

Immigration and Customs Enforcement's (ICE) unlawful revocation of his long-standing Order of Supervision (OSUP). On December 5, 2025, during a routine ICE check-in, and after approximately a decade of full and consistent compliance with every condition of supervision, ICE abruptly revoked Gomez-Alcina's OSUP without prior notice, without a meaningful opportunity to be heard, and without any individualized findings that he posed a danger to the community or a risk of flight, as required by statute and regulation. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. §§ 241.4(l), 241.13(i). Gomez-Alcina was re-detained and transferred to the Florida Soft Side South ("Alligator Alcatraz") in Ochopee, Florida, where he is currently detained. Based on information currently available to Petitioner, the Oakdale Immigration Court may have granted Petitioner protection from removal on August 9, 1988, which, if confirmed, would bar his removal to Cuba as a matter of law. ICE has not alleged that Gomez-Alcina's removal is reasonably foreseeable. Nor has ICE identified any third country willing to accept him, provided notice of an intended third-country removal, or afforded him an opportunity to seek protection with respect to any such country, as required by law. Instead, ICE has resorted to detention untethered to any lawful removal process. Compounding these constitutional and statutory violations, Gomez-Alcina is a seventy-two-year-old man with serious chronic medical conditions, including insulin-dependent Type 2 diabetes requiring injections three times daily and coronary artery disease, and his

detention has already resulted in hospitalization, placing his life and health in imminent jeopardy and causing irreparable harm. Because ICE's revocation of the OSUP is final agency action that must comply with due process and governing regulations, and because agencies must follow their own rules under *Accardi*.

Based on the foregoing, Gomez-Alcina respectfully petitions this Court to issue a writ of habeas corpus ordering his immediate release from custody under appropriate conditions of supervision. After a decade of full compliance with all conditions of his supervision, his continued detention serves no legitimate governmental purpose, endangers his health, and offends fundamental notions of fairness and due process.

JURISDICTION

1. This action arises under the United States Constitution and the Immigration and Nationality Act of 1952 ("INA"), 8 U.S.C. § 1101 et seq.

2. This Court has subject matter jurisdiction over this petition for writ of habeas corpus under 28 U.S.C. § 2241 (habeas corpus authority); U.S. Const. art. 1, § 9, cl. 2. (Suspension Clause), 28 U.S.C. § 1331 (federal question); U.S. Const. amend. V (the Due Process Clause of the U.S. Constitution).

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

4. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging both the lawfulness and the constitutionality of their detention. See, *Demore v. Kim*, 538 U.S. 510, 516-517 (2003) (recognizing jurisdiction to grant habeas corpus relief to noncitizens challenging their detention); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

VENUE

5. Venue is proper because Petitioner is currently in the custody of ICE at the Florida Soft Side South ("Alligator Alcatraz") detention facility located in Ochopee, Florida, which is within the jurisdiction of this District. **See, Exhibit A, DHS/ICE Online Detainee Locator information.**

6. Venue is proper in this District under 28 U.S.C. § 1391(e), because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rising to his claims occurred in this district, and no real property is involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

7. The Court must grant the petition for writ of habeas corpus or issue an order to show case (OSC) to the respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

8. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noa*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

9. Petitioner **Antonio Elpidio Gomez-Alcina** is a 72-year-old native and citizen of Cuba, who has resided in the United States since his entry on or about 1980, approximately 45 years ago. Prior to Respondent's revocation of Petitioner's Order of Supervision and detention on or about December 5, 2025, he was residing in Miami Lakes, Florida. Petitioner is currently in the physical and legal custody of Respondents at the Florida Soft Side South ("Alligator Alcatraz") detention facility located in Ochopee, Florida

10. Respondent **Kristi Noem** is the Secretary of the United States Department of Homeland Security ("DHS"). In that capacity, she exercises ultimate control and supervisory authority over all components and personnel of DHS, including U.S. Immigration and Customs Enforcement ("ICE"). She is responsible for the administration and enforcement of the nation's immigration laws pursuant to 8 U.S.C. § 1103(a). Accordingly, she is the Petitioner's ultimate legal custodian, as Petitioner's detention is maintained under DHS authority.

