UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 0:25-CV-62173-JEM

VENTURA ARROYO BORJA
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
_____/

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

Petitioner, Ventura Arroyo Borja, 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. § 241.13 and 8 C.F.R. § 1208.16(e) (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).

Petitioner has been detained in the custody of the United States Immigration and Customs Enforcement ("ICE") since July 29, 2024, and is alleging unreasonable detention in violation of due process. Petitioner seeks immediate release, since that the Secretary of Homeland Security has seriously breached, and continues to do so, the implementing regulations pertaining to the detention of non-removable aliens, since that the Department ("ICE") appealed for second time the same IJ's decision. The Board could not render a decision in the matter as there is no statutory or regulatory provision that permits the Government to file more than one appeal with

regard to the same petition. Pursuant 8 C.F.R. § 103.3(c) (administrative decisions designated as precedent "are binding on all Service employees"). And in support of this Petition and Complaint, petitioner alleges as follows:

CUSTODY

1. Petitioner satisfies the "in custody" requirement for habeas review because she is currently being physically detained by ICE-ERO at the Broward Transitional Center, Pompano Beach, Florida.

JURISDICTION

. 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All the Writs Acts), 28 U.S.C. § 1331 (federal question) and the U.S. Constitution, art I § 9, cl. 2 (Suspension Clause). While the courts of appeals have jurisdiction to review removal orders directly through petitions for review, 8 U.S.C.§ 1252(a)(1), (b), the federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas corpus claims by aliens challenging "the constitutionality of the entire statutory scheme under the Fifth Amendment." [1] This case arises under the Unites States Constitution; the immigration and Nationality Act ("INA"), 8 U.S.C.§ § 1101 *et seq.*, and the Due Process Clause of the Fifth Amendment. This Court has remedial authority under its inherent authority and the All Writs Act, 28 U.S.C. § 1651.

3. Furthermore, 28 U.S.C. § 2241 authorizes district courts to grant writs of habeas corpus to individuals "in custody in violation of the Constitution or laws or treaties of the United States." Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention; as well as claims by noncitizens seeking to protect their due process rights. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 840-41 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner is currently detained by U.S. Immigration Custom Enforcement ("ICE") within this judicial district , satisfying the "custody" requirement at the time if filing See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

4. This court further has jurisdiction under Article , Section 9, Clause 2 of the U.S. Constitution, the Suspension Clause, which guarantees the availability of the writ of habeas corpus except in cases of rebellion or invasion.

5. 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).

6. Jurisdiction exist 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 may 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").

7. The claims raised herein are not barred by 8 U.S.C. § 1252, as Petitioner is not challenging the validity of the final order of removal, but rather the legality of detention in the absence of a foreseeable removal and in violation of Due Process under the Fifth Amendment. See Clark v. Martinez, 543 U.S. 371 (2005) (extending *Zadvydas* to inadmissible aliens).

VENUE

8. Venue is Proper because Petitioner's detention and removal proceedings have all occurred in the Southern District of Florida, 28 U.S.C. § 1391(e)(1)(B). Venue is also proper because the Petitioner resides in Pompano Beach, Florida, which is in the Southern District of Florida, and Petitioner is detained in ICE Custody in the Southern District of Florida, 28 U.S.C. § 1391(e)(1)(C) and 28 U.S.C. § 2241(d).

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[1] Jennings v. Rodriguez, 138 S. Ct. 830, 841 (2018). District courts also have jurisdiction to review "collateral challenges to unconstitutional practices and policies" used by Respondents in reaching their detention. *McNary v. Haitian Refugee Ctr., Inc*. 498 U.S. 479, 896 (1991).

PARTIES

9. Petitioner is a native and citizen of Mexico. Petitioner was first taken into the respondent's custody on July 29, 2024. The respondent's application for Withholding of Removal was granted by the Immigration court in Pompano Beach, Florida, on January 7, 2025 and upon remand on August 19, 2025. As such, The Department of Homeland Security (DHS) cannot deport Petitioner to Mexico.

10. 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.

11. 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.

12. 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.

