

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

SILVESTRE HERNANDEZ HERNANDEZ,

Petitioner,

v.

**WARDEN, PORT ISABEL SERVICE
DETENTION CENTER;**

KRISTI NOEM, Secretary of the
Department of Homeland Security;

PAMELA BONDI, Attorney General of
The United States;

TODD M. LYONS, Acting Director of
U.S. Immigration and Customs Enforcement;

MIGUEL VERGARA, Harlingen Field
Office Director, U.S. Immigration and
Customs Enforcement.

Respondents.

CASE No.: 1:25-cv-337

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

INTRODUCTION

This is a habeas corpus action challenging U.S. Immigration and Customs Enforcement’s (ICE) improper revocation of Petitioner Silvestre Hernandez

Hernandez's ("Hernandez" or "Petitioner") long-standing Order of Supervision and his resulting re-detention, despite continuous compliance since his release under supervision on September 11, 2018, and while he remained the beneficiary of active deferred action. Hernandez is a thirty-five-year-old native and citizen of Mexico who entered the United States as a minor and has resided in this country for nearly two decades. Since September 11, 2018, the Department of Homeland Security (DHS) repeatedly exercised discretion in his favor, determining that detention and removal were neither appropriate nor necessary.

Hernandez has been the beneficiary of multiple grants of deferred action, including Deferred Action for Childhood Arrivals (DACA) and, more recently, deferred action granted in connection with his pending U-visa petition. In February 2019, USCIS formally determined that the evidence submitted with Hernandez's Form I-918 established his eligibility for U nonimmigrant status and placed him on the statutory waitlist solely due to visa unavailability, granting him deferred action pursuant to regulation. That deferred action remains in effect today, as confirmed by his valid employment authorization issued under category (c)(14) through February 16, 2026.

Consistent with DHS's discretionary determinations, ICE released Hernandez from custody on September 11, 2018, under an Order of Supervision (OSUP). From that date until December 8, 2025, Hernandez lived openly in the community,

reported annually as directed, worked lawfully, and fully complied with every condition imposed by ICE. ICE never alleged that Hernandez posed a danger to the community or a risk of flight.

Nevertheless, on December 8, 2025, during a routine check-in and without prior notice, ICE revoked Hernandez's Order of Supervision and took him into custody, notwithstanding his active deferred action status and despite the absence of any removal or departure plan. In doing so, ICE failed to make any individualized findings that Hernandez 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). ICE's action contravenes its own regulations, which prohibit revocation of supervision absent changed circumstances and require notice and procedural safeguards.

Following his re-detention, Hernandez was transferred through multiple ICE facilities and is currently detained at the Port Isabel Detention Center in Los Fresnos, Texas.

Hernandez's continued detention serves no legitimate removal-related purpose and is wholly inconsistent with DHS's repeated determinations that he should remain in the community. Under these circumstances, his detention is arbitrary, punitive, and unlawful under the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), and violates the Due Process Clause of the Fifth Amendment.

As the Supreme Court made clear in *Zadvydas v. Davis*, 533 U.S. 678, 690–701 (2001), prolonged post-order detention is impermissible where removal is not reasonably foreseeable as a practical matter.

Based on the foregoing, Hernandez respectfully petitions this Court to issue a writ of habeas corpus ordering his immediate release from custody under appropriate conditions of supervision. After over seven years of full compliance with all conditions of his supervision and while remaining the beneficiary of active deferred action, his continued detention serves no legitimate governmental purpose 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 Port Isabel Detention Center detention facility located in Los Fresnos, Texas, which is within the jurisdiction of this District.

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 **Silvestre Hernandez Hernandez** is a thirty-five-year-old native and citizen of Mexico who entered the United States on or about January 20, 2006, when he was fifteen years old. Since his release from immigration custody on September 11, 2018, pursuant to an Order of Supervision (OSUP), Hernandez has resided in the community and has remained in full compliance with all conditions imposed by ICE. Hernandez is also the beneficiary of active deferred action granted by U.S. Citizenship and Immigration Services on February 11, 2019. Hernandez is currently in the physical custody of ICE and detained at the Port Isabel Detention Center in Los Fresnos, Texas.

10. Respondent **Warden** is sued in his official capacity as the Warden of the Port Isabel Service Detention Facility, where Petitioner is currently detained.

11. 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.

12. 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.

13. 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.

14. Respondent **Miguel Vergara** is the Harlingen Field Office Director for U.S. Immigration and Customs Enforcement ("ICE"), which has jurisdiction over the Port Isabel Service Detention Center 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.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

15. Petitioner Silvestre Hernandez Hernandez ("Hernandez") is a native and citizen of Mexico. He was born in 1990, and is currently thirty-five years old.

16. On or about January 20, 2006, when Hernandez was fifteen years old, he entered the United States without inspection and was not apprehended by immigration officials.

17. On June 25, 2014, U.S. Citizenship and Immigration Services (USCIS) approved Hernandez's Form I-821D, Consideration of Deferred Action for Childhood Arrivals (DACA), valid from June 25, 2014, through June 24, 2016. **See, Exhibit A, USCIS DACA approval notice.** Hernandez did not subsequently renew DACA because USCIS denied his later request on March 29, 2019, after determining that his case was already covered by deferred action granted in connection with his pending Form I-918, Petition for U Nonimmigrant Status. **See, Exhibit B, USCIS Deferred Action Decision.**

18. On or about July 5, 2017, Hernandez was apprehended by ICE, and on that same date, the Department of Homeland Security (DHS) issued a Notice to Appear (NTA) charging him with removability under INA § 212(a)(6)(A)(i) as an

alien present in the United States without being admitted or paroled. **See, Exhibit C, Notice to Appear.**

19. On August 21, 2017, Hernandez submitted a Form I-918, Petition for U Nonimmigrant Status, with USCIS based on his victimization in an armed robbery. **See, Exhibit D, USCIS Receipt Notice for Form I-918, Application for U Nonimmigrant Status.**

20. On January 18, 2018, the Orlando Immigration Court denied Hernandez's application for cancellation of removal under INA § 240A(b)(1), 8 U.S.C. § 1229(b)(1). **See, Exhibit E, Order of the Immigration Judge.**

21. On May 17, 2018, the Board of Immigration Appeals dismissed Hernandez's appeal from the Immigration Judge's decision dated January 18, 2018.

22. On September 6, 2018, the ICE Miami Field Office granted Hernandez an Administrative Stay of Deportation or Removal pursuant to INA § 241(c)(2) for a period of one year. **See, Exhibit F, Letter granting Stay of Removal.** The stay was not subsequently renewed because Hernandez was already released under an Order of Supervision and continued to report annually without issue, particularly after USCIS granted him deferred action on February 11, 2019. **See, Exhibit G, U Visa Informational letter.**

23. On September 11, 2018, Hernandez was released from immigration custody by the ICE Tallahassee Sub-Office pursuant to an Order of Supervision (OSUP). **See, Exhibit H, ICE/ERO Form I-220B, Order of Supervision.** He was directed to report in person to the Tampa ICE office on September 19, 2018, and to continue reporting annually thereafter, with which he fully complied. *Id.* Since his release, Hernandez has resided in the community pursuant to OSUP and has remained in full compliance with all conditions of his supervision.

24. On February 11, 2019, USCIS issued an Informational letter indicating that the evidence Hernandez submitted with his petition appeared to demonstrate that he had established the eligibility requirements for U nonimmigrant status. It further indicated that because the statutory cap for U nonimmigrant visas had been reached for the fiscal year, USCIS placed him on a waitlist and granted him deferred action as permitted under 8 C.F.R. § 274a.12(c)(14). **See, Exhibit G, USCIS Informational letter.**

25. On February 17, 2022, USCIS approved Hernandez's Form I-765, Application for Employment Authorization, under category (c)(14), reflecting his grant of deferred action and consistent with issuance to individuals placed on the U-visa waitlist. **See, Exhibit I, USCIS I-765 approval notice.** The employment authorization remains valid from February 17, 2022 to February 16, 2026. *Id.*

26. On December 8, 2025, Hernandez appeared for a routine ICE check-in accompanied by counsel, Vivian Canals. Despite documentary proof of his active deferred action, granted by USCIS because his U-visa petition remains pending solely due to the statutory visa cap, ICE abruptly revoked his long-standing Order of Supervision and took him into custody without prior notice, in violation of 8 C.F.R. § 241.4(l)(2). This action occurred after more than seven years of full compliance with his supervision and while Hernandez remained the beneficiary of deferred action under 8 C.F.R. § 274a.12(c)(14). At the time of detention, ICE neither identified nor communicated any intent to revoke supervision in advance, nor articulated any removal or departure plan to Petitioner.

27. ICE has not alleged that Hernandez poses any danger to the community or risk of flight.

28. Hernandez was transferred to detention centers in Florida, Louisiana, and finally the Port Isabel Detention Center in Los Fresnos, Texas, where he is currently detained.

29. The revocation of Hernandez'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. Hernandez's continued detention serves no legitimate removal-related purpose where DHS has identified no removal or departure plan,

has long permitted him to reside in the community under supervision, and has affirmatively granted him deferred action. Under these circumstances, detention is not reasonably related to effectuating removal and directly contravenes the constitutional and statutory principles articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and its progeny, which prohibit continued detention where removal is not reasonably foreseeable as a practical matter.

30. In light of these facts, Hernandez'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). After more than seven years of full compliance under supervision, while benefiting from active deferred action status and placement on the U-visa waitlist, ICE arbitrarily revoked his Order of Supervision and re-detained him without justification and in violation of the governing regulations. *See*, 8 C.F.R. § 241.4(l)(2); 241.13(i). His continued detention is not reasonably related to effectuating removal, serves no legitimate governmental purpose, contravenes due process, and warrants immediate judicial intervention.

31. This petition followed.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

32. 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 Hernandez 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.

33. 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”).

34. Petitioner is subject to an administratively final order of removal entered on January 18, 2018, 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

35. "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.

36. 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").

37. "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**

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

39. 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).

40. 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").

41. 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).

42. 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)

43. 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).

44. 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).

45. 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(l)(1).

THE APA SETS MINIMUM STANDARDS FOR FINAL AGENCY ACTION

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

47. 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).

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

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

50. 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 his rights under the Constitution, statute, and regulation.

**THE ACCARDI DOCTRINE REQUIRES AGENCIES TO
FOLLOW INTERNAL RULES**

51. 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.”).

52. *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).

53. 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

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

55. 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.

56. 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 January 18, 2018.

57. 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.

58. Petitioner remained under an Order of Supervision for over seven 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 8, 2025, ICE check-in, without any change in circumstances or individualized justification to warrant such action.

59. 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)

60. 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.

61. 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]").

62. Here, Hernandez's re-detention bears no reasonable relationship to any legitimate purpose. For more than seven years, Hernandez resided in the community pursuant to an Order of Supervision and fully complied with every condition imposed by ICE. During that period, DHS affirmatively chose not to effectuate his removal, repeatedly exercising discretion in his favor by releasing him under supervision and granting him deferred action. Hernandez's lengthy and unbroken history of compliance conclusively demonstrates that he poses neither a flight risk nor a danger to the community. In the absence of any individualized findings to the contrary or any articulated removal plan, his continued detention is arbitrary and unsupported by the statutory purposes of civil immigration detention, which are limited to 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.

63. 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 Hernandez substantial and irreparable harm.

CLAIM TWO

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

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

65. *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.

66. 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.

67. 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.

68. 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.

69. 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

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

71. 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).

72. 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).

73. 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.

74. 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.

75. 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.

76. 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.

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

78. 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

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

80. 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).

81. 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).

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

83. 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.

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

85. 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.

86. 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.

87. 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

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

89. 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).

90. “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).

91. 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.

92. 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)

93. 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

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

95. 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”).

96. 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).

97. 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.

98. 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. Silvestre Hernandez Hernandez, 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 Southern District of Texas 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 17, 2025

Respectfully submitted,

/s/ Veronica Semino
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remotely from Texas.

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

I represent Petitioner Silvestre Hernandez Hernandez 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 17, 2025

Respectfully submitted,

/s/ Veronica Semino
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