11. Respondent **Pamela Bondi** is the Attorney General of the United States. In that capacity, she administers the Department of Justice ("DOJ"), including the Executive Office for Immigration Review ("EOIR"), the Board of Immigration Appeals ("BIA"), and the Immigration Courts. She is responsible for the administration and enforcement of the nation's immigration laws pursuant to 8 U.S.C. § 1103(g). Accordingly, she is one of Petitioner's legal custodians.


12. Respondent **Todd M. Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), a component agency within DHS. In that capacity, he exercises authority over ICE operations nationwide, including enforcement, detention, and removal functions. Accordingly, he is one of Petitioner's legal custodians, as he has direct oversight of the agency responsible for Petitioner's custody.

13. Respondent **Garret Ripa** is the Miami Field Office Director for U.S. Immigration and Customs Enforcement ("ICE"), which has jurisdiction over the Florida Soft Side South ("Alligator Alcatraz") detention facility where Petitioner is detained. In that capacity, he exercises day-to-day supervisory authority over custody determinations and the conditions of detention within his jurisdiction. Accordingly, he is a proper Respondent as one of Petitioner's legal custodians.

14. Respondent **Matthew Mordant** is sued in his official capacity as the Warden of the Florida Soft Side South ("Alligator Alcatraz") detention facility, where Petitioner is currently detained.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

15. Petitioner reserves the right to amend and supplement this Statement of Facts upon receipt of his complete immigration and agency files from his pending Freedom of Information Act (FOIA) requests before USCIS and EOIR.

16. Petitioner Antonio Elpidio Gomez-Alcina ("Gomez-Alcina") is a native and citizen of Cuba. He was born on , and is currently seventy-two years old.

17. Gomez-Alcina has lived in the United States for more than forty-five years, since his arrival in 1980 during the Mariel Boatlift.

18. Based on the information currently available to Petitioner, on or about August 9, 1988, the Oakdale Immigration Court, appears to have granted Gomez-Alcina protection from removal. However, the precise form of relief granted, whether withholding of removal under INA § 241(b)(3) or protection under the Convention Against Torture, cannot be confirmed at this time. Petitioner has submitted a FOIA request seeking the complete record of proceedings. Upon receipt of those records, Petitioner will supplement or amend this petition as necessary to accurately reflect the form of relief granted.

19. On January 13, 1999, Gomez-Alcina was convicted in Ohio of involuntary manslaughter, in violation of Ohio Rev. Code § under Ohio RC 2903.03, a felony of the first degree, and felonious assault, in violation of Ohio Rev. Code § 2903.11, a felony of the second degree. He was committed to the custody of the Ohio Department of Rehabilitation and Corrections and sentenced to a term of ten years imprisonment for involuntary manslaughter and six years for imprisonment for felonious assault, to be served consecutively.

20. Following his release from state custody, Gomez-Alcina was released by ICE under and Order of Supervision (OSUP) issued on October 20, 2015. *See, Exhibit B, ICE/ERO Form I-220B, Order of Supervision.* Since that time, he has lived lawfully in the community pursuant to OSUP and has remained in full compliance with all conditions of his supervision, including annual reporting to the ICE ERO office. *Id.*

21. Gomez-Alcina successfully completed all conditions of his Ohio sentence. In the twenty-six years since his conviction, and for more than ten years since his release from custody, he has had no further contact with law enforcement, demonstrating sustained rehabilitation and stability.

22. On April 14, 2025, Gomez-Alcina reported to the ISAP ("Intensive Supervision Appearance Program") Miami Office and was not detained. He was ordered to appear in person every eight weeks and was enrolled in weekly telephonic

reporting via SmartLINK. *See, Exhibit C, ISAP Individual Service Plan.* As of that date, ICE did not indicate any intent to revoke his Order of Supervision or identify any departure plan determined, nor was any such plan communicated to Petitioner. *Id.* Gomez-Alcina complied with all new conditions imposed.

23. On December 5, 2025, Gomez-Alcina appeared for his routine ICE check-in. At that time, ICE abruptly and without prior notice revoked his long-standing Order of Supervision and took him into custody, despite more than ten years of full compliance, substantial family and community ties, and serious chronic health conditions.

