UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:25-62244-CIV-SINGHAL

LAZARO RAUL ROJAS-CHAO,

Petitioner,

v.

FIELD OFFICE DIRECTOR,
Miami Field Office,
U.S. Immigration and Customs Enforcement,

Respondent.
_____/

FIRST AMENDED
VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

The petitioner, Lazaro Raul Rojas-Chao, submits this Verified Petition for Writ of Habeas Corpus, by and through undersigned counsel, and alleges as follows:

PARTIES

1. The petitioner, **Lazaro Raul Rojas-Chao**, is currently detained by the respondent and his or her agents, and was detained at the U.S. Immigration and Customs Enforcement (ICE) Miramar Sub-Office at 2805 SW 145 Avenue, Miramar, FL 33027 at the time of the initiation of this action. (D.E. 1, at 1 ¶ 2; D.E. 1-1.)

2. The respondent **Field Office Director**, Miami Field Office, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner.

JURISDICTION

3. This action arises under the Constitution of the United States of America, 28

U. S. C. § 2241 *et seq*. (habeas corpus), the Immigration and Nationality Act (INA), 8 U. S. C. § 1101 *et seq.*, and Title 8 of the Code of Federal Regulations.

4. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus), and § 1331 (federal question).

5. The Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause), 28 U. S. C. § 1651 (All Writs Act), 28 U. S. C. §§ 2201–02 (declaratory relief), and 28 U. S. C. § 2241 (habeas corpus).

VENUE

6. Venue is proper in this district under 28 U. S. C. § 2241 because this is the district where the "the custodian can be reached by service of process." *Rasul* v. *Bush*, 542 U. S. 466, 478–79 (2004).

7. Venue will remain proper throughout the course of this action because the Court had proper venue when this action was initiated. *Ex parte Endo*, 323 U. S. 283, 307 (1944) ("That end may be served and the decree of the court made effective if a respondent who has custody of the prisoner is within reach of the court's process even though the prisoner has been removed from the district since the suit was begun.")

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. No exhaustion is statutorily required for the petitioner's habeas claims because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo* v. *Warden*, 785 F. 3d 467, 474 (CA11 2015)."

9. Exhaustion in the habeas context is at most a "non-jurisdictional," *id*., at 475, "judicially-created . . . doctrine," *Haitian Refugee Ctr., Inc.* v. *Nelson*, 872 F.2d 1555, 1561 (CA11 1989) (*HRC* v. *Nelson*), aff'd sub nom. *McNary* v. *Haitian Refugee Ctr., Inc*., 498 U. S. 479

(1991), subject to various exceptions. See *Jaimes* v. *United States*, 168 Fed. Appx. 356, 359, n. 4 (CA11 2006) ("judicially-created exhaustion requirements may be waived by the courts for discretionary reasons") (quoting *Gallo Cattle Co.* v. *U. S. Dep't of Agric.*, 159 F. 3d 1194, 1197 (CA9 1998)); *Richardson* v. *Reno*, 162 F. 3d 1338, 1374 (CA11 1998) (*Richardson I*), cert. granted, judgment vacated on other grounds, 526 U.S. 1142 (1999) ("judicially developed exhaustion requirements might be waived for discretionary reasons by courts").[1]

10. For example, "a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim.'" *Boz* v. *United States*, 248 F. 3d 1299, 1300 (CA11 2001), abrogation on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (quoting *HRC* v. *Nelson*, 872 F. 2d, at 1561).

11. **First**, no statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner's constitutional claim seeks to remedy.

12. "Because the BIA does not have the power to decide constitutional claims—like the validity of a federal statute— . . . certain due process claims need not be administratively exhausted." *Warsame* v. *U. S. Att'y Gen.*, 796 Fed. Appx. 993, 1006 (CA11 2020); accord *HRC* v. *Nelson*, 872 F. 2d, at 1561 (exhaustion had "no bearing" where petitioner sought to make a constitutional challenge to procedures adopted by the INS); see also *Matter of Punu*, 22 I. & N. Dec. 224, 229 (BIA 1998) ("this Board cannot entertain constitutional challenges") (citations omitted).

13. The petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available

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[1] In a revised opinion following remand, the Eleventh Circuit "readopt[ed] and reaffirm[ed] the reasoning in *Richardson I* except to the extent it relied on INA § 242(g) to support its holding." *Richardson* v. *Reno*, 180 F. 3d 1311, 1313 (CA11 1999) (*Richardson II*).

administrative process. See *Boumediene* v. *Bush*, 553 U. S. 723, 783 (2008).