FACTUAL AND PROCEDURAL HISTORY

13. Petitioner, Ventura Arroyo Borja is a native and citizen of Mexico. Petitioner was granted Withholding of Removal on January 7, 2025 by the Immigration court in Florida. The Department Appealed the IJ's decision, and the Board remanded the case for the Immigration court to conduct further factual findings. See BIA order. On August 19, 2025 The Immigration judge Stuart A. Siegel granted again the Applicant's application for withholding of removal

under INA § 241(b)(3) and ordered reinstated the petitioner's removal order to Mexico. The Department Appealed again the IJ's decision, which is actually under review in the BIA.

14. The petitioner remained in (DHS) custody continuously since July 29, 2024, and has been in the custody of ICE for more than fifteenth months since her detention 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. Petitioners appeal was reviewed by the Board of Immigration Appeals and the DHA filed for second time an appeal; in violation of DHS own regulations, since that pursuant s. 8 § C.F.R. 103.3(c) (administrative decisions designated as precedent "are binding on all Service employees"), which violated Petitioner's due process rights. Petitioner has cooperated fully with all efforts by ICE to remove petitioner from the United States.

16. To date, however, ICE has been unable to remove petitioner to Mexico 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), since that Petitioner can request a more prompt review upon a showing of a material change in circumstances since the last review. 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 executed 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 911 NW 5TH ST. Okeechobee, Fla. 34972.

20. Petitioner prevailed in her petition for Withholding of Removal. 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 her continue det ntion without a Bond Hearing. The petitioner has not been informed if ICE is trying remove her) 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 in unlawful because her detention violates the regulations set forth in 8 C.F.R. § 103.3(c). 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 and continue detention without a Bond Hearing, and 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, section 8 C.F.R. § 241.13, was 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). *Thamotar v. U.S. Att'y Gen.*, 1 F.4th 958, 967 (11th Cir. 2021). 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 section 8 C.F.R. § 241.13 and 8 C.F.R. § 103.3 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. ICE failed to comply with the required procedures, thereby violating the Petitioner's due process rights, as follows:

The regulations at 8 C.F.R. 241.13(a) clearly sets forth the scope of the procedures for detaining an alien:

> This section establishes special review procedures for those aliens who are subject to a final order of removal and are detained under the custody review procedures provided at 241.4 after the expiration of the removal period, *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 regulations at 8 CFR 241.4 (setting out procedures DHS must follow to impose continued detention). Continued detention under this provision creates the ``post-removal-period." Although the statute does not specify a time limit on how long DHS may detain an alien in the post-removal period, this Court has ``read an implicit limitation" into the statute ``in light of the Constitution's demands," and has held that an alien may be detained only for ``a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas* v. *Davis*, 533 U. S. 678, 689, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). And according to the Court, a period reasonably necessary to bring about the alien's removal from the United States is presumptively six months. *Id.*, at 701, 121 S. Ct. 2491, 150 L. Ed. 2d 653. After that point, if the alien ``provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the Government must either rebut that showing or release the alien. see also 8 CFR 241.13 (setting out the *Zadvydas* procedures). If no exception applies, an alien who is not removed within the 90-day removal period will be released subject to supervision. See 8 U. S. C. 1231(a)(3); see also 8 CFR 241.5.

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, 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

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 described 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.

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 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 afforded an initial informal interview promptly after her return to Service custody to afford the alien an opportunity to respond to the reasons for her detention which constituted "the final order of removal" now under review. Respondent's 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).

The section 8 C.F.R. 103.3(a)(1)(ii), provides:

> (ii) *Appealable decisions.*
>
> "Certain unfavorable decisions on applications, petitions, and other types of cases may be appealed. Decisions under the appellate jurisdiction of the Board of Immigration Appeals (Board) are listed in 3.1(b) of this chapter. Decisions under the appellate jurisdiction of the Associate Commissioner, Examinations, are listed in 103.1(f)(2) of this part"

8 C.F.R 3.1(c) provides that the Immigration and Naturalization Commissioner, or any other duly authorized officer of the Immigration and Naturalization Service, any Immigration Judge, or the Board of Immigration Appeals (BIA) may require certification to the BIA of cases arising under the BIA's appellate jurisdiction.

The section 8 C.F.R. 103.3(c)

> (c) *Service precedent decisions.*
>
> The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General. In addition to Attorney General and Board decisions referred to in 1003.1(g) of chapter V, designated Service decisions are to serve as precedents in all proceedings involving the same issues(s). Except as these decisions may be modified or overruled by later precedent decisions, they are binding on all Service employees in the administration of the Act, Precedent decisions must be published and made available to the public as described in 8 CFR 103.10(e).