24. Gomez-Alcina was transferred to the Florida Soft Side South (“Alligator Alcatraz”) in Ochopee, Florida, where he remains detained.

25. Gomez-Alcina has extensive and longstanding family and community ties in the United States, including his long-time partner, his daughter, son-in-law, grandchildren, and nieces and nephews.

26. ICE has not alleged that Gomez-Alcina poses any danger to the community or risk of flight, nor has it demonstrated that his removal to Cuba, which has been impossible since 1988, is reasonably foreseeable. Moreover, is available information that the Oakdale Immigration Court may have granted Gomez-Alcina protection from removal in 1988, his removal to Cuba would be unlawful as a matter of law. Nor has ICE identified any third country willing to accept him or initiated

the legally required process for third-country removal, including providing notice and an opportunity to seek protection with respect to any such country.

27. The revocation of Gomez-Alcina's Order of Supervision and his resulting re-detention are arbitrary, punitive, and unlawful under the Immigration and Nationality Act (INA), 8 U.S.C. § 1231(a)(6), and violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution. His continued and unnecessary detention, despite the absence of any likelihood of removal and notwithstanding his serious medical vulnerabilities, directly contravenes the constitutional and statutory principles articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and its progeny, which prohibit indefinite detention absent a significant likelihood of removal in the reasonably foreseeable future.

28. Gomez-Alcina's detention places his life and health in imminent jeopardy and constitutes irreparable harm. He suffers from multiple serious, chronic medical conditions, including insulin-dependent Type 2 diabetes mellitus requiring injections three times daily, multilevel degenerative spinal disease, chronic neck and low-back pain; hyperlipidemia, vision and memory impairment; and recurrent mild depression. Interruption, delay, or mismanagement of his medical care poses a substantial risk of acute complications. Detaining an elderly individual with serious medical conditions, absent any showing of danger or flight risk, renders Gomez-Alcina's confinement excessive in relation to any legitimate governmental purpose.

Within days of his detention, Gomez-Alcina was hospitalized for approximately three days due to medical complications, underscoring the immediate and serious risks posed by his continued confinement, and was released from the hospital and returned to detention on approximately December 9, 2025.

29. Given these facts, Gomez-Alcina's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), and the constitutional principles articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Despite a decade of full compliance under supervision, his advanced age, medical vulnerability, and deep community ties, ICE has arbitrarily revoked his Order of Supervision and re-detained him without justification. His ongoing detention serves no legitimate governmental purpose, contravenes due process, and warrants immediate judicial intervention.

30. This petition followed.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

31. The Supreme Court has recognized that exhaustion is not required where a plaintiff "may suffer irreparable harm if unable to secure immediate judicial consideration of her claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). This is the case here, where Gomez-Alcina raises constitutional and statutory claims that the agency cannot redress, and where each day that passes is one in which he is being unconstitutionally deprived of his liberty.

32. Even if the Court were to consider requiring exhaustion as a prudential matter, further action with the agency is unnecessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *McCarthy v. Madigan*, 503 U.S. 144, 147-48 (1992) (holding that an administrative remedy is inadequate when it “lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute” or where the “challenge is to the adequacy of the agency procedure itself”).

33. Petitioner is subject to an administratively final order of removal entered on August 9, 1988, for which no further administrative remedies remain available. Accordingly, habeas corpus is the proper and appropriate vehicle to vindicate his constitutional, statutory, and regulatory rights and to secure relief from his unlawful detention and restore his liberty.

LEGAL FRAMEWORK

DUE PROCESS GOVERNS DECISIONS TO REVOKE AN ORDER OF SUPERVISION

34. "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 [the Due Process] Clause [of the Fifth Amendment] protects." *Id.* at 690 (2001). Indefinite detention, in

particular, raises a "serious constitutional problem" and violates the Due Process Clause. *Id.* at 689-90.

35. The Due Process Clause requires that the deprivation of Petitioner's liberty must be narrowly tailored to serve a compelling government interest. *See, Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest").

36. "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 [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333.