14. **Second**, there is no available administrative remedy available which the petitioner can pursue to present his regulatory and statutory arguments, and thus those claims are not subject to prudential exhaustion.

15. In addition to the rule that prudential exhaustion is not required " 'where the administrative remedy will not provide relief commensurate with the claim,' " *Boz*, 248 F. 3d, at 1300 (citation omitted), the same is also true where "the nature of [a] challenge [to agency] procedures is such that relief at the administrative review level would [be] unlikely," *HRC* v. *Nelson*, 872 F. 2d, at 1561. This analysis is conducted by balancing the nature of a claim against "[t]he policies advanced by allowing the administrative process to run its full course" to determine whether such policies "are not thwarted by judicial intervention in [a] case." *Haitian Refugee Ctr.* v. *Smith*, 676 F. 2d 1023, 1034 (CA5 Unit B 1982) (*HRC* v. *Smith*) (precedential under *Stein* v. *Reynolds Sec., Inc.*, 667 F. 2d 33, 34 (CA11 1982), disapproved of on other grounds by *Jean v. Nelson*, 727 F. 2d 957, 976, n. 27 (11th Cir. 1984) (en banc).

16. As noted by precedent, "the Supreme Court [has] deemed it insignificant that [an] agency . . . possesse[s] the power to change the content of its procedures and thus could . . . pretermit[t] the necessity for judicial intervention." *HRC* v. *Smith*, 676 F. 2d, at 1034 (citing *Mathews* v. *Eldridge*, 424 U. S. 319 (1976)). As "[t]he [Supreme] Court commented: 'It is unrealistic to expect that the [agency head] would consider substantial changes in the current administrative review system at the behest of a single [regulated party] raising a [legal] challenge in an adjudicatory context.' " *Id.*, (quoting *Mathews*, 424 U. S., at 330). In the immigration context, "[an] assumption that the INS or the BIA would . . . substantially revis[e] the procedures established for [a specific] program is equally naive." *Id.*

17. Here, the petitioner argues that the respondent is failing to comply with the existing regulatory and statutory framework for several reasons, and there is no established administrative process by which those claims can be presented.

FACTUAL BACKGROUND

18. The petitioner, Lazaro Raul Rojas-Chao, is a 70-year-old native and citizen of Cuba who was born on [redacted] in Havana, Cuba. **App**., Exh. C, pp. 14–17.

19. Mr. Rojas has lived in the United States since in or about the 1970s.

20. However, due to indiscretions during the 1980s involving marijuana, Mr. Rojas was convicted of controlled substance offenses.

21. On April 9, 1991, Mr. Rojas was ordered excluded by an immigration judge at the Miami Immigration Court. **App**., Exh. D, pp. 18–20.

22. On March 28, 1994, the Board of Immigration Appeals (BIA) dismissed Mr. Rojas' appeal from the order of the immigration judge. **App**., Exh. D, pp. 19.

23. Since then, Mr. Rojas was affirmatively allowed to remain in the United States by the immigration authorities under an Order of Supervision (OSUP) and an administrative stay of removal under 8 U. S. C. §§ 1231(a)(3) & (c)(2).

24. Under his Order of Supervision, Mr. Rojas has annually renewed his employment authorization with the immigration authorities, and maintains a REAL ID Act-compliant driver license with the State of Florida. **App.**, Exh. B, pp. 11–13.

25. The reason that Mr. Rojas has been affirmatively permitted to remain in the United States under an Order of Supervision is because, like with other Cuban nationals since the 1950s, there has been "no significant likelihood of removal in the reasonably foreseeable future," *Zadvydas* v. *Davis*, 533 U. S. 678, 701 (2001), for decades on end.

26. Thus, Mr. Rojas' Order of Supervision is governed by the regulations codified at 8 CFR § 241.13. And if not, his Order of Supervision would then be governed by the default regulations codified at 8 CFR § 241.5.