Here, The comparative-grounds approach used by the Department ("ICE") in the second appeal filed before the BIA was arbitrary and capricious and violated the Administrative Procedure Act, 5 U.S.C.S. 706(2)(A) because a second appeal to the BIA would essentially be a motion for reconsideration of an issue the BIA already had decided. "They are binding on all Service employees in the administration of the Act" as described in 8 C.F.R. 103.3(c).

. "The comparative-grounds approach used by the BIA when it found that a resident alien was not eligible to seek relief from deportation under former 8 U.S.C.S. 1182(c) (repealed) violated 5 U.S.C.S. 706(2)(A).... use of the comparative-grounds approach was arbitrary and capricious

and violated the Administrative Procedure Act, 5 U.S.C.S. 706(2)(A)" *Judulang v. Holder*, 132 S. Ct. 476, 181 L. Ed. 2d 449 (2011).

Under the law of the case doctrine, a court is ordinarily precluded from re-examining an issue previously decided in the same case. Consolidation Coal Co. v. McMahon, 77 F.3d 898, 905 n.5 (6th Cir. 1996). Because the Panel's prior decision addressed the same issue presented in this appeal, the law of the case doctrine is applicable to this appeal. See In re George Worthington Co., 921 F.2d 626, 628-29 (6th Cir. 1990) ("The purpose of the doctrine of law of the case is to promote judicial comity, the judicial system's interest in finality, and the efficient administration of cases").

The Board was presented with the same issue twice. "The waiver doctrine 'holds that an issue that could have been but was *not* raised on appeal is forfeited and may not be revisited by the district court on remand,'" and "prevents [this court] from considering such an issue during a second appeal."

There is no statutory or regulatory provision that permits the filing of more than one appeal regarding the same petition. *See* 8 C.F.R. 103.3(a)(1)(ii).

On August 19, 2025 The Immigration judge Stuart A. Siegel granted again the Applicant's application for withholding of removal under INA § 241(b)(3). The Department Appealed again the same IJ's decision, which is actually under review in the BIA. The Board could not render a decision in the matter as there is no statutory or regulatory provision that permits the Government to file more than one appeal with regard to the same petition.

"The decision over whether the alien is to be removed from the United States is pending, 1231 deals with detention of aliens *after* removal proceedings are completed-*i.e.*, when a removal order has been issued. *See Sopo v. U.S. Atty. Gen.*, 825 F.3d 1199, 1207 (11th Cir. 2016). "Consistent with general principle that exhaustion did not require repeated presentations of issues already finally resolved, petitioner was not required to take second appeal to BIA following IJ's removal order issued on remand; BIA's determination on prior appeal that government was not collaterally estopped from denying her status as U.S. citizen sufficed to

exhaust that issue. Shepherd v Holder (2012, CA10) 678 F.3d 1171". Here, the Service failed to follow its own regulations. The Petitioner cites to a U.S. Supreme Court decision for the proposition that USCIS is required to defer to its own prior determinations. Skidmore v. Swift & Co., 323 U.S. 134 (1944).

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 perio... *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 withholding of . 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).

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.

COUNT TWO

Petitioner is in Detention, which now has lasted fifteenth months, has become unreasonably prolonged, has no foreseeable end, and therefore violates her due process rights, 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. § 241.13 and 8 C.F.R. § 103.3

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) 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. § 241.13 and 8 C.F.R. § 1208.16(e). Moreover, Respondent reasonably relied on the agency regulations promulgated for her guidance by the filing of an affidavit with the Immigration Court having administrative control of the record and the court did not schedule a hearing to consider whether deferral of removal should be terminated.

29. 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.

30. 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).

GROUND THREE

Petitioner is in Detention in Violation the petitioner's Right to Due Process Clause of the Fifth Amendment to the United States Constitution, since that was deprived her of due process because the immigration judge (IJ) failed to inform her of her right to appeal the removal order and failed to inform her of her possible eligibility for relief from deportation under former 212(c) (8 U.S.C.S. 1182(c).

31. Petitioner repeats and re-alleges the allegations set forth in paragraphs 1 through 30 as though set forth fully herein.

32. Right to Notice and Opportunity to Respond:

The regulations governing expedited removal proceedings codify, in mandatory terms, the immigration officer's duty to inform the alien of the charge against him and to allow the alien to review the sworn statement prepared in his name. See 8 C.F.R. 235.3(b)(2)(i) ("The examining immigration officer shall advise the alien of the charges against him or her . . . , and the alien shall be given an opportunity to respond to those charges in the sworn statement."); *see also id.* (requiring the examining officer to take the alien's sworn statement and to "have the alien read (or have read to him or her) the statement". Because Petitioner was protected by the Due Process Clause when he faced removal, we conclude that any failure to inform Petitioner of the charge against him and to provide him the opportunity to review the sworn statement constituted a violation of Petitioner's due process rights. *See cf. United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 882, 95 S. Ct. 2574, 45 L. Ed. 2d 607 (1975) (declining to recognize an exception to the Fourth Amendment requirement of articulable reasonable suspicion for stops near the border, even though such an exception would facilitate immigration enforcement).

33. As the IJ acknowledges, the Petitioner had no opportunity to present her case opposing termination to the Immigration Judge on the first's order of removal issued on August 1 2000. Nor did she have the benefit of a hearing in which the charge of removability and potential eligibility for relief was adjudicated as the statute requires. Section 241(a)(5) of the Act and 8 C.F.R. 241.8, if applicable to the Petitioner at all, it is within the authority of the Immigration Judge if warranted by the evidence, to grant the Petitioner permission to reenter, nunc pro tunc, in conjunction with considering the Petitioner's eligibility for relief from removal.

34. The Petitioner suffered three distinct due process violations during her 2000 expedited removal proceedings: (1) the immigration officer's failure to inform Petitioner (in violation of DHS regulations) of the charge of inadmissibility she faced and to read to her (or allow her to read) her sworn statement; (2) the officer's failure to advise Petitioner of the possibility of withdrawing her application for admission; and (3) the officer's failure to afford Petitioner the opportunity to consult with counsel. The Petitioner removal on August 1, 2000, was on illegitimate grounds because at time the Petitioner was eligible to cancellation of removal.

35. The Petitioner expedited removal order issued on August 1, 2000 was fundamentally unfair, since that she has shown that she would plausibly have been granted a discretionary form of relief from removal.

36. First, the agency's exercise of discretion for the relief being sought: According to the Board precedent "There is no authority to issue a Notice and Order of Expedited Removal (Form I-860) in these circumstances". Matter of X-K-, 23 I. & N. Dec. 731 (BIA 2005), where, " the asylum officer determined that the Petitioner demonstrated a credible fear of persecution and complied with the regulatory requirement of issuing a Notice to Appear (Form I-862) for full consideration of the Petitioner's asylum and withholding of removal claims in section 240 removal proceedings. 8 C.F.R. 1208.30(f) (2004)"

37. Second, in light of the factors relevant to the form of relief being sought, and based on the unique circumstances of the Petitioner's own case, it was plausible that the agency official considering the defendant's case would have granted relief from removal, since that the Petitioner was eligible for cancellation of removal pursuant to section 240A(b)(1)(A). "She therefore asserts that she was not compelled to depart the United States under the threat of the institution of deportation or removal proceedings,...alien's continuous physical presence continues to accrue for purposes of section 240A(b)(1)(A) of the Act following his or her departure of a duration less than that specified in section 240A(d)(2) unless, upon return to a land border port of entry, the alien was formally excluded or made subject to an order of expedited removal, was offered and accepted the opportunity to withdraw an application for admission, or was subjected to some other formal, documented process pursuant to which the alien was determined to be inadmissible to the United States. As the record does not establish that such an event occurred in

this case, the Petitioner is not ineligible for cancellation of removal pursuant to section 240A(b)(1)(A)" Matter of Guadalupe Avilez-Nava, 23 I. & N. Dec. 799 (BIA 2005). The violation caused prejudice, as follows:

38. The deportation proceedings at which the order was issued on August 1, 2000, improperly deprived her of the opportunity for judicial review.

Here, the Petitioner's underlying deportation hearing deprived her of due process because the immigration judge (IJ) failed to inform her of her right to appeal the removal order and failed to inform her of her possible eligibility for relief from deportation under former 212(c) (8 U.S.C.S. 1182(c) (repealed)) of the Immigration and Nationality Act. Also, due to these errors, defendant did not waive her right to appeal. "The appellate court determined that defendant was prejudiced by the IJ's errors because defendant had at least one plausible challenge to his removal order based on the fact that he was eligible for relief under former INA 212(c)" United States v. Ubaldo-Figueroa, 364 F.3d 1042, 1047 (9th Cir. 2004).

39. The entry of the order issued on August 1, 2000 was fundamentally unfair. 8 U.S.C.S. 1326. The Petitioner indicates repeatedly that she wishes to apply for adjustment of status. Although such an application requires the approval of an immigrant visa petition, and in the Petitioner's case, an application for a waiver under section 212(h) of the Act, the Petitioner was not advised of her apparent eligibility to seek such relief and was foreclosed from any opportunity to submit such applications as a result of the Immigration Judge's erroneous termination of her case. *See* 8 C.F.R. 240.11 (1998), because the regulations provide that she may seek such permission, nunc pro tunc, in connection with an application for adjustment of status made proceedings before the Immigration Judge. *See* 8 C.F.R. 212.2(e) (1998).

40. The Petitioner was Prejudiced by her Invalid Removal issued on August 1, 2000. The Petitioner was prejudiced because she was "removed when he should not have been," even though the Petitioner would have been otherwise removable. The Petitioner argues that three possible forms of relief were available to her to avoid a removal order: withdrawal of her application for admission, cancellation of removal or voluntary departure.

41. "According to the Petitioner, therefore asserts that she was not compelled to depart the United States under the threat of the institution of deportation or removal proceedings,...alien's continuous physical presence continues to accrue for purposes of section 240A(b)(1)(A) of the Act following his or her departure of a duration less than that specified in section 240A(d)(2) unless, upon return to a land border port of entry, the alien was formally excluded or made subject to an order of expedited removal, was offered and accepted the opportunity to withdraw an application for admission, or was subjected to some other formal, documented process pursuant to which the alien was determined to be inadmissible to the United States. As the record does not establish that such an event occurred in this case, the Petitioner is not ineligible for cancellation of removal pursuant to section 240A(b)(1)(A)" Matter of Guadalupe Aviles-Nava, 23 I. & N. Dec. 799 (BIA 2005). Also, the I.J.'s failure to advise plaintiff of her right to present evidence was prejudicial error" Molina v. Sewell, 983 F.2d 676 (5th Cir. 1993) (finding the petitioner was substantially prejudiced when he was prevented from presenting evidence to demonstrate that her departure was not meaningful).

42. Moreover, a form of relief that was granted by this court, which was appealed by the service. Thus, while the Petitioner is within this court jurisdiction, this remand ultimately could affect her status in such a way that her entry, no matter what its earlier character, is considered lawful, nunc pro tunc. Such a determination would take her outside of section 241(a)(5) of the Act under any reading of the provision, because her reentry would not be considered illegal.

43. The Petitioner indicates repeatedly that he wishes to apply for adjustment of status. Although such an application requires the approval of an immigrant visa petition, and in the Petitioner's case, an application for a waiver under section 212(h) of the Act, the Petitioner was not advised of her apparent eligibility to seek such relief and was foreclosed from any opportunity to submit such applications as a result of the Immigration Judge's erroneous termination of her case. *See* 8 C.F.R. 240.11 (1998).

44. "The Petitioner's due process rights were violated when he was placed in expedited removal proceedings because he was not inadmissible under 8 U.S.C.S. 1182(a)(7). Moreover, by the Petitioner's own admission, he did not submit an application for admission, nor did he

have a pending application on his behalf; [2]-The court found that the October 5 removal order was fundamentally unfair, such that it violated the Petitioner's due process rights and prejudiced him because he was not removable as charged under 8 U.S.C.S. 1182(a)(7)" United States v. Mayren,591 F. Supp. 3d 692; 2022 U.S. Dist. LEXIS 176814 (C.D. Cal., Mar. 16, 2022). Moreover, "[n]oncitizens who are physically, even if unlawfully, present in the United States, have access to multiple forms of immigration relief, such as voluntary departure and cancellation of removal, which require determination by an immigration judge, not simply an immigration officer as set forth in 1225(b)(1)." *Carrillo-Moreno*, 2023 U.S. Dist. LEXIS 71116, 2023 WL 306096 at *6.

45. The explicit authority of an Immigration Judge to consider requests for permission to apply for reentry, nunc pro tunc, in order to achieve an appropriate and necessary disposition of the case, is longstanding and was not disturbed by the amendments to the statute. *See Matter of Vrettakos,* 14 I. & N. Dec. 593, 599 (BIA 1973, 1974); *see also Matter of Ducret,* 15 I. & N. Dec. 620 (BIA 1976); *Matter of Tin,* 14 I. & N. Dec. 371 (R.C. 1973). From its inception, the Board has embraced the equitable concept of granting relief nunc pro tunc as appropriate and within the Attorney General's authority to extend in cases involving exclusion and deportation. In *Matter of L-,* 1 I. & N. Dec. 1, 5 (BIA, A.G. 1940), the first case decided by the Board under the delegated authority of the Attorney General, the Attorney General found that it would be capricious to conclude that ``the technical form of the proceedings" would determine the result, and instructed that consideration for relief in deportation proceedings should relate back to the time at which the Petitioner was readmitted.

46. These patterns significantly exceed the procedural barriers in comparable applicants, once a Petitioner has established statutory eligibility for a grant of withholding of removal, where she merits such relief as a matter of discretion. INA 240(c)(4) on a humanitarian basis. This Certificate is issued in support of relief under constitutional Due Process, Equal protection, and access to justice doctrine.

Ground Fourth:

Petitioner was improperly deprived of an opportunity to testify with respect to her asylum claim on remand, in direct conflict with the BIA's instructions.

47. Petitioner repeats and re-alleges the allegations contained in paragraphs 1 through 46 as though set forth fully herein.

48. ICE failed to comply with the required procedures, thereby violating the Petitioner's due process rights, as follows:

a. The defect in the proceeding rendered it fundamentally unfair. The IJ informed Petitioner that she would abandon any claims for relief if she did not file the application "on or before of July 28, 2025". There was no written order concerning the filing deadline.

Judge to Counsel:

"I had issued an order on June 6th basically giving both attorneys 45 days to submit any additional evidence and legal brief" (See T. Pag 2)

b. The defect prejudiced the outcome of the case, because the Immigration Court did not issued a Notice of Hearing and stated:

Judge to Ms. Borja:

"The Government will file their brief on August 12th. If I decide that additional evidence needs to be taken, we'll set it down for another hearing date. Otherwise, I'll decide the case again based upon the evidence of the record and arguments from both attorneys."

49. The petitioner also asserted that she was confused by the reset of her hearing and believed the reset had moved the filing deadline, since that the Government will file their brief on August 12th. The IJ set an unambiguous filing deadline on August 12th. Allowing more time to the government that the allowed to the respondent. "An ambiguous deadline to submit a relief application, among other issues, rendered a petitioner's immigration proceedings fundamentally

unfair. *Arizmendi-Medina v. Garland*, 69 F.4th 1043, 1048-49 (9th Cir. 2023) (granting petition and remanding). Benitez-Rivera v. Mchenry, 2025 U.S. App. LEXIS 1904 (5t Cir. 2025).

50. As to fundamental unfairness, the Petitioner did not waived the opportunity to have any hearing. The Petitioner was given a choice between submitting an affidavit and have a hearing, and she voluntarily chose to submit an affidavit. On August 7, 2025, the department filed a Motion to Strike the Applicant's 7/30/2025 Filing (August.7, 2025). The Court grant the Department motion to Strike because Applicant's filing was untimely" (See Exhibit A – Pag, 2). But this is an incorrect assessment of what the Florida IJ informed Petitioner. As discussed above, the Florida IJ allowed to submit an affidavit *and* scheduled a master calendar hearing for August 12, 2025. It is unreasonable for Petitioner to have understood that by submitting an affidavit prior to that scheduled hearing, she was intentionally and voluntarily waiving it. Nor did the Florida IJ confirm with Petitioner that she was intentionally and voluntarily relinquishing her right to testify by submitting a supporting affidavit.

51. The BIA also instructed the IJ to make "clear and concise" findings of fact and conclusions of law. The BIA instructed the IJ to address all inconsistencies and afford Petitioner a "further opportunity" to explain them on remand. The petitioner submitted an affidavit and supplemental documents in support of her application, attempting to explain any perceived inconsistencies. Without scheduled a hearing, the Florida IJ issued a written decision denying Petitioner's applications for asylum, and relief under the CAT, but again granted withholding of removal. Petitioner was deprived of her due process rights by not being afforded an opportunity to testify.

52. As to prejudice, the Petitioner argues that a hearing would have changed her adverse credibility determination, she expressly states that she "would have resolved any inconsistencies, discrepancies, and omissions the immigration judge believed existed." Petitioner also states that she was the only person who could have "allayed any of the immigration judge's concerns," given that she was the one persecuted in Mexico. She could have explained, for instance, about the lack of certain supporting evidence of her persecution and why, years after numerous traumatic incidents, she was unable to accurately remember all of the details of her persecution. *See Roblero-Morales v. Boente*, 677 F. App'x 849, 852 (4th Cir. 2017) (per curiam) (recognizing

that due process mandates "a *meaningful opportunity* to present a claim") (emphasis added); *see also Capric v. Ashcroft*, 355 F.3d 1075, 1087-88 (7th Cir. 2004) (concluding prejudice occurs when the due process transgression is "likely to impact the results of the proceedings").

Indeed, the BIA has even emphasized how important it is for an IJ to consider an applicant's live testimony:

> [W]e consider the full examination of an applicant to be an essential aspect of the asylum adjudication process for reasons related to fairness to the parties and to the integrity of the asylum process itself. We note that there are often significant differences (either discrepancies or meaningful omissions) between the written and oral statements in an asylum application; *these differences cannot be ascertained unless an applicant is subjected to direct examination*. Moreover, if an applicant is not fully examined under oath there would seldom be a means of detecting those unfortunate instances in which an asylum claim is fabricated. *Matter of Fefe*, 20 I&N Dec. 116, 118 (BIA 1989) (emphasis added).7 It is difficult to imagine how Petitioner's live testimony would not have likely added something probative to the record as a whole).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

53. Petitioner is being held in detention in violation of the law. She is entitled to immediate release. She has exhausted all available administrative remedies and there are no further administrative remedies available to her.

54. However ICE failed to comply with the required procedures, thereby violating the Petitioner's due process rights. In the light of the decision rendered in Grigorian v. Bondi, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025); her detention in unlawful because her detention violates the regulations set forth in 8 C.F.R. § 241.4(I) 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). She has exhausted all available administrative remedies.

55. Petitioner has exhausted her administrative remedies as required, since that "the fact that the Board of Immigration Appeals reviews immigration judges' discretionary decisions de novo does not fulfill the agency's duty under 8 C.F.R. 1208.16(e) to reconsider the discretionary asylum denial if an applicant is subsequently granted withholding of removal. Here, the agency

did not fulfill this duty" Thamotar v. United States AG, 1 F.4th 958 (11th Cir. 2021). "The applicant was entitled to a new hearing before a new Immigration Judge (IJ)… As such, the court granted the petition for review, vacated the order of removal, and remanded for the BIA to consider whether petitioner was entitled to a new hearing before a different IJ because the initial IJ's conduct-both during and following the hearing-failed to satisfy the high standard expected of IJs under Matter of Y-S-L-C-." Acevedo V. Garland, 44 F.4th 241 (4th Cir. 2022). These patterns significantly exceed the procedural barriers in comparable applicants, once a Petitioner has established statutory eligibility for a grant of withholding of removal, where she merits such relief as a matter of discretion. INA 240(c)(4) on a humanitarian basis. This Certificate is issued in support of relief under constitutional Due Process, Equal protection, and access to justice doctrine.

56. This Court should find that ICE's failure to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. §. 103.3 violated Petitioner's due process rights, due to ICE Failure to follow its own procedural regulations which constitute a due process violation. ICE's failure to provide Petitioner with a timely conduct an informal interview 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.

WHEREFORE, This Court should find that ICE's failure to comply with both 8 C.F.R. § 241.13 and 8 § C.F.R. 103.3(c) (administrative decisions designated as precedent "are binding on all Service employees"); 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, Ventura Arroyo Borja, 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: November 5, 2025

Ventura Arroyo Borja
Pro se Petitioner
A#: [redacted]
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 November 5, 2025.

Respectfully Submitted:

Ventura Arroyo Borja
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INSPECTED

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