STATUTE AND REGULATION GOVERN PROCEDURES FOR REVOKING AN ORDER OF SUPERVISION

37. Section 1231 of Title 8 of the U.S. Code governs the detention and removal of individuals who have been ordered removed.

38. Once a noncitizen is subject to a legally final and executable order of removal, the government is required to remove them "within a period of 90 days . . . referred to as the 'removal period.'" 8 U.S.C. § 1231(a)(1)(A); *see also, id.* §

1231(a)(1)(B) (listing the circumstances that trigger the beginning of the removal period). Detention is mandatory during the removal period. *See id.* § 1231(a)(2).

39. A noncitizen 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").

40. A noncitizen may only be detained beyond the 90-day removal period following the entry of a final order of removal if they are found to pose a "risk to the community or are unlikely to comply with the order of removal", or if the removal order was issued on specified statutory grounds. *See*, 8 U.S.C. § 1231(a)(6). Detention beyond the removal period is therefore permissible only under narrowly defined circumstances. *See id.*, 8 C.F.R. § 241.4 (authorizing continued detention only when DHS determines that the noncitizen presents a danger to the community or a flight risk).

41. The government's post-removal period discretionary detention authority under 8 U.S.C. § 1231(a)(6) is strictly limited by statute and the Constitution. In *Zadvydas v. Davis*, the Supreme Court construed Section 1231(a)(6) to contain an "implicit 'reasonable time' limitation" in light of the "serious constitutional problem" raised by potentially indefinite civil detention. *See, Zadvydas v. Davis*, 533 U.S. at 682, 690. Even where initial detention beyond the

90-day removal period is permissible, 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. (emphasis added)

42. 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 C.F.R. § 241.4(1)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release"). 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).

43. 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 C.F.R. §§ 1.2, 241.4(1)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intends to revoke an order of supervision, they must first make findings that “revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. § 241.4(1)(2). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 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).

44. 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 to the reasons for revocation stated in the notification. *See*, 8 C.F.R. § 241.4(1)(1).

THE APA SETS MINIMUM STANDARDS FOR FINAL AGENCY ACTION

45. The Administrative Procedure Act authorizes judicial review of final agency action. *See*, 5 U.S.C. § 704.

46. Final agency actions are those (1) that “mark the consummation of the agency’s decision-making process” and (2) “by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997).

47. ICE’s revocation of an Order of Supervision is a final agency action subject to this Court’s review.

48. The revocation here marked the consummation of ICE’s decision-making process regarding Petitioner’s custody.

49. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Petitioner in violation of her rights under the Constitution, statute, and regulation.

THE ACCARDI DOCTRINE REQUIRES AGENCIES TO FOLLOW INTERNAL RULES

50. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See, 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); *see also*, *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.”).

51. *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *See*, *Morton v. Ruiz*, 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 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

52. 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. *See*, *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *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

CLAIM ONE

**VIOLATION OF THE SUBSTANTIVE DUE PROCESS PROTECTIONS
OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION**

53. Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

54. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical restraint "lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas*, 533 U.S. at 690.

55. Petitioner's detention is governed by the post-removal order detention statute, 8 U.S.C. § 1231(a), because he has been subject to a final order of removal since August 9, 1988.

56. The U.S. government did not remove Petitioner during the 90-day removal period, and he was subsequently released under an Order of Supervision pursuant to 8 U.S.C. § 1231(a)(3). In issuing the Order of Supervision, ICE necessarily determined that Petitioner poses neither a danger to the community nor a flight risk.

57. Petitioner remained under an Order of Supervision for approximately ten years, during which he fully and consistently complied with every condition imposed. Notwithstanding this unbroken record of compliance, Respondents revoked the Order of Supervision and took Petitioner into custody at his December 5, 2025, ICE check-in, without any change in circumstances or individualized justification to warrant such action.

58. To comply with the Due Process Clause, detention must always bear "some reasonable relation to the purpose for which the individual was committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 241 (5th Cir. 2018)

59. Consistent with due process, the only legitimate purposes of federal civil immigration detention are to prevent flight risk, ensure a noncitizen's appearance for a legal hearing adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690-91.

60. The Due Process Clause requires that any deprivation of liberty be narrowly tailored to serve a compelling government interest. *See, Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state

interest"); *Demore*, 538 U.S. at 528 (applying a less rigorous standard for "deportable [noncitizens]").

61. Here, Gomez-Alcina's re-detention bears no reasonable relationship to any legitimate purpose. Gomez-Alcina lived under an Order of Supervision for ten years and has consistently complied with every condition imposed. During that time, the government was unable to effectuate his removal to Cuba. Gomez-Alcina has had no further encounters with law enforcement, has maintained ongoing medical treatment for his serious health conditions, and has substantial family and community ties in the United States. His lengthy and unbroken history of compliance conclusively demonstrates that he poses neither a flight risk nor a danger to public safety. Accordingly, Gomez-Alcina's continued detention is arbitrary and unsupported by the statutory purposes of civil immigration detention, namely, preventing danger to the community or risk of flight prior to removal. Detention is constitutional only when it serves a lawful and legitimate purpose, and here, it serves none.

62. Because Respondents had no legitimate, non-punitive objective in revoking Petitioner's Order of Supervision, Petitioner's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution and is causing Gomez-Alcina substantial and irreparable harm.

CLAIM TWO

**VIOLATION OF THE PROCEDURAL DUE PROCESS PROTECTIONS
OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION**

63. Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

64. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), instructs courts to balance three factors in determining whether procedural due process has been satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government’s interest, including fiscal and administrative burdens that additional or substitute procedural requirements would entail.

65. The first factor, the private interest at issue, strongly favors Petitioner. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690.

66. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also weighs heavily in Petitioner's favor. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that an Order of Supervision can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when

doing so, including giving notice and an opportunity to be heard. Respondents ignored these statutory and regulatory requirements, rendering the risk of erroneous deprivation of liberty not merely high but inevitable. Requiring Respondents to provide notice and an opportunity to respond before revoking an Order of Supervision is of great value, because it reduces the risk of wrongful detention, particularly for individuals like Petitioner, who are neither dangerous nor flight risks.

67. The third factor, the government's interest, likewise favors Petitioner. When the government disregards the legal requirements of notice and an opportunity to be heard before revoking an Order of Supervision, it expends scarce financial and administrative resources on the unnecessary detention of individuals who are neither flight risks nor dangers to the community. Such arbitrary action undermines, rather than advances, the efficiency and integrity of the immigration system. Moreover, by forcing detainees to seek judicial intervention through habeas corpus proceedings, the government further burdens itself with avoidable litigation. Ensuring notice and a meaningful opportunity to respond prior to revocation would, in contrast, conserve governmental resources and promote lawful and efficient enforcement.

68. For these reasons, revoking Petitioner's Order of Supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

CLAIM THREE

**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,
5 U.S.C. § 706(2)(A), (B)**

CONTRARY TO LAW AND CONSTITUTIONAL RIGHT

69. Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

70. The Administrative Procedure Act ("APA") provides that a reviewing court shall "hold unlawful and set aside agency action" that is ". . . otherwise not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity". 5 U.S.C. § 706(2)(A), (B).

71. The Supreme Court has clarified that the APA's reference to "law" in the phrase "not in accordance with law," "means, of course, *any* law, and not merely those laws that the agency itself is charged with administering." *See, FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

72. Respondents' revocation of Petitioner's Order of Supervision was both unconstitutional and unlawful. As detailed in the Statutory Framework above, the revocation violated the Fifth Amendment Due Process Clause and contravened the Immigration and Nationality Act ("INA") and its implementing regulations which strictly define who may lawfully revoke an Order of Supervision and under what circumstances.

73. Petitioner's Order of Supervision was not revoked by the ICE Executive Associate Director. The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director.

74. Before revoking the order, Respondents failed to make findings that Petitioner was either a danger to the community or unlikely to comply with a removal order, as required by statute.

75. Even assuming the validity of regulations purporting to provide additional justifications for revocation of an Order of Supervision, Respondents did not comply with them. Respondents could not make findings that Petitioner's conduct indicated release would no longer be appropriate or that Petitioner violated any condition of release, because he had not. Nor could Respondents make findings that the purposes of release had been served or that it was appropriate to enforce a removal order, because it had yet to make final arrangements for Petitioner's removal.