27. Upon information and belief, Mr. Rojas has never violated the terms of his Order of Supervision.

28. Federals regulations which afford procedural protections or "that affect substantial individual rights and obligations" are binding upon agencies without a showing of prejudice. *Morton* v. *Ruiz*, 415 U. S. 199, 232 (1974); *id.*, at 235 ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required.") (citations omitted); accord *Port of Jacksonville Mar. Ad Hoc Comm., Inc.* v. *U.S. Coast Guard*, 788 F. 2d 705, 709 (CA11 1986) ("The guideline clearly was intended to confer a procedural benefit and therefore, under the *American Farm Lines* framework, no inquiry into substantial prejudice was necessary."); *Kurapati* v. *USCIS*, 775 F. 3d 1255, 1262 (CA11 2014) (" 'Even when a decision is committed to agency discretion, a court may consider allegations that an agency failed to follow its own binding regulations.' ") (citations omitted); *Grigorian* v. *Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *9 (S.D. Fla. Sept. 9, 2025) ("It is a rather 'unremarkable proposition that an agency must abide by its own regulations.' ") (citations omitted).

29. Although the Migration Accords with Cuba were modified to begin some removals to Cuba on January 12, 2017, **App.**, Exh. N, pp. 51–57, that relationship fell apart in 2019, leading to visa sanctions against Cuba due to recalcitrance, **App.**, Exh. O, pp. 58–80.

30. Beginning earlier this year, removal flights to Cuba have started up again, but there is no publicly available information as to the details of the agreement, and which categories of

persons nominated for removal by the DHS are accepted by the Cuban authorities.

31. At the same time, upon information and belief, and as will likely have evidentiary support after a reasonable opportunity for further investigation or discovery, many Cuban nationals are being deported to third countries, mostly to Mexico.

32. Upon information and belief, and as will likely have evidentiary support after a reasonable opportunity for further investigation or discovery, removals to Cuba are currently paused due to recent damage caused by Hurricane Melissa.

33. Regarding his personal circumstances, Mr. Rojas has been married to his U. S. citizen wife Patricia Couso for the last 36 years. **App**., Exh. E, pp. 21–23.

34. They have two U. S. citizen daughters together, 35-year-old Nancy Rojas, and 33-year-old Cynthia Rojas. **App.**, Exh. F, pp. 24–26.

35. They also have two U. S. citizen grandchildren, a 10-year-old and a 2-year-old, through their daughter Cynthia. **App**., Exh. G, pp. 27–29.

36. Additionally, Mr. Rojas' 89-year-old mother Andrea Sanchez is a citizen of the United States as well. **App.**, Exh. H, pp. 30–31.

37. Mr. Rojas' mother suffer from a host of ailments, including "advanced Alzheimer's Disease with multiple co-morbidities including adult failure to thrive, cachexia, bowel-bladder incontinence, hypothyroidism, arterial hypertension, osteoarthritis, dysphagia and anorexia." **App.**, Exh. K, pp. 37–38.

38. Mr. Rojas himself suffer from heart issues and diabetes, and is prescribed the following medications by his physician: Trazodone HCL; Valsartz/HCTZ; Ezetimibe; Gabapentin; and Amlodipine. **App.**, Exh. P, pp. 81–86.

39. Additionally, through prior counsel, Mr. Rojas has filed a motion to reopen with

the Board of Immigration Appeals seeking to reopen his case to apply for protection for removal under the Convention Against Torture, as implemented through codification at 8 CFR §§ 1208.16–1208.18, among other relief.

40. Attached to his motion to reopen, Mr. Rojas submitted a statement pleading his equities and acknowledging his past errors, **App.**, Exh. I, pp. 32–33, and his wife also submitted a letter doing the same, **App.**, Exh. J, pp. 34–35. Letters of support were also submitted by members of the community, **App.**, Exh. L, pp. 39–45, along with evidence of a transportation company that Mr. Rojas owns, **App.**, Exh. M, pp. 46–50.

LEGAL BACKGROUND

I. Background Constitutional Framework for Civil Immigration Detention

41. Civil immigration detention is presumptively unconstitutional absent its authorization by a special justification enacted pursuant to an Act of Congress. *Sopo* v. *U. S. Att'y Gen.*, 825 F. 3d 1199, 1210 (CA11 2016) ("Under the Due Process Clause, civil detention is permissible only when there is a 'special justification' that 'outweighs the individual's constitutionally protected interest in avoiding physical restraint.' ") (citation omitted), vacated on mootness grounds, 890 F. 3d 952 (2018).

