the petitioner with an informal interview promptly after his detention or to otherwise provide meaningful opportunity to contest the reasons for revocation violates both ICE's own regulations and the Fifth Amendment Due Process Clause...This compel the petitioner's release"). Here, the petitioner is entitled to the same relief.

The change in the current policy to proceed in the respondent's case, this supports that the application in the respondent's case was arbitrary and capricious. "Patently inconsistent application of agency standards to similar situations lacks rationality and is arbitrary." *Contractors Transport Corp. v. United States*, 537 F.2d 1160, 1162 (4th Cir. 1976); *NLRB v. Washington Star Co.*, 235 U.S. App. D.C. 372, 732 F.2d 974, 977 (D.C. Cir. 1984) "The present sometimes-yes, sometimes-no, sometimes-maybe policy . . . cannot, however, be squared with our obligation to preclude arbitrary and capricious management of the Board's mandate (*Doyle v. Brock*, 821 F.2d at 786 & n.7; *Professional Airways Systems Specialists v. Federal Labor Relations Auth.*, 258 U.S. App. D.C. 14, 809 F.2d 855, 859 (D.C. Cir. 1987)" *Vargas, v. INS*, 938 F.2d 358 (2nd Cir. 1991).

WHEREFORE, This Court should find that ICE's failure to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 violated Petitioner's due process rights, See *Diaz v. Wofford*, 2025 U.S. Dist. LEXIS 173666 (S.D. Cal. 2025) (Failure to follow its own procedural regulations may constitute a due process violation" *M.S.L. v. Bostock*, 2025 U.S. LEXIS 162519 (D. Or. Aug. 21, 2025) (ICE's failure to provide Petitioner with a timely Notice of Revocation or conduct an informal interview until nearly a month after taking her into custody is a grave violation of Petitioner's due Process rights in that they deprived her both of meaningful notice and an opportunity to be heard").

PRAYER FOR RELIEF

WHEREFORE, petitioner prays that this Honorable Court to grant the following relief:

1. Issue an Order:
 - a. Declaring that petitioners continued detention is not authorized by the INA and/or violates the Fifth Amendment;
 - b. Granting this petition for a Writ of Habeas Corpus and releasing petitioner under an order of supervision;
2. Grant any other and further relief this Court may deem appropriate.

OATH

UNDER PENALTIES OF PERJURY, I, Nely Yohana Torres-Huete, declare that I have read the foregoing document, and I understand its content; this document is filed in good faith and is timely filed, I understand its content in English, has potential merit, and that facts contained in the documents are true and correct.

Date: October 21, 2025



Nely Yohana Torres-Huete

Pro se Petitioner

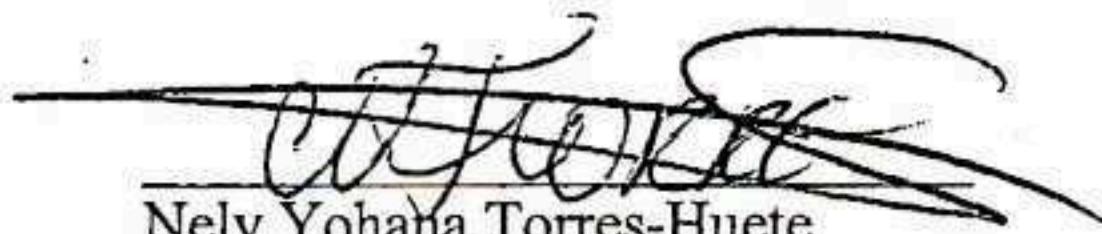
A#:

Broward Transitional Center
3900 N. Powerline Rd.
Pompano Beach Fl. 33073

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct original of the foregoing document has been furnished by U.S. Mail-postage prepaid to The Clerk of the District Court Southern District of Florida, to, Immigration and Custom Enforcement. Department of Homeland Security, Chief Counsel, Deputy Chief Counsel, Assistant Chief Counsel, Office of the principal Legal Advisor at Broward Transitional Center.3900 N. Powerline Road, Pompano Beach, Fl 33073, to the U.S. Dpt. of Justice, 950 Pennsylvania Av. NW. Office of the Attorney General, Room 5114, Washington DC. 20530-0001, and all the lawyer on record via e-filing court system, on this day October 21, 2025.

Respectfully Submitted:



Nely Yohana Torres-Huete

Pro se Petitioner

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