76. Respondents also failed to provide Petitioner with notice of the reasons for revocation and an opportunity to be heard prior to his re-detention.

77. For these reasons, the revocation of Petitioner's Order of Supervision was contrary to the agency's constitutional power and not in accordance with the

INA and implementing regulations. Accordingly, it must be held unlawful and set aside.

CLAIM FOUR

**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,
5 U.S.C. § 706(2)(A)**

ARBITRARY AND CAPRICIOUS

78. Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

79. Under the Administrative Procedure Act ("APA"), a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

80. An agency action is arbitrary and capricious when it "runs counter to the evidence before the agency". *See, Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

81. Respondents' revocation of Petitioner's Order of Supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as set forth above.

82. Respondents' decision to revoke Petitioner's Order of Supervision ran directly counter to the evidence before the agency that Petitioner would comply with a demand to appear for removal without detention. Petitioner has never violated a

condition of his Order of Supervision, and no new facts or changed circumstances suggest he would fail to comply with a removal demand if issued.

83. Respondents failed to consider the serious constitutional concerns raised by revoking Petitioner's Order of Supervision without notice and an opportunity to respond.

84. Respondents failed to consider the substantial fiscal and administrative burden to the agency caused by detaining a person who poses no risk of flight or danger to the community and for whom the agency lacks the travel documents necessary to effectuate removal. Such unnecessary detention drains limited resources and diverts them from legitimate enforcement priorities.

85. Respondents failed to consider reasonable and less burdensome alternatives that were available, such as continuing release under the Order of Supervision and setting a future time and date to appear for removal. This alternative would have advanced the government's interest in effectuating a removal order without resorting to the Petitioner's unlawful detention.

86. For these and other reasons, Respondents' revocation of Petitioner's Order of Supervision is arbitrary, capricious, and not in accordance with law, and should be held unlawful and set aside under 5 U.S.C. § 706(2)(A).

CLAIM FIVE

**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,
5 U.S.C. § 706(2)(C)**

IN EXCESS OF STATUTORY AUTHORITY

87. Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

88. Under the Administrative Procedures Act ("APA"), a court shall “hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

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

90. 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.

91. Regulations that purport to give Respondents authority to revoke an Order of Supervision on grounds other than those listed § 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)

92. Respondents’ revocation of Petitioner’s Order of Supervision relied on regulations that are ultra vires. Accordingly, the revocation was in excess of statutory authority and must be held unlawful and set aside.

CLAIM SIX

VIOLATION OF THE ACCARDI DOCTRINE

93. Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

94. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See, United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (“If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing”).

95. Respondents violated agency regulations governing who and upon what findings it may properly revoke an Order of Supervision when it revoked Petitioner’s order. “As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release” and Petitioner “is entitled to release on that basis alone.”

Ceesay v. Kurzdorfer, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE Order of Supervision was ordered by someone without regulatory authority to do so).

96. Respondents also violated agency instructions in Petitioner's release notification to give an opportunity to prepare for an orderly departure when they revoked Petitioner's Order of Supervision without advance notice.

97. Under *Accardi*, Respondents' revocation of the Order of Supervision and decision to ignore instructions in the release notification should be set aside for violating agency procedures, rules, or instructions.

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PRAYER FOR RELIEF

WHEREFORE, Petitioner, Mr. Antonio Elpidio Gomez-Alcina, respectfully requests that this Honorable Court grant the following relief.

- A. Exercise jurisdiction over this matter;
- B. Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, ordering Respondents to show cause why this Petition should not be granted within three days;
- C. Enjoin Petitioner's removal from the United States and transfer outside the Middle District of Florida during the pendency of this action;
- D. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;
- E. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from ICE custody;
- F. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA) and on any other basis justified under law; and

G. Grant such other and further relief this Court deems just and proper.

Dated: December 15, 2025

Respectfully submitted,

/s/ Veronica Semino

Veronica Semino, Esq.†

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remotely from Texas.

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner Antonio Elpidio Gomez-Alcina and submit this verification on his behalf. I hereby verify under penalty of perjury that the factual statements made in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 15, 2025

Respectfully submitted,

/s/ Veronica Semino
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