42. Thus, absent a statutory special justification, civil immigration detention is unlawful and unconstitutional.

43. Further, only criminal detention, following a lawful conviction by jury trial, may be utilized for punitive purposes.

44. Civil detention becomes punitive when it is being used for purposes that are not contemplated within the special statutory justification authorizing its use. See *Bell* v. *Wolfish*, 441 U. S. 520, 539 (1979) ("Thus, if a particular condition or restriction of pretrial detention is

reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.' Conversely, if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.") (citations and footnotes omitted); *In re Grand Jury Proc.*, 877 F. 2d 849, 850 (CA11 1989) ("Civil contempt is a coercive device imposed to secure compliance with a court order and if the circumstances illustrate that the sanction will not compel compliance, it becomes punishment and violates due process.") (citation omitted); *Lynch* v. *Baxley*, 744 F. 2d 1452, 1463 (CA11 1984) ("A court must decide whether the restriction is imposed to punish or whether it is simply an incident of legitimate governmental purpose. . . . Absent an express intent to punish, that determination will turn on whether the restriction appears excessive in relation to the alternative purpose assigned to it. . . . If a restriction is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court may infer that the purpose of the government action is punishment.") (citations omitted); *United States* v. *Vasquez-Escobar*, 30 F. Supp. 2d 1364, 1365 (M.D. Fla. 1998) (ruling that improper use of civil immigration detention was unconstitutionally punitive).

45. Thus, where civil immigration detention becomes punitive in its nature, it has become unlawful and unconstitutional.

46. In sum, civil immigration detention is lawful only: (1) when it is being administered in accordance with the terms of duly enacted statutes; (2) which are based upon a special justification that outweighs the deprivation of liberty at stake; and (3) it is being carried out in a manner that is consistent with and reasonably related to that special statutory justification.

II. Due process governs decisions to revoke an Order of Supervision.

47. "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas* v. *Davis*, 533 U. S. 678, 693 (2001) (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.*, at 690.

48. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *Zadvydas*, 533 U. S., at 690–92 (discussing constitutional limitations on civil detention).

49. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty,' " like the decision to revoke a non-citizen's order of supervision. *Mathews* v. *Eldridge*, 424 U. S. 319, 332 (1976). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *Id.*, at 333 (citation omitted).

III. Statute and regulation govern procedures for revoking an Order of Supervision.

50. A non-citizen with a final order of removal "who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General." 8 U. S. C. § 1231(a)(3) (titled "Supervision after 90-day period").

51. A non-citizen may only be detained past the 90-day removal period following a removal order if found to be "a risk to the community or unlikely to comply with the order of

removal" or if the order of removal was on specified grounds. § 1231(a)(6).

52. But even where initial detention past the 90-day removal period is authorized, if "removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas*, 533 U. S., at 699–700.

53. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 CFR § 241.4(l)(2); see also § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release" or removal is determined to be reasonably likely in the reasonably foreseeable future). Because "[r]egulations cannot circumvent the plain text of the statute[,]" courts question whether these regulations are ultra vires of statutory authority. See, *e.g.*, *You* v. *Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U. S. C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

54. It is clear, however, that regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay* v. *Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 CFR §§ 1.2 & 241.4(*l*)(2), and

explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). For a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *Ceesay*, 781 F. Supp. 3d, at 161 (finding a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision).

55. Upon revocation of an order of supervision, ICE must give a non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 CFR § 214.4(*l*) & 214.13(i).

IV. The *Accardi* doctrine requires agencies to follow internal rules.

56. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *United States ex rel. Accardi* v. *Shaughnessy*, 347 U. S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); accord *Morton* v. *Ruiz*, 415 U. S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

57. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla* v. *INS*, 926 F. 2d 162, 167 (CA2 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *Morton*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S.* v. *Heffner*, 420 F. 2d 809, 812 (CA4 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

58. Where a release notification issued alongside an order of supervision instructs that a non-citizen with a final order of removal will be given an opportunity to prepare for an "orderly

departure," ICE's failure to follow that instruction is an *Accardi* violation. *Ceesay*, 781 F. Supp. 3d, at 169; *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

CLAIMS FOR RELIEF

COUNT I:
Civil Immigration Detention in Violation of 8 CFR § 241.13 and Due Process

59. The allegations in paragraphs 1-58 are realleged and incorporated herein.

60. The petitioner's Order of Supervision is governed by the regulations codified at 8 CFR § 214.13.

61. Under those regulations, an Order of Supervision may only be revoked for two reasons: (1) a violation of the conditions of release under said supervision, § 214.13(i)(1); or (2) "on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," § 214.13(i)(2).

62. The petitioner has not violated the terms of his Order of Supervision.

63. Further, there was no determination by the Government of a significant likelihood of Mr. Rojas' removal in the reasonably foreseeable future to any specific country at the time of the revocation of Mr. Rojas' supervision given that: (1) upon information and belief, Cuba is not currently accepting removals following Hurricane Melissa; and (2) upon information and belief relating to ICE's practices, ICE did not secure the acceptance of removal by Cuba or any other third country prior to revoking Mr. Rojas' supervision, as ICE only tries to seek out that approval on an individualized basis after revoking supervision—which, although it may be a lawful practice under 8 CFR § 214.4(*l*), it is not lawful under § 214.13(i)(2).

64. Thus, Mr. Rojas' current detention is unlawful under binding regulations and the due process clause of the Fifth Amendment to the United States Constitution.

65. As such, the petitioner's ongoing and continued civil immigration detention is unlawful.

66. Therefore, the petitioner is entitled to a writ of habeas corpus ordering that he be immediately released from the respondent's custody.

COUNT II:
Civil Immigration Detention Without Compliance with the Regulatory Review Process

67. The allegations in paragraphs 1-58 are realleged and incorporated herein.

68. Regardless of whether the petitioner's Order of Supervision is governed by 8 CFR § 214.13, or by the default regulations at § 214.4, there is a formal review process that must be followed prior to the revocation of an Order of Supervision under both sets of regulations.

69. Under § 214.13: "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. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." § 214.13(i)(3).

70. Under § 214.4: "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." § 214.4(*l*)(1).

71. Further, "[i]f the alien is not released from custody following the informal interview

provided for in paragraph (l)(1) of this section, the HQPDU Director shall schedule the review process in the case of an alien whose previous release or parole from immigration custody pursuant to a decision of either the district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner under the procedures in this section has been or is subject to being revoked. The normal review process will commence with notification to the alien of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked. That custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." § 214.4(*l*)(3).

72. The petitioner has a right to counsel in all of those processes. § 292.5(b) ("Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative who shall be permitted to examine or cross-examine such person and witnesses, to introduce evidence, to make objections which shall be stated succinctly and entered on the record, and to submit briefs.").

73. The petitioner has not been afforded any of these processes with counsel present, and thus regulatory procedural rights and his rights to constitutional due process have been violated. *Grigorian* v. *Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *9 (S.D. Fla. Sept. 9, 2025) ("The process afforded here fails to comply with ICE's own regulations or comport with traditional notions of due process."); *id.* ("The opportunity to contest detention through an informal interview is not some ticky-tacky procedural requirement; it strikes at the heart of what due process demands.") (citation omitted).

74. As such, the petitioner's ongoing and continued civil immigration detention is unlawful.

75. Therefore, the petitioner is entitled to a writ of habeas corpus ordering that he be immediately released from the respondent's custody. *Grigorian*, 2025 WL 2604573, at *10 (S.D. Fla. Sept. 9, 2025) ("The failure to provide Petitioner with an informal interview promptly after his detention or to otherwise provide a meaningful opportunity to contest the reasons for revocation violates both ICE's own regulations and the Fifth Amendment Due Process Clause. This compels Petitioner's release. Courts around the country have concluded likewise.") (citing, *e.g.*, *Ceesay* v. *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You* v. *Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot* v. *Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu* v. *Genalo*, — F. Supp. 3d —, 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L.* v. *Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Wing Nuen Liu v. Carter*, Case No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025); *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025)).

COUNT III:
Ultra Vires Revocation of the Order of Supervision

76. The allegations in paragraphs 1-58 are realleged and incorporated herein.

77. "An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." *FEC* v. *Cruz*, 596 U. S. 289, 301 (2022) (internal quotation marks and citation omitted).

78. 8 U. S. C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no

longer authorized by [§ 1231(a)(6]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas* v. *Davis*, 533 U. S. 678, 699-700 (2001).

79. Regulations that purport to give the respondents authority to revoke an order of supervision on grounds other than those listed at 8 U. S. C. § 1231(a)(6) are ultra vires and in excess of statutory authority because "[r]egulations cannot circumvent the plain text of the statute." *You* v. *Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018).

80. Upon information and belief, the respondents' revocation of the petitioner's Order of Supervision was based on ultra vires regulations. Thus, it was in excess of statutory authority.

81. As such, the petitioner's ongoing and continued civil immigration detention is unlawful.

82. Therefore, the petitioner is entitled to a writ of habeas corpus ordering that he be immediately released from the respondent's custody.

COUNT IV:
Lack of Meaningful Opportunity to Contest Third Country Removal through Claims of Fear of Persecution or Torture, and Claims of Chain Nonrefoulement

83. The allegations in paragraphs 1-58 are realleged and incorporated herein.

84. Pursuant to § 1231(b)(3)(A), courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an immigration judge if they have a fear of persecution or torture in that country. See *Andriasian* v. *INS*, 180 F. 3d 1033, 1041 (CA9 1999) ("Failing to notify individuals who are subject to deportation that they have the right to apply . . . for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process."); *Kossov* v. *INS*, 132 F. 3d 405, 408–09 (CA7 1998) (failure to provide notice of and hearing on deportation to third country was a

"fundamental failure of due process"); see also *Hadera* v. *Gonzales*, 494 F. 3d 1154, 1159 (CA9 2007); *El Himri* v. *Ashcroft*, 378 F. 3d 932, 938 (CA9 2004); cf. *Protsenko* v. *U. S. Att'y Gen.*, 149 Fed. Appx. 947, 953 (CA11 2005) (per curiam) (failure to give "proper notice of a potential country of deportation" and a subsequent order of removal to that country may constitute a violation of due process, citing *Kossov*).

85. Subsection 1231(b)(2) sets out a 4-step process for designating countries of removal. This procedure is also addressed in *Jama* v. *ICE*, 543 U. S. 335, 338–41 (2005).

86. First, in the removal hearing, subject to § 1231(b)(3), the noncitizen is entitled to select a country of removal. § 1231(b)(2)(A); 8 CFR § 1240.10(f).

87. Second, subject to Subsection 1231(b)(3), the immigration judge or DHS may disregard a designation if the noncitizen "fails to designate a country promptly," the designated country is nonresponsive or unwilling to accept the person, or removal to the designated country would prejudice U.S. interests. § 1231(b)(2)(C).

88. Third, still subject to § 1231(b)(3), the immigration judge may designate, or DHS may select, an alternative country of removal where the person "is a subject, national, or citizen," unless such country is nonresponsive or unwilling to accept the person. § 1231(b)(2)(D).

89. Fourth, subject to § 1231(b)(3), the immigration judge may designate or DHS may select, certain specified additional alternative countries, including the country: (i) from which the noncitizen was admitted; (ii) of the noncitizen's port of departure for the United States or a foreign contiguous territory; (iii) where the noncitizen resided before entering the United States; (iv) where the noncitizen was born; (v) having sovereignty over the noncitizen's place of birth at the time of birth; or (vi) where the noncitizen's birthplace is located at the time of the removal order. § 1231(b)(2)(E)(i)-(vi).

90. Only if removal to one of these countries is "impracticable, inadvisable, or impossible" may DHS remove the noncitizen to "another country whose government will accept [the noncitizen]." § 1231(b)(2)(E)(vii). For this last step, DHS counsel must provide evidence to the immigration court that the foreign government "will accept" the individual. *El Himri*, 378 F. 3d, at 939.

91. Critically, Congress carved § 1231(b)(3) out from the designation statutes, i.e., §§ 1231(b)(1) and (b)(2). See §§ 1231(b)(1)–(2) (providing that both subsections are "subject to paragraph (3)"); *see also Jama*, 543 U. S., at 348 (noncitizens who "face persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); relief under an international agreement prohibiting torture, *see* 8 C.F.R. §§ 208.16(c)(4), 208.17(a)"); *Andriasian*, 180 F. 3d, at 1041 (IJ must provide sufficient notice and an opportunity to apply for relief from designated country of removal); *Kossov*, 132 F. 3d, at 405 (due process violation to order deportation to Russia after a claim of asylum as to Latvia where uncounseled noncitizen was provided insufficient notice of Russia possibility).

92. In 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the Departments of Justice and Homeland Security assumed that "[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)]." 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. pt. 241) (supplementary information). Furthermore, the Departments contemplated that, in cases where DHS sought removal to a country that was not designated in removal proceedings, namely, "removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv) or (b)(2)(E)(vii)]," DHS would join motions to reopen "[i]n appropriate circumstances" to allow the noncitizen to apply for

protection. *Id.*

93. For these reasons, if DHS designates a new country of removal *after* the completion of removal proceedings, the Immigration and Nationality Act (INA), the Due Process Clause, and binding international agreements obligate DHS to provide meaningful notice and an opportunity to present a fear-based claim *prior to* carrying out the deportation.

94. Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal to permit the filing of a motion to reopen removal proceedings if the person claims a fear of removal to the third country. See *Andriasian*, 180 F. 3d, at 1041; *Aden* v. *Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash 2019) ("A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation."); *Sadychov* v. *Holder*, 565 Fed. Appx. 648, 651 (CA9 2014) ("However, should circumstances change such that Azerbaijan is the designated country of removal, the agency must provide Sadychov with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from Azerbaijan.").

95. Likewise, an opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened. See *Aden*, 409 F. Supp. 3d, at 1010 (merely giving petitioner an opportunity to file a discretionary motion to reopen "is not an adequate substitute for the process that is due in these circumstances;" ordering reopening); *Dzyuba* v. *Mukasey*, 540 F. 3d 955, 957 (CA9 2008) (remanding to BIA to determinate whether designation is appropriate).

96. Alternatively, a reasonable fear interview before an asylum officer must be provided, along with the right to an immigration judge review, prior to removal to a third alternate country. *Cruz-Medina* v. *Noem*, — F. Supp. 3d —, No. 25-CV-1768-ABA, 2025 WL 2841488, at *9 (D. Md. Oct. 7, 2025) ("Accordingly, Petitioner has shown a strong likelihood of success on the merits of his claim that until and unless an immigration judge concurs with the asylum officer's determination that Petitioner lacks a reasonable fear of persecution or torture in Mexico, due process precludes his removal to Mexico."); *Sagastizado* v. *Noem*, — F. Supp. 3d —, No. 5:25-CV-00104, 2025 WL 2957002, at *16 (S.D. Tex. Oct. 2, 2025) ("For the foregoing reasons, this Court hereby ORDERS that Respondents and all of their officers, agents, servants, employees, attorneys, successors, assigns, and persons acting in concert or participation with them are hereby ENJOINED from removing Petitioner from the continental United States until seven (7) days after an Immigration Judge reviews Petitioner's denied Reasonable Fear Interview, and only if the Immigration Judge affirms such denial.")

97. Upon information and belief, ICE, as a matter of practice, does not voluntarily afford this process, and is not currently affording this process to the petitioner.

98. As such, the petitioner's ongoing and continued civil immigration detention is unlawful.

99. Therefore, the petitioner is entitled to a writ of habeas corpus ordering that he be immediately released from the respondent's custody unless he is afforded the full reasonable fear and withholding-only proceeding process used in reinstatement of removal cases with regard to any third country of removal that ICE wishes to designate.

PRAYER FOR RELIEF

WHEREFORE, the petitioner prays that the Court grant the following relief:

(a) Assume jurisdiction over this matter;

(b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;

(c) Order the respondents to show cause why the writ should not be granted within three days, and allowing the petitioner three days to file a traverse, and, if necessary, set a hearing on this petition within five days of the submission of the return, pursuant to 28 U. S. C. § 2243;

(d) Order the respondents to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the petitioner remains in the respondents' custody;

(e) Grant, with respect to Counts I through III, the petitioner a writ of habeas corpus ordering his immediate release from the respondents' custody because that custody is unlawful;

(f) Grant, with respect to Count IV, the petitioner a writ of habeas corpus ordering his immediate release from the respondents' custody unless he is afforded the full reasonable fear and withholding-only proceeding process used in reinstatement of removal cases with regard to any third country of removal that ICE wishes to designate;

(g) Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and

(h) Grant any other and further relief that the Court deems just and proper.

Dated: November 7, 2025

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VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Mark A. Prada, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney in these proceedings. Based upon a review of the records available to me, discussions with the petitioner's other attorneys, and/or discussions with the petitioner's family, I hereby verify that the statements made in the foregoing First Amended Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 7, 2025

s/ Mark A. Prada
Fla. Bar No